

273. *Seventh*, the Board terminated the Transaction Committee in violation of the May 8, 2013 resolution to protect Ergen's personal interests. As the Bankruptcy Court found "[e]ven though the DISH board resolutions permitted disbandment of the special committee only upon the special committee's own decision, so long as a bid for LightSquared remained viable, immediately after the special committee delivered its conditional approval of the LBAC bid, the DISH board abruptly disbanded the special committee without advanced notice." (May 8, 2014 Tr. at 37:24-38:5).

274. Finally, the purported “technical issue” for pulling DISH’s bid was a pretext. The Bankruptcy Court found that DISH’s engineers were informed by multiple telecommunications firms that the purported “technical issue” was not an impediment to the use of LightSquared’s uplink spectrum. Moreover, credible witness testimony (subject to cross-examination by Ergen’s lawyers, Wilkie Farr, acting on behalf of DISH’s 100% subsidiary, LBAC) established that the “technical issue” is unlikely to exist at all and that, even if it did exist, technology is available today that can eliminate the problem, rendering it a non-issue. (Confirmation Op. at 33).

## IX. DERIVATIVE ALLOCATIONS

275. Plaintiff brings this action derivatively in the right and for the benefit of DISH to redress injuries suffered, and to be suffered, by DISH as a direct result of the breaches of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. DISH is named as a nominal defendant solely in a derivative capacity.

276. Plaintiff will adequately and fairly represent the interests of DSH in enforcing and prosecuting its rights.

277. Plaintiff was a shareholder of DISH at the time of the wrongdoing complained of, has continuously been a shareholder since that time, and is a current DISH shareholder.

278. Plaintiff has not made any demand on the Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below:

1                                    **X. DEMAND ON THE DISH BOARD IS EXCUSED AS FUTILE**

2            279. Demand on the Board is excused for several reasons. *First*, because this matter  
3 involves a controlling shareholder standing on both sides of multiple transactions, the Court must  
4 review the transactions at issue under the exacting entire fairness standard. *See Shoen*, 122 Nev.  
5 at 640 n.61 (“Generally, when an interested fiduciary’s transactions with the corporation are  
6 challenged, the fiduciary must show good faith and the transaction’s fairness”). As the Nevada  
7 Supreme Court has explained:

8                                    A director is a fiduciary. So is a dominant or controlling  
9 stockholder or group of stockholders. Their powers are powers in  
10 trust. *Their dealings with the corporation are subjected to*  
11 *rigorous scrutiny and . . . the burden is on the director or*  
12 *controlling stockholder not only to prove the good faith of the*  
13 *transaction but also to show its inherent fairness from the*  
14 *viewpoint of the corporation and those interested therein. The*  
15 *essence of the test is whether or not under all the circumstances,*  
16 *the transaction carries the earmarks of an arm’s length bargain.”*

17 *Foster v. Arma*, 74 Nev. 143, 155 (1958).

18            280. Because Defendants bear the evidentiary burden of proving good faith and  
19 inherent fairness subject to this Court’s rigorous scrutiny, and because of the highly fac-  
20 sensitive nature of this review, demand is excused in cases involving self-dealing as long as the  
21 unfairness is particularized, as it is here.

22            281. *Second*, the Board lacks independence from Ergen, the Company’s admitted  
23 controlling shareholder, whose misconduct lies at the heart of the Complaint. Ergen himself is  
24 clearly interested and, as discussed below, none of the Directors other than Goodham are  
25 independent of the interested controlling shareholder and, thus, demand is excused.

26            282. *Finally*, independent of the exacting entire fairness test and the independence  
27 inquiry, the Board acted in bad faith when, among other things, it: (1) refused to support the  
28 Termination Committee against Ergen’s interference and meddling with the requested  
indemnification; (2) terminated the Transaction Committee in derogation of the enabling  
resolution; (3) created a deeply flawed SLC whose members are beholden to Ergen and the  
Board; (4) refused to protect DISH’s interests when Ergen and his personal lawyers at Wilkie  
barr conditioned DISH’s bid on receiving payment in full of his personal debt claims.

1 representing instead to this Court that no conflict existed; (5) refused to protect DISH's interests  
2 when Wilkie Farr terminated DISH's bid. In each instance, the Board knowingly favored  
3 Ergen's personal interests over the interests of DISH and DISH's public shareholders. Such  
4 intentionally disloyal and bad faith misconduct is not protected by the business judgment rule.

5 **A. Defendants Have Not Met the Burden of Proving the Entire Fairness of Defendant**  
6 **Ergen's Self-Dealing at Issue in this Action.**

7 283. Ergen has and, at all relevant times had, a personal interest in his investment of \$1  
8 billion of LightSquared debt. Ergen admitted that he spent "most of his personal money" to  
9 make the investment. Thus, Ergen had a very strong incentive to protect his personal investment  
10 by using his control over DISH and DISH's Board, even if Ergen's personal interests were not  
11 aligned with the interests of DISH. Under Nevada law, when the interests of a controlling  
12 shareholder and corporate fiduciary diverge from those of his company and its public  
13 shareholders, as here, entire fairness review applies.

14 284. The challenged transactions, including Ergen's secret LightSquared debt  
15 purchases, Ergen's personal \$2 billion bid for LightSquared's assets setting a "floor" to protect  
16 his personal investment, Ergen's decision to condition DISH's bid for valuable LightSquared  
17 assets on payment in full of his personal claims for payment of LightSquared debt, and Ergen's  
18 decision to terminate DISH's bid are governed by the exacting entire fairness standard, not the  
19 business judgment rule. The burden of proving the participants' good faith and the entire  
20 fairness of each of these transactions challenged herein, including all aspects of the transactions'  
21 negotiation, structure, and terms, is placed upon the Board, as a matter of law.

22 285. Here, the Director Defendants cannot meet their burden. As detailed above, the  
23 entire process, starting with Ergen's secret LightSquared debt purchases and continuing to the  
24 date of this Complaint, is marred by intentional disloyal conduct favoring the personal interests  
25 of Ergen over the interests of DISH and DISH's public shareholders. As the Bankruptcy Court  
26 found after a trial, including extensive briefing and testimony, "[f]rom his stunning lack of  
27 candor with the DISH Board and management to the stonewalling and disbanding of the special  
28 committee, the message is loud and clear. *No one crosses or even questions the actions of the*

1 *chairman*. Charles Ergen is, in every sense, the controlling shareholder of DISH and wields that  
2 control as he sees fit.” (May 8, 2014 Tr. at 51:24-52:4). As a result, the process of Ergen’s  
3 personal LightSquared debt purchases and DISH’s bid for LightSquared spectrum assets is and  
4 has been fatally flawed, and cannot survive entire fairness review. Accordingly, demand on the  
5 Board is excused.

6 **B. The Challenged Conduct at Issue is Not Subject to the Business Judgment Rule**

7 286. The Directors Defendants’ challenged misconduct at the heart of this case  
8 constitutes the direct facilitation of disloyal and bad faith misconduct. In essence, as the  
9 “ultimate decision making body” of DISH, the Board affirmatively adopted, facilitated and  
10 condoned Ergen’s abuse of DISH information, resources and opportunity for his personal gain.  
11 Intentional disloyal conduct is not a legally protected exercise of business decision and such  
12 conduct can in no way be considered a valid exercise of business judgment. Indeed, the business  
13 judgment rule only provides deference to the decisions of directors if they acted in good faith, in  
14 the company’s best interests, and if they were fully informed in making the decision—none of  
15 which occurred here.

16 287. To the contrary, the record in the Bankruptcy Court conclusively establishes that  
17 the Board was not fully informed about Ergen’s debt purchases and did not act in good faith or in  
18 the best interest of DISH, including by terminating the Transaction Committee in derogation of  
19 the enabling resolutions, allowing Ergen to condition DISH’s bid on receiving payment in full on  
20 his personal debt purchases, and permitting Ergen’s lawyers at Wilkie Farr to terminate DISH’s  
21 bid.

22 288. The Board’s actions intentionally favored Ergen’s interests over the interests of  
23 DISH, and accordingly do not receive deference under the business judgment rule. The Board’s  
24 failure to act in accordance with the business judgment rule excuses Plaintiff from having to  
25 make a demand.

26 **C. A Majority of the Board is Controlled by Ergen.**

27 289. At the time Plaintiff filed this action, the Board consisted of Charles Ergen,  
28



1 Cantey Ergen, Clayton, DeFranco, Moskowitz, Orloff, Vogel, and Goodburn. Except Goodburn  
2 (who is no defendant here), each of these Director Defendants was and is personally beholden to  
3 Ergen.<sup>7</sup>

4 290. Charles Ergen, DISH's admitted controlling shareholder, is clearly conflicted with  
5 respect to determining whether to initiate and aggressively prosecute this Action. Pursuing the  
6 claims asserted herein could force Ergen to disgorge hundreds of millions of dollars in profits  
7 from his LightSquared debt purchases and compensate DISH for the lost opportunity of  
8 acquiring LightSquared spectrum. Since pursuing the claims asserted in this Complaint is  
9 antithetical to Ergen's personal economic interests, he could not impartially consider a demand.

10 291. Cantey Ergen is Ergen's wife and could not fairly and impartially consider a  
11 demand to initiate an action that could force her husband to disgorge hundreds of millions of  
12 dollars in profits from his LightSquared debt purchases (made with funds from their joint trust  
13 account) and compensate DISH for the lost opportunity of acquiring LightSquared spectrum.  
14 Since pursuing the claims asserted in this Complaint is antithetical to Cantey Ergen's personal and  
15 financial interests, she could not impartially consider a demand.

16 292. Joseph Clayton, DISH's President and CEO, could not fairly and impartially  
17 consider a demand to initiate this action. When Ergen stepped down as DISH's CEO in 2011, he  
18 personally selected Clayton to succeed him. Clayton serves at the pleasure of Ergen and  
19 received compensation of \$907,000 and \$9,845,632 in 2012 and 2011, respectively. Since  
20 pursuing the claims asserted in this Complaint is antithetical to Clayton's financial interests, he  
21 could not impartially consider a demand.

22 293. James DeFranco, the co-founder of DISH with Charles and Cantey Ergen, and  
23 could not fairly and impartially consider a demand to initiate this action. DeFranco and Ergen's  
24 close personal relationship dates back more than 35 years. DeFranco has become incredibly  
25 wealthy as a result of his friendship and partnership with Ergen. According to the 2013 DISH  
26

27 <sup>7</sup> Under Nevada law, demand futility is determined as of the commencement of the Action. For  
28 the avoidance of doubt, and as alleged herein, Defendants Brokaw and Lillis are not independent  
either.

1 Annual Meeting Proxy, DeFranco owns 4,576,027 shares of DISH Class A common stock,  
2 which based on DISH's closing stock price of \$63.41 on July 24, 2014, are worth approximately  
3 \$290 million. This is the remaining total after DeFranco sold, in 2011 and 2012 alone, roughly  
4 \$40 million of his personal DISH equity. Moreover, DeFranco has worked closely with Ergen  
5 for the last thirty years as he has been and continues to be serve as a DISH vice president and a  
6 member of the DISH Board at the pleasure of Ergen. Since pursuing the claims asserted in this  
7 Complaint is antithetical to DeFranco's personal and financial interests, he could not impartially  
8 consider a demand.

9 294. David Moskowitz could not fairly and impartially consider a demand to initiate  
10 this action. At the pleasure of Ergen, Moskowitz served as DISH's General Counsel between  
11 1990 and 2007 -- receiving more than \$6 million -- and has served as a "senior advisor" since  
12 2012 receiving compensation of \$250,000 per year. According to the 2013 DISH Annual  
13 Meeting Proxy, Moskowitz also received 944,352 shares of DISH Class A common stock, which  
14 based on DISH's closing stock price of \$63.41 on July 24, 2014, are worth approximately \$59  
15 million. Ergen has also selected Moskowitz to serve as trustee for certain trusts established for  
16 the benefit of Ergen's children. Since pursuing the claims asserted in this Complaint is  
17 antithetical to Moskowitz's personal and financial interests, he could not impartially consider a  
18 demand.

19 295. Tom Ortolf could not fairly and impartially consider a demand to initiate this  
20 action. At the pleasure of Ergen, Ortolf served as DISH's President and Chief Operating Officer  
21 from 1988 until 1991 and, since 2005, as a DISH director. DISH has paid Ortolf more than  
22 \$730,000 for his service as a director. Ergen also added Ortolf to the board of directors of  
23 EchoStar in 2007 and rewarded him with over \$520,000 in additional directorship fees over the  
24 last five years. At the pleasure of Ergen, DISH has also employed Ortolf's children. Since  
25 pursuing the claims asserted in this Complaint is antithetical to Ortolf's personal and financial  
26 interests, he could not impartially consider a demand.

27 296. Carl Vogel could not fairly and impartially consider a demand to initiate this  
28 action. At the pleasure of Ergen, Vogel served as a senior DISH executive between 2005 and

1 2008 — receiving more than \$9 million — and has continued to serve as a “senior advisor” while  
2 serving as a DISH director. According to the 2013 DISH Annual Meeting Proxy, Vogel also  
3 received 357,244 shares of DISH Class A common stock, which based on DISH’s closing stock  
4 price of \$63.41 on July 24, 2014, are worth approximately \$22 million. Ergen also added Vogel  
5 as a “senior advisor” and a member of the board of directors of EchoStar. Since pursuing the  
6 claims asserted in this Complaint is antithetical to Vogel’s personal and financial interests, he  
7 could not impartially consider a demand.

8 **D. A Majority of the Board is Conflicted by a Substantial Likelihood of Liability Arising**  
9 **from their Misconduct.**

10 297. Even if knowingly facilitating disloyal conduct could somehow fall within the  
11 ambit of the business judgment rule (which it does not), demand is also futile and excused  
12 because a majority of the members of the Board are not disinterested or independent because  
13 they face a substantial likelihood of liability for their misconduct. Specifically, Defendants  
14 DeFranco, Moskowitz, Ortolf and Vogel are Defendants to this Action because they repeatedly  
15 failed to place the interests of DISH and its public shareholders before the interests of Ergen.

16 298. As alleged herein (in § IV.J. *supra*) Defendants DeFranco, Moskowitz, Ortolf,  
17 and Vogel each breached their fiduciary duties of loyalty and good faith to DISH and its public  
18 shareholders when they voted to terminate the Transaction Committee in derogation of the  
19 enabling resolutions in order to protect Ergen’s personal interests.

20 299. As alleged herein (in § V.C. *supra*) Defendants DeFranco, Moskowitz, Ortolf, and  
21 Vogel each breached their fiduciary duties of loyalty and good faith to DISH and its public  
22 shareholders when they created the SLC with highly conflicted directors (including Ortolf  
23 himself) who were completely beholden to Ergen. As discussed herein, the personal,  
24 professional, and financial ties between Ortolf and Ergen, and Brokaw and Ergen, established  
25 from the SLC’s inception that it could not and would not place DISH’s interests before Ergen’s,  
26 regardless of any conflicts.

27 300. As alleged herein (in § VI.B. *supra*) Defendants DeFranco, Moskowitz, Ortolf,  
28 and Vogel each breached their fiduciary duties of loyalty and good faith to DISH and its public

1 shareholders when they allowed Ergen to condition DISH's bid for LightSquared spectrum assets  
2 on a release of claims against Ergen personally, and on Ergen's LightSquared debt claims being  
3 paid in full.

4 301. As alleged herein (in § VLE *supra*) Defendants DeFranco, Moskowitz, Ortolf,  
5 and Vogel each breached their fiduciary duties of loyalty and good faith to DISH and its public  
6 shareholders when they allowed Ergen to terminate DISH's bid for LightSquared spectrum  
7 assets.

8 302. These Director Defendants are conflicted from and unable to pursue the  
9 Company's claims against Ergen and the Board. Any effort to prosecute such claims against  
10 Ergen for his role in using DISH for his personal interests and at the expense of DISH's public  
11 shareholders would necessarily expose the Board's own culpability for the very same  
12 misconduct.

13 303. Accordingly, demand upon each of Defendants DeFranco, Moskowitz, Ortolf, and  
14 Vogel is excused as futile.

15 **XL THE SPECIAL LITIGATION COMMITTEE IS NOT ENTITLED TO CONTROL**  
16 **THIS ACTION**

17 304. The Special Litigation Committee formed by the Board is just a sham designed by  
18 Ergen to frustrate this litigation. Like the entire Board before it, the Special Litigation  
19 Committee is only interested in acting in Charles Ergen's best interests, not in the interests of  
20 DISH. Accordingly, it is not entitled to step in for Plaintiff and control this litigation.

21 **A. The Special Litigation Committee Lacks Independence**

22 305. Conceding that a majority of the Board is obviously beholden to the interested  
23 Ergen, and that Plaintiff would establish that a demand is excused, the Board formed a special  
24 litigation committee in an attempt to regain control over the claims in this action. A hearing on  
25 Plaintiff's Motion for Preliminary Injunction was scheduled for September 19, 2013. Late in the  
26 evening the night before, on September 18, 2013, Plaintiff was informed that the Board had  
27 created a special litigation committee to assess the claims raised in Plaintiff's original complaint.

28 306. The membership of the Special Litigation Committee raises proves that it is not

1 independent from Ergen. Initially, the Special Litigation Committee consisted of only two  
2 members—Ortolf and Brokaw. The inclusion of Ortolf on the special committee is shocking.  
3 As noted above, Defendants acknowledged that he could not even serve on the Special  
4 Committee because of his conflicts with EchoStar, another Ergen controlled entity. In addition,  
5 Ortolf has longstanding ties to Ergen and to the Company, including serving as DISH's President  
6 and Chief Operating Officer from 1988 until 1991. Ergen selected Ortolf to serve both DISH  
7 and EchoStar as an officer and a director, and Ergen is accordingly responsible for much of  
8 Ortolf's personal earnings throughout his tenure at both companies. Indeed, in his capacity as a  
9 DISH and EchoStar director for 2013 alone, Ortolf earned approximately \$280,000.

10 307. In addition, Ortolf's children have each worked at DISH, and, in fact, one still  
11 works there. Rather than being forthright about this conflict, the SLC concealed Ortolf's  
12 children's connections with DISH in its initial status report to the Court. Additionally, Ortolf has  
13 already demonstrated that he cannot act independently of Ergen by being one of the directors to  
14 vote in favor of the disbandment of the Special Committee. Ergen could not stand up to Ergen if  
15 he wanted to, which he does not.

16 308. Brokaw is also not independent of Charles and Catey Ergen. In fact, Brokaw  
17 and his wife *chose* the Ergens to be part of their family by selecting Catey Ergen to be their  
18 son's godmother. In other words, Brokaw has entrusted the Ergens to raise his son in the event  
19 something tragic would happen to Brokaw and his wife. In a very literal sense, for Brokaw  
20 taking money from Ergen is like taking money from Brokaw's own son. Moreover, Brokaw has  
21 provided Ergen with free professional advice on multiple occasions. The idea that Brokaw  
22 would sue Ergen is simply absurd.

23 309. The late addition of Charles M. Lillis does not cure the Special Litigation  
24 Committee's deficiencies. As detailed above at ¶ 31, Lillis has had close professional  
25 relationships with Defendants Cullen (Ergen's "right hand man" and "closest confidante on all  
26 things wireless") and Vogel for decades.

27 310. Between 1995 and 2000, Lillis served as Chairman of the board of directors and  
28 CEO of cable company MediaOne Group, Inc., where he worked closely with and supervised

1 Cullen, until AT&T acquired MediaOne in July 2000. At the time that acquisition was  
2 consummated, Defendant Vogel had just served as Executive Vice President and Chief  
3 Operating Officer of Field Operations for AT&T Broadband and Internet Services, and was  
4 responsible for managing the operations of AT&T's cable broadband properties. In July 2000,  
5 following AT&T's acquisition of MediaOne, Lillis and Cullen formed private equity firm  
6 LoneTree Capital. The next year, in October 2001, Vogel joined cable company Charter  
7 Communications, Inc. as President and CEO. In July 2003, Cullen joined Vogel at Charter as  
8 Senior Vice President of Advanced Services and Business Development, with Lillis joining  
9 Charter's board of directors shortly thereafter in October 2003. In that capacity, Lillis played a  
10 role in awarding Vogel a \$500,000 special bonus in July 2004. The investigation of counsel has  
11 revealed evidence that Lillis and Vogel were very close and that Lillis was "not happy" with the  
12 decision of the Charter board of directors to fire Vogel. Indeed, according to a former Charter  
13 director, Lillis resigned from the Charter board to protest the termination of Vogel, and sent his  
14 fellow directors an email "berating" them for a poor performance review of Vogel. Vogel would  
15 go on to join the EchoStar Board in May 2005 and to serve as DISH's Vice Chairman from June  
16 2005 to March 2009, and DISH's President from September 2006 to February 2008.

17 311. In 2006, Vogel introduced Cullen to Ergen, and Cullen joined DISH in 2007,  
18 becoming the Company's Executive Vice President and Ergen's "right hand man" and "closest  
19 confidante on all things wireless." Based on Lillis's close relationships with Ergen's trusted  
20 colleagues Vogel and Cullen dating back to MediaOne and Charter, Ergen selected Lillis to join  
21 the DISH Board in November 2013.

22 312. Vogel also serves as a member of the board of directors of the National Cable &  
23 Telecommunications Association, a trade organization to which Lillis belongs. In addition, Lillis  
24 and his wife, Gwen, along with Charles and Cantey Ergen, are benefactors of the Children's  
25 Circle of Care, a charitable organization that contributes to children's hospitals throughout North  
26 America.

27 313. A director of the Company has additionally admitted and confirmed that the  
28 members of the Board and the Special Litigation Committee cannot and do not act independently

1 of Charles Ergen. Goodbarn specifically removed his name from consideration for membership  
2 on the Special Litigation Committee because it was his view that it was not independent. He  
3 noted that when the committee was being formed, the same issues were arising as he experienced  
4 with the Special Committee. Despite these issues, he observed that none of the other directors  
5 were raising any objections. Accordingly, it was Goodbarn's determination that the committee  
6 would not be independent because none of the other directors could act independently from  
7 Ergen. As Goodbarn testified:

8 Q. So it was -- it was your view that nobody else could act in an  
9 independent way of Charlie, correct?

10 A. That is correct.

11 (Goodbarn Tr. at 233:25-234:3).

12 **B. The Suspect Special Litigation Committee's Prejudgment of this Action Without any**  
13 **Investigations Shows That It is Not Acting in Good Faith.**

14 314. After the Board decided to create the Special Litigation Committee on the eve of  
15 the Court's scheduled hearing on Plaintiffs' Motion for Preliminary Injunction, and after  
16 Plaintiffs timely sent the Special Litigation Committee a demand, the SLC wasted no time in  
17 rejecting Plaintiffs' allegations and arguments out of hand. The SLC provided its first status  
18 report on October 3, 2013—two weeks after its formation, ten days after Plaintiffs' demand, and  
19 less than one week after retaining counsel. The SLC status report provided conclusions to the  
20 Court on the merits of Plaintiff's claims -- despite its severely limited investigation --  
21 demonstrating that it pre-judged this Action and failed to act in good faith since its inception.

22 315. In its report, the SLC represented "that it takes seriously the claims in the  
23 Complaint, would investigate them thoroughly and would decide whether they should be  
24 pursued, stayed or dismissed in the best interest of DISH and its stockholders." The SLC further  
25 acknowledged that it would need to conduct an extensive investigation that would take  
26 "approximately four months," including that it "expects to request and review documents from  
27 DISH and other relevant persons and to complete its review of documents by early November,"  
28 "to conduct interviews of relevant persons during November and early December." and,

1 “[U]nless . . . to determine the appropriate course of action in response to the demand.” In  
2 reality, however, as evidenced by that same report and discussed above, the SLC had already  
3 decided not to pursue claims against Ergen and the Board.

4 316. In its report, the purportedly independent SLC sided wholly and completely with  
5 Ergen and the Director Defendants, asserting to this Court that “the SLC does not believe that the  
6 requested relief, if granted, would serve the best interest of DISH.” Moreover, the SLC informed  
7 the Court that Ergen could not have any conflicting interest because “as the owner of most of  
8 DISH’s equity, [Ergen] has a strong incentive to ensure that DISH acquires LightSquared on the  
9 most favorable terms possible, without overpaying.” Having swallowed Ergen’s and the Board’s  
10 arguments “line, hook, and sinker,” the SLC emphatically stated that “Ergen’s participation [in  
11 the LightSquared bankruptcy proceedings] does not threaten to impair DISH’s efforts to Acquire  
12 LightSquared.” Ergen’s pulling of DISH’s bid has proved that assertion false.

13 317. Incredibly, by its own admission, the SLC was not even fully informed when it  
14 reached these conclusions defending Ergen and the Director Defendants. The SLC’s prejudged  
15 rejection of the merit of Plaintiff’s claims is inconsistent with an independent committee tasked  
16 to fairly and independently investigate claims, and fully consistent with a sham committee  
17 hastily assembled in an effort to whitewash Ergen’s and the Board’s misconduct and de-rail this  
18 Action.

19 **C. The SLC Fails to Take Action Despite Conflicts Arising with Ergen’s Involvement in**  
20 **the LightSquared Bid Brought Directly to its Attention**

21 318. The SLC’s supposed purpose was to investigate the claims alleged in this action,  
22 and to decide whether to take action to protect DISH. Following its initial rejection of Plaintiff’s  
23 claims, demonstrating it was not seriously interested in an actual investigation, it has continued  
24 to demonstrate that its fundamental inability and/or unwillingness to consider compelling  
25 allegations that Ergen and the Board have breached their duties to, and have harmed, DISH.  
26 Indeed, even as the harms to the Company that Plaintiffs complained of have manifested  
27 themselves, the SLC has not taken any steps to protect DISH and seek monetary or other relief.

28 319. At the time of its formation, the SLC acknowledged the value to the Company



1 that LightSquared's spectrum assets represented. In a November 20, 2013 filing with the Court  
2 in advance of a hearing on Plaintiffs' Motion for Preliminary Injunction, the SLC stated that  
3 "[t]here are at least two points on which all parties in this action agree: (i) the acquisition of the  
4 LP Assets would be in the best interest of DISH and its shareholders; and (ii) the current \$2.2  
5 billion stalking horse bid (the "DISH Bid") for those assets should not be disturbed," and that  
6 "[t]he acquisition of those assets is too large and important to DISH to prevent Ergen or his  
7 controlled directors from steering DISH's acquisition strategy. But the SLC did nothing to  
8 protect the Company's pursuit of those assets, and now has done nothing to hold Ergen or the  
9 Board accountable for the inexplicable decision to pull LBAC's bid for those assets and abandon  
10 its stalking-horse position, as detailed at §§ V.LC – V.LE.

11 320. Having already aligned itself with Ergen and his controlled directors, the SLC  
12 repeatedly failed and refused to recognize even the risk, let alone the increasing likelihood, that  
13 DISH would be harmed because Ergen and those directors placed Ergen's interests before  
14 DISH's. Even acknowledging that Ergen and his controlled directors may have "interfered with  
15 the [Transaction Committee] in some meaningful way," the SLC would not act to protect DISH.  
16 Instead, the SLC trumpeted the false and facile conclusion that past interference "would still not  
17 demonstrate that the Court intervention sought by Plaintiff is appropriate."

18 321. Confirming that it was categorically adverse to Plaintiff despite Plaintiff's attempt  
19 to protect the Company, the SLC went on to contend that Plaintiff's actions, rather than Ergen's,  
20 endangered DISH's bid for LightSquared's assets. The SLC stated that "[t]he acquisition of  
21 spectrum assets has been described as a potentially transformative shift in DISH's business that  
22 could make DISH a Fortune 100 company. . . . [I]f DISH lost the LP Assets because of a misstep  
23 in bidding or negotiating, that injury would be irreparable."

24 322. In a display of unintended foresight, the SLC continued, "The acquisition of the  
25 LP Assets is too large and important to DISH to be left in the hands of a single director or even a  
26 single pre-existing director and new director." Although the SLC made its statement to ensure  
27 that the independent Goodham remained on the sidelines, it is telling that the SLC itself allowed  
28 a single director – Ergen – to control DISH's pursuit of LightSquared's spectrum assets. As a

1 result, DISH lost out on a “potentially transformative” acquisition. Still, the SLC has permitted  
2 Ergen’s misconduct to go unchecked, regardless of the harm to the Company, and never gave the  
3 slightest contemplation of crossing Ergen in the slightest manner.

4 323. Both at the time of the SLC’s November 20, 2013 filing and since, Ergen and the  
5 controlled directors have been responsible for several conflicts of interest that have threatened  
6 DISH. Each of these conflicts arose because of Ergen’s participation in the LightSquared  
7 bidding process. Nevertheless, the SLC has failed to act, and the Board has not created any new  
8 independent committees.

9 324. One of the first conflicts arose pursuant to a broad release of claims, including  
10 against Ergen personally, that Ergen insisted to as a condition of DISH’s bid for LightSquared.  
11 As outlined above in § VI.B, this broad release and Ergen’s unwillingness to expose himself to  
12 personal liability created serious problems for DISH’s bid. Multiple parties and entities,  
13 including the United States Trustee, objected to such a broad release as a component of DISH’s  
14 bid for LightSquared’s assets.

15 325. Moreover, not only did Ergen insist on a release of claims against him, he also  
16 insisted that DISH’s bid be conditioned on satisfying his *personal claims* arising from his debt  
17 purchases. At Ergen’s direction, and through Ergen’s counsel, DISH (via 100% owned  
18 subsidiary LBAC) represented to the Bankruptcy Court that unless Ergen’s claims were honored  
19 in full, DISH would pull its bid for LightSquared’s assets. It is difficult to imagine a more direct  
20 and obvious conflict of interest.

21 326. Despite Ergen’s insistence on the release and on conditioning DISH’s bid on  
22 LightSquared honoring his personal claims, the SLC continued to sit idly by, content to watch  
23 Ergen imperil DISH’s “potentially transformative” bid for LightSquared’s spectrum.

24 327. At the Court’s November 25, 2013 hearing on Plaintiff’s Motion for Preliminary  
25 Injunction, counsel for the SLC downplayed the importance of the U.S. Trustee’s objection and  
26 deliberately ignored that the Trustee’s objection illuminated the conflicts between DISH’s and  
27 Ergen’s interests in the bankruptcy proceedings. Counsel for the SLC shrugged off those  
28 concerns, stating, “well, the federal government has even objected, that’s the job of the United

1 States Trustee. That's what they do."

2 328. The Trustee's objection brought to light the conflict between DISH, which had no  
3 interest one way or another in a release of claims against Ergen or his massive personal  
4 investment in LightSquared debt, and Ergen, who obviously did. Accordingly that conflict,  
5 arising from broad releases that Ergen required as a condition of DISH's bid in the Bankruptcy  
6 Court, served as the basis for this Court's order enjoining Ergen's or his counsel's involvement  
7 in negotiating or discussing those releases.

8 329. Eliminating any doubt that the SLC had already prejudged the merits of Plaintiff's  
9 claims and concluded that the claims lacked merit and the Special Litigation Committee would  
10 not pursue those claims. Based solely on the record assembled in advance of the injunction  
11 hearing, counsel persistently showed that the SLC had already reached definitive conclusions in  
12 favor of Ergen on a wide variety of matters pertaining to Ergen:

13 There's not a breach of fiduciary duty if the transaction was fair;  
14 there's not a breach of fiduciary duty if the value was fair; there's  
15 not a breach of fiduciary duty if you have an independent valuation  
16 that you accept; there's not a breach of fiduciary duty to terminate  
17 the special transaction committee, because its job was done, and if  
18 we need to reconvene them at another time to evaluate the  
19 opportunity, we will do so. That doesn't -- the fairness -- none of  
20 those affect the fairness of the LightSquared spectrum by LBAC.  
21 Everything else that they talk about is speculation. They want to  
22 focus on the termination of the special transaction committee and  
23 the importance of the special transaction committee to the process.  
24 Well, they had done their job. They had reached the value. There  
25 was nothing left for them to do unless it later came up as to  
26 whether or not there was an opportunity that existed.

27 330. In other words, despite record evidence that the Court determined presented  
28 "loyalty issues that you're going to be able to allege and get past a motion to dismiss and  
29 probably a motion for summary judgment based on what I've seen," the SLC charged with  
30 representing the Company's interest had no need to genuinely investigate or pursue claims  
31 against Ergen and the Board, since it had already determined that Ergen was beyond reproach.

32 331. Indeed, based on the partisan position that the Special Litigation Committee took  
33 on behalf of Defendants, Plaintiff's counsel raised with the Court that "defendants incorporated  
34 the SLC brief before it was even out." The Court responded by asking "You think maybe they're  
35

1 working together? . . . I recognized that, too. I don't know that you need to go much further."

2 332. At no point did the SLC take any action to protect DISH's interests. The Board  
3 and SLC's refusal to act and deference to Ergen regarding the bankruptcy release, jeopardizing  
4 the Company's bid, was only addressed by this Court issuing an injunction preventing Ergen's  
5 further involvement in the release issue. The SLC's failure to act in the face of Ergen's conflicts  
6 demonstrates that it will not – and, indeed, never would – act contrary to his interests.

7 333. Even after the Court enjoined Ergen's or his counsel's involvement in negotiating  
8 the release, the SLC continued to ignore the blatant conflict that this Court had acknowledged by  
9 issuing the injunction. In response to Plaintiff's Motion for Reconsideration that raised to the  
10 Court the continued role Ergen's personal counsel played in the Bankruptcy Court concerning  
11 the release, the SLC contended that "[i]t remains speculative whether any limitation in the scope  
12 of the release could produce a material benefit for DISH . . . [t]he release of the disallowance  
13 claim is not likely to have any material impact."

14 334. At the December 19, 2013 argument on Plaintiff's Motion for Reconsideration,  
15 the SLC again ignored the conflict posed by the Bankruptcy Court release. Counsel attempted to  
16 conceal from this Court that, with an injunction in place, DISH's counsel nevertheless permitted  
17 Ergen's counsel to continue to represent LBAC in the Bankruptcy Court in conjunction with the  
18 release issue. In the Bankruptcy Court, Ergen's personal counsel, Rachel Strickland of Willkie  
19 Furr, made representations concerning the releases. In this Court, counsel for the SLC falsely  
20 represented that "at the time of the exchange between the judge and Ms. Strickland there wasn't  
21 an opportunity for the DISH counsel to get up." When the Court pressed SLC's counsel,  
22 pointing out that "there was plenty of time for DISH counsel to stand up in that 100 pages or so,"  
23 counsel reluctantly conceded the obvious, stating, *"I guess there was an opportunity for*  
24 *somebody to stand up and say something"*

25 335. Further, counsel for the SLC went on to lambast (and accuse) Plaintiffs for  
26 seeking to protect the Company in its pursuit of LightSquared's assets, suggesting that "the  
27 derivative plaintiffs seem to be playing really more into the hands of those who are opposing the  
28 opportunity of the company to buy valuable spectrum. And every step that they take along the

1 way breaches their fiduciary duty, if you will, Your Honor, that they have to the other  
2 shareholders.”

3 336. Indeed, based on the SLC’s completely partisan position to justify Defendants’  
4 every action, Plaintiff’s counsel raised with the Court on November 23, 2013 that “defendants  
5 incorporated the SLC brief before it was even out,” which shows that the SLC inexplicably  
6 tainted any integrity in its process by sharing its brief with Defendants. The Court responded by  
7 asking Plaintiff’s counsel: “You think maybe they’re working together? . . . I recognized that,  
8 too. I don’t know that you need to go much further.”

9 337. As per the Court’s observation, at no point did the SLC take any action to protect  
10 DISH’s interests. The Board and SLC’s refusal to act, including its complete abdication to Ergen  
11 regarding the bankruptcy release, jeopardizing the Company’s bid, demonstrates that it will not –  
12 and, indeed, never would – act contrary to his interests.

13 338. DISH has now failed to acquire that “valuable spectrum,” albeit as a result of  
14 Ergen and the other Defendants’ actions. The SLC has not, however, investigated or considered  
15 whether Ergen’s and the other Defendants’ conduct constitutes breaches of their duties to the  
16 Company and its public shareholders.

17 339. Counsel for the SLC’s lack of candor to the Court is consistent with the Special  
18 Litigation Committee’s unwillingness to even entertain the possibility of pursuing any claims  
19 against Ergen or his controlled directors, no matter how meritorious.

20 340. The SLC, again, failed and refused to acknowledge the conflicts that Ergen’s  
21 involvement posed, and the harm that ultimately came to pass. As discussed at ¶ 240,  
22 LightSquared’s special committee was so interested in pursuing claims against Ergen that it  
23 cancelled the scheduled bankruptcy auction, at which LBAC was poised to purchase  
24 LightSquared’s spectrum assets, rather than allow a sale and releasing claims against Ergen.

25 **D. After Ergen Causes DISH to Withdraw Its Bid, the SLC Still Refuses to Investigate**  
26 **Credible Claims**

27 341. As discussed in § V.E above, as a result of Ergen’s conflicts and his control over  
28 DISH’s pursuit of LightSquared’s spectrum assets, DISH (through LBAC) abandoned its bid for

1 those same assets that the Special Litigation Committee recognized were "valuable" and  
2 "transformative" just months earlier. The Special Litigation Committee still refuses to engage in  
3 any genuine investigation or pursue credible claims that Ergen and the other Defendants  
4 breached their fiduciary duties.

5 342. Instead, the SLC has emerged as the lead voice on behalf of all of the Defendants  
6 in this Court. In advance of the June 19, 2014 status conference before the Court, the SLC  
7 signed and submitted a document titled "Defendants' Status Report," including Defendants'  
8 reservation of rights to "take whatever action they deem necessary, including filing a motion to  
9 dismiss the amended complaint . . . and opposing any future amendment to Plaintiff's pleading."  
10 Put simply, it is hard (perhaps impossible) to find an SLC in any case anywhere that so flagrantly  
11 showed its intent to conduct a whitewash of significant misconduct.

12 343. The Court should not give any deference to the SLC. Any deference makes a  
13 mockery of the concept of an SLC as a viable extrajudicial mechanism.

#### 14 FIRST CLAIM FOR RELIEF

#### 15 **DERIVATIVE CLAIM AGAINST ERGEN FOR BREACH OF THE FIDUCIARY** 16 **DUTY OF LOYALTY IN CONNECTION WITH DISH'S FAILED BID FOR** 17 **LIGHTSQUARED'S ASSETS**

18 344. Plaintiff repeats and realleges each and every allegation above as if set forth in  
19 full herein.

20 345. Defendant Charles Ergen, as DISH's Chairman of the Board and DISH's  
21 controlling stockholder, is a fiduciary of the Company and its public shareholders. As such,  
22 Ergen owes them the utmost duties of loyalty, good faith and fair dealing, and is prohibited by  
23 these duties from misusing corporate information or knowingly placing the Company at  
24 increased risk of material harm to serve his self-interest. Ergen was required "to maintain, in  
25 good faith, the corporation's and its shareholders' best interests over anyone else's interest,"  
26 including his own. *Shoen v SAC Holding Corp.*, 172 Nev. 621, 632 (2006).

27 346. Ergen acted disloyally by conditioning DISH's bid for LightSquared assets on  
28 receiving payment in full of on his personal claims in connection with his holdings of

1 LightSquared debt. As a result, the December 11, 2013 auction for LightSquared assets was  
2 canceled and DISH missed the opportunity to buy the spectrum for \$2.22 billion.

3 347. Ergen acted disloyally by canceling the Plau Support Agreement and withdrawing  
4 DISH's bid for LightSquared spectrum on January 22, 2014 after LightSquared decided to  
5 pursue claims against Ergen in connection with his personal purchases of LightSquared debt.  
6 DISH's bid was withdrawn to serve Ergen's personal and selfish interests.

7 348. Because of Ergen's disloyal actions, DISH was unable to acquire LightSquared's  
8 spectrum assets that were worth between \$5.174 billion and \$8.996 billion to DISH. This injury  
9 to DISH and DISH public shareholders is the direct result of Ergen's disloyal decisions and  
10 conduct maintaining his own personal interests in \$1 billion of LightSquared debt over the  
11 interests of DISH in acquiring LightSquared spectrum.

12 349. Accordingly, Plaintiff seeks an award of monetary damages against Ergen to  
13 compensate DISH for losing the opportunity to buy LightSquared's spectrum assets for \$2.2  
14 billion or less.

15 350. Plaintiff has been required to retain the undersigned counsel to prosecute this  
16 action and, accordingly, Plaintiff is entitled to an award of its reasonable attorneys' fees, costs  
17 and interests.

## 18 SECOND CLAIM FOR RELIEF

### 19 **DERIVATIVE CLAIM AGAINST ERGEN FOR BREACH OF THE FIDUCIARY** 20 **DUTY OF LOYALTY IN CONNECTION WITH ERGEN'S PURCHASES OF** 21 **LIGHTSQUARED DEBT**

22 351. Plaintiff repeats and realleges each and every allegation above as if set forth in  
23 full herein.

24 352. Defendant Ergen, as DISH's Chairman of the Board and DISH's controlling  
25 stockholder, is a fiduciary of the Company and its public shareholders. As such, Ergen owes  
26 them the utmost duties of loyalty, good faith and fair dealing, and is prohibited by these duties  
27 from misusing corporate information or knowingly placing the Company at increased risk of  
28 material harm to serve his self-interest. Ergen was required "to maintain, in good faith, the

1 corporation's and its shareholders' best interests over anyone else's interest," including his own.  
2 *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006).

3 353. When pursuing a personal business opportunity is reasonably likely to cause harm  
4 to the Company, a fiduciary like Ergen is obligated to permit the company's independent  
5 directors to decide, on full information and without interference, whether fiduciary's pursuit of  
6 the opportunity should be permitted or should be conditioned in any respect, so that the  
7 company's interests are not harmed by the fiduciary's pursuit of the opportunity.

8 354. Ergen, as part of his work on DISH's behalf to identify opportunities to acquire  
9 spectrum assets, saw an opportunity to purchase LightSquared secured debt at a discount and  
10 provide profit when DISH or another bidder would seek to acquire LightSquared spectrum in the  
11 bankruptcy proceedings. Ergen disloyally withheld this opportunity from DISH and kept it for  
12 himself, knowing that he could monetize on this opportunity risk-free by using his control over  
13 the DISH Board to cause DISH to bid on LightSquared spectrum in the LightSquared bankruptcy  
14 proceedings.

15 355. Ergen knew that his personal acquisition of a controlling stake in LightSquared's  
16 debt would create problems for and possibly impair DISH's efforts to acquire LightSquared's  
17 spectrum. Ergen knew that only a short while earlier, DISH was sanctioned in connection with  
18 the DBSD bankruptcy. It was very likely and foreseeable that Ergen's purchase of LightSquared  
19 debt, if coupled with a DISH bid to acquire LightSquared from bankruptcy, would create for  
20 DISH problems similar and potentially worse than those it experienced in the DBSD bankruptcy.

21 356. Rather than disclose the material facts about his desire to personally acquire  
22 LightSquared debt to the Board and permit the independent directors to determine whether  
23 Ergen's pursuit of the opportunity to buy LightSquared should be permitted or should be  
24 conditioned in any respect in order to protect DISH's own interests in buying LightSquared's  
25 assets or to allow DISH itself to profit from this opportunity, Ergen surreptitiously and disloyally  
26 acquired over one billion dollars of LightSquared debt.

27 357. In contemplating, planning, and/or effecting the foregoing conduct, Ergen  
28 misused confidential corporate information and resources belonging to DISH, including



1 confidential information about DISH's strategy and the assistance and knowledge of Defendant  
2 Kiser.

3 358. Nevada Revised Statutes ("NRS") Section 78.070(8) provides companies  
4 incorporated in this state with the ability to disclaim certain corporate opportunities, such that a  
5 director or officer could pursue such identified opportunity without breaching his or her fiduciary  
6 duties. Specifically, NRS 78.070(8) provides Nevada corporations with the right to "renounce in  
7 its articles of incorporation or by action by the board of directors any interest or expectancy to  
8 participate in specified business opportunities or specified classes or categories of business  
9 opportunities that are presented to the corporation or one or more of its officers, directors or  
10 stockholders."

11 359. NRS 78.070(8) did not override Ergen's duty of loyalty to DISH, and does not  
12 purport to excuse a director who breaches his or her duties when identifying or pursuing the  
13 opportunity, even if the corporation has otherwise renounced its interest in such opportunity. In  
14 particular, the statute did not permit Ergen to misuse DISH resources and confidential corporate  
15 information as a means to identify and protect his pursuit of an otherwise renounced opportunity  
16 for his personal gain.

17 360. DISH's Charter required Ergen to inform the Board about the opportunity of  
18 buying LightSquared debt. Article VIII of the Charter provides limited protection to directors or  
19 officers of DISH who learn of business opportunities in a context other than their work for  
20 DISH. According to Article VIII, a DISH director or officer is aware of a Potential Business  
21 Opportunity: "If a director or officer of the Corporation or any Subsidiary of the Corporation is  
22 offered, or otherwise acquires knowledge of, a potential transaction or matter that may  
23 constitute or present a business opportunity for the Corporation or any of its Subsidiaries (any  
24 such transaction or matter, and any such actual or potential business opportunity, a 'Potential  
25 Business Opportunity'). With respect to such Potential Business Opportunity, Article VIII of  
26 DISH's Charter expressly required Ergen to refer the opportunity to the Company if:

27 (A) the Corporation has expressed an interest in such business opportunity ... as  
28 evidenced by resolutions appearing in the Corporation's minutes; (B) such Potential  
Business Opportunity was expressly offered to such director or officer solely in his or her

1 capacity as a director or officer of the Corporation ... ; and (C) such opportunity relates  
2 to a line of business in which the Corporation or any Subsidiary of the Corporation is  
then directly engaged.

3 361. The acquisition of LightSquared debt, secured by LightSquared spectrum assets,  
4 is related to a line of business in which DISH is engaged.

5 362. Ergen learned of the opportunity to purchase LightSquared debt in his capacity as  
6 DISH's Chairman and leader of its strategic initiatives. As set forth above, a critical part of  
7 Ergen's duties at DISH is to seek out ways for DISH to effectuate its strategic plans, including  
8 by acquiring spectrum assets. Ergen has publicly stated that acquiring spectrum assets is a  
9 strategic imperative for DISH. Moreover, the Board has approved numerous efforts to acquire  
10 spectrum assets, including through government auctions and through takeover bids for  
11 companies just like LightSquared. Accordingly, DISH's board minutes reflect the Board's  
12 determination that acquiring spectrum assets is in the Company's interest.

13 363. Accordingly, DISH's Charter did not protect, and was not intended to protect,  
14 Ergen's decision to personally acquire a controlling position in the debt of LightSquared using  
15 DISH confidential information and resources for his personal gain.

16 364. Indeed, the strongest proof that the Charter does not insulate Ergen's actions is the  
17 failure by Ergen, Dodge (as DISH's general counsel) or either DISH's or Ergen's lawyers to  
18 inform the Transaction Committee and its counsel that their attempt to investigate Ergen's debt  
19 purchases was misplaced in light of the Charter. To the contrary, nobody ever asserted that the  
20 Charter would immunize Ergen's conduct until counsel made an assertion to that effect in the  
21 context of this litigation. If this "Charter defense" was not deemed credible enough to even raise  
22 with the Transaction Committee and its counsel from Cadwalader Wickersham & Taft, there is  
23 no basis for this Court to credit Ergen's belated assertion of the Charter as a defense.

24 365. As a result of Ergen's actions, the Company has been and will be damaged.

25 366. Plaintiff seeks an award of monetary damages from Ergen to compensate DISH  
26 for losing the opportunity to buy LightSquared spectrum assets at a discount, for the costs and  
27 fees incurred by DISH in defending itself, its subsidiaries and affiliates (including LBAC and  
28 SP50) and Ergen against allegations that Ergen's purchases of LightSquared debt were improper

1 and barred under the LightSquared credit agreement, and any future monetary harm suffered on  
2 account of Ergen's breach of the duty of loyalty.

3 367. Plaintiff has been required to retain the undersigned counsel to prosecute this  
4 action and, accordingly, Plaintiff is entitled to an award of its reasonable attorneys' fees, costs  
5 and interests.

6 **THIRD CLAIM FOR RELIEF**

7 **DERIVATIVE CLAIM AGAINST THE DIRECTOR DEFENDANTS FOR**  
8 **BREACH OF THE FIDUCIARY DUTY OF LOYALTY**

9 368. Plaintiff repeats and realleges each and every allegation above as if set forth in  
10 full herein.

11 369. The Director Defendants, as directors of the Company, are fiduciaries of the  
12 Company and its public shareholders. As such, the Director Defendants owe them the utmost  
13 duties of loyalty, good faith, and fair dealing, and are prohibited by these duties from knowingly  
14 placing the Company at increased risk of material harm to serve Ergen's personal interests. The  
15 Director Defendants were required "to maintain, in good faith, the corporation's and its  
16 shareholders' best interests over anyone else's interest," including Ergen. *Shoen v. SAC Holding*  
17 *Corp.*, 122 Nev. 621, 632 (2006).

18 370. The Director Defendants acted disloyally to DISH and DISH's public  
19 shareholders by (1) withholding adequate indemnification from the Transaction Committee; and  
20 (2) prematurely disbanding the Transaction Committee in derogation of the enabling resolutions  
21 to protect the interests of Ergen. As a result, Ergen has been allowed to enjoy significant profits  
22 on a corporate opportunity that Ergen created by using DISH information and resources, and that  
23 Ergen wrongfully withheld from the Company.

24 371. The Director Defendants acted disloyally to DISH and DISH's public  
25 shareholders by creating a deeply flawed special litigation committee that is beholden to the  
26 interests of Ergen rather than the interests of DISH. The Director Defendants knew that Orloff  
27 voted to terminate the Transaction Committee to protect Ergen's interests as well as the close  
28 personal and professional ties spanning more than 35 years between Ergen and Orloff, yet placed

1 Orloff on the SLC anyway. The Director Defendants knew of the close personal ties between  
2 Brokaw, on the one hand, and Ergen and Cantey Ergen on the other hand, yet placed Brokaw on  
3 the SLC anyway. The Director Defendants knew of the close personal and professional ties  
4 between Lillis on the one hand and Vogel, Cullen and Ergen on the other hand, yet placed Lillis  
5 on the SLC anyway. The only plausible inference from these actions is that the Director  
6 Defendants deliberately created a Board committee that would act in the best interests of Ergen  
7 and the Board defendants, not in the best interests of DISH and DISH's public shareholders.

8 372. The Director Defendants acted disloyally to DISH and DISH's public  
9 shareholders by allowing Ergen to condition DISH's bid for LightSquared spectrum on Ergen  
10 receiving payment in full on his personal purchases of LightSquared debt.

11 373. The Director Defendants acted disloyally to DISH and DISH's public  
12 shareholders by allowing Ergen terminate the plan support agreement with the Ad Hoc Secured  
13 Group and to terminate DISH's bid for LightSquared spectrum. The Director Defendants knew  
14 of the enormous value of the LightSquared spectrum to DISH, yet they did not oppose Ergen  
15 from terminating DISH's bid for LightSquared spectrum when LightSquared brought a lawsuit  
16 against Ergen personally.

17 374. Because of the Director Defendants' disloyal actions, DISH was unable to acquire  
18 LightSquared's spectrum assets that were worth between \$5.174 billion and \$8.996 billion to  
19 DISH. This injury to DISH and DISH public shareholders is the direct result of the Director  
20 Defendants' misconduct that favored Ergen's personal interests over the interests of DISH and  
21 DISH's public shareholders.

22 375. Because of the Director Defendants' disloyal actions, DISH is not receiving  
23 payment from Ergen for his pursuit of an opportunity to buy LightSquared debt at a discount,  
24 which he was required to present to the Board, or for Ergen's misappropriation of DISH  
25 information and resources for his personal benefit.

26 376. Because of the Director Defendants' disloyal actions, DISH agreed to pay in full  
27 the legal costs of LBAC in the bankruptcy process. Then, in derogation of this Court's  
28 injunction Order, Ergen's personal counsel at Willkie handled virtually all of the bankruptcy

1 work involving LBAC. As a consequence, DISH is paying millions of dollars in legal fees that  
2 serve Ergen's personal interests (and only hurt the interests of DISH and its public investors).

3 377. The Director Defendants' misconduct has caused DISH to suffer significant  
4 injury. Accordingly, Plaintiff seeks an award of monetary damages against the Director  
5 Defendants to compensate DISH for losing the opportunity to buy LightSquared spectrum assets  
6 between December 10, 2013 and January 22, 2014 and not receiving payment from Ergen for his  
7 pursuit of an opportunity to buy LightSquared debt at a discount and his misappropriation of  
8 DISH information and resources, and any legal fees paid by DISH to defend against claims  
9 based on Ergen's debt purchases (including but not limited to fees paid to Willie Farr).

10 378. Plaintiff has been required to retain the undersigned counsel to prosecute this  
11 action and, accordingly, Plaintiff is entitled to an award of its reasonable attorneys' fees, costs  
12 and interests.

#### 13 FOURTH CLAIM FOR RELIEF

#### 14 **DERIVATIVE CLAIM FOR BREACH OF THE FIDUCIARY DUTY OF** 15 **LOYALTY AGAINST THE OFFICER DEFENDANTS FOR FAILING TO** 16 **INFORM THE BOARD OF ERGEN'S DEBT PURCHASES**

17 379. Plaintiff repeats and realleges each and every allegation above as if set forth in  
18 full herein.

19 380. The Officer Defendants, as executive officers of the Company, are fiduciaries of  
20 the Company and its public shareholders. As such, the Officer Defendants owe them the utmost  
21 duties of loyalty, good faith, and fair dealing. The Officer Defendants were required "to  
22 maintain, in good faith, the corporation's and its shareholders' best interests over anyone else's  
23 interest," including his own. *Shoen v SAC Holding Corp.*, 122 Nev. 621, 632 (2006).

24 381. The Officer Defendants acted disloyally to DISH and DISH's public shareholders  
25 by consciously withholding from the Board information that Ergen was purchasing LightSquared  
26 debt. Each of the Officer Defendants knew that Ergen was personally buying LightSquared debt  
27 but decided not to inform the Board, thereby improperly favoring Ergen's interests over the  
28 interests of DISH and DISH's public shareholders.

1           382. Defendant Kiser also acted disloyally by using DISH facilities and resources to  
2 assist Ergen in executing the trades of LightSquared debt.

3           383. Rather than disclose the material facts about Ergen's LightSquared debt purchases  
4 to the Board and permit the independent directors to determine whether Ergen's pursuit of the  
5 opportunity to buy LightSquared should be permitted or should be conditioned in any respect in  
6 order to protect DISH's own interests in buying LightSquared's assets, or whether DISH should  
7 have purchased LightSquared debt itself, the Officer Defendants breached their duties and  
8 allowed Ergen, surreptitiously and in breach of his duty of loyalty, to acquire over one billion  
9 dollars of LightSquared debt. Moreover, Defendant Kiser personally assisted and advised Ergen  
10 with regard to Ergen's debt purchases.

11           384. Nevada Revised Statutes ("NRS") Section 78.070(8) provides companies  
12 incorporated in this state with the ability to disclaim certain corporate opportunities, such that a  
13 director or officer could pursue such identified opportunity without breaching his or her fiduciary  
14 duties. Specifically, NRS 78.070(8) provides Nevada corporations with the right to "renounce in  
15 its articles of incorporation or by action by the board of directors any interest or expectancy to  
16 participate in specified business opportunities or specified classes or categories of business  
17 opportunities that are presented to the corporation or one or more of its officers, directors or  
18 stockholders."

19           385. NRS 78.070(8) did not override the Officer Defendants' duty of loyalty to DISH,  
20 and does not purport to excuse a director who breaches his or her duties when identifying or  
21 pursuing the opportunity, even if the corporation has otherwise renounced its interest in such  
22 opportunity. In particular, the statute did not permit Ergen to misuse DISH resources and  
23 confidential corporate information as a means to identify and protect his pursuit of an otherwise  
24 renounced opportunity for his personal gain.

25           386. DISH's Charter required the Officer Defendants to inform the Board about the  
26 opportunity of buying LightSquared debt. Article VIII of the Charter provides limited protection  
27 to directors or officers of DISH who learn of business opportunities in a context other than their  
28 work for DISH. According to Article VIII, a DISH director or officer is aware of a Potential

1 Business Opportunity: "If a director or officer of the Corporation or any Subsidiary of the  
2 Corporation is offered, *or otherwise acquires knowledge of, a potential transaction or matter*  
3 *that may constitute or present a business opportunity for the Corporation* or any of its  
4 Subsidiaries (any such transaction or matter, and any such actual or potential business  
5 opportunity, a 'Potential Business Opportunity'). With respect to such Potential Business  
6 Opportunity, Article VIII of DISH's Charter expressly required the Officer Defendants to refer  
7 the opportunity to the Company if:

8 (A) the Corporation has expressed an interest in such business  
9 opportunity ... as evidenced by resolutions appearing in the  
10 Corporation's minutes; (B) such Potential Business Opportunity  
11 was expressly offered to such director or officer solely in his or her  
12 capacity as a director or officer of the Corporation ... ; and (C)  
13 such opportunity relates to a line of business in which the  
14 Corporation or any Subsidiary of the Corporation is then directly  
15 engaged.

16 387. The acquisition of LightSquared debt, secured by LightSquared spectrum assets,  
17 is related to a line of business in which DISH is engaged

18 388. Ergen learned of the opportunity to purchase LightSquared debt in his capacity as  
19 DISH's Chairman and leader of its strategic initiatives. As set forth above, a critical part of  
20 Ergen's duties at DISH is to seek out ways for DISH to effectuate its strategic plans, including  
21 by acquiring spectrum assets. Ergen has publicly stated that acquiring spectrum assets is a  
22 strategic imperative for DISH. Moreover, the Board has approved numerous efforts to acquire  
23 spectrum assets, including through government auctions and through takeover bids for  
24 companies just like LightSquared. Accordingly, DISH's board minutes reflect the Board's  
25 determination that acquiring spectrum assets is in the Company's interest

26 389. DISH's Charter did not protect, and was not intended to protect the Officer  
27 Defendants' decision to withhold information about Ergen's personal debt purchases from the  
28 Board.

390. The Officer Defendants' failures to inform the Board of Ergen's LightSquared  
debt purchases have caused DISH to lose a corporate opportunity and to incur significant legal  
fees in defending against lawsuits brought by LightSquared and Harbinger against DISH based

1 on Ergen's LightSquared debt purchases. Accordingly, as a result of the Officer Defendants'  
2 actions, DISH has been and will be damaged.

3 391. Plaintiff seeks an award of monetary damages from the Officer Defendants  
4 reflecting the lost opportunity to DISH of purchasing LightSquared debt, the costs DISH has  
5 incurred in its efforts to defend itself against claims by LightSquared and Habringer based on  
6 Ergen's LightSquared debt purchases, and for any future monetary harm suffered on account of  
7 the Officer Defendants' breach of their duty of loyalty.

8 392. Plaintiff has been required to retain the undersigned counsel to prosecute this  
9 action and, accordingly, Plaintiff is entitled to an award of its reasonable attorneys' fees, costs  
10 and interests.

#### 11 FIFTH CLAIM FOR RELIEF

##### 12 CLAIM FOR UNJUST ENRICHMENT AGAINST ERGEN

13 393. Plaintiff repeats and realleges each and every allegation above as if set forth in  
14 full herein.

15 394. Ergen purchased more than \$1 billion of LightSquared debt without informing the  
16 DISH Board, making a personal profit of \$150 million plus interest. Ergen has caused DISH to  
17 pay for part of all of the expenses and fees incurred by DISH, LBAC, SPSO and Ergen in  
18 defending against claims that Ergen's purchases of LightSquared debt were not permitted under  
19 the LightSquared debt agreement.

20 395. Equity and good conscience do not permit Ergen to reap substantial profits of an  
21 investment that Ergen misappropriated from DISH, implemented using DISH information and  
22 resources, and protected by using lawyers paid by DISH.

23 396. Ergen is unjustly enriched at the expense of DISH.

24 397. Plaintiff may not have an adequate remedy at law.

25 398. Ergen should be subject to an order of disgorgement or the award of money  
26 damages for the profits Ergen obtains through his misappropriation of DISH information and  
27 usurping a corporate opportunity from DISH.

28 399. Plaintiff has been required to retain the undersigned counsel to prosecute this



1 action and, accordingly, Plaintiff is entitled to an award of its reasonable attorneys' fees, costs  
2 and interests.

3 **RELIEF REQUESTED**

4 **WHEREFORE**, Plaintiff demands judgment as follows:

5 1. Determining that this action is a proper derivative action and demand is excused;

6 2. Awarding, against all Defendants and in favor of DISH, the damages sustained by  
7 the Company as a result of Defendants breaches of fiduciary duty, together with pre- and post-  
8 judgment interest to the Company;

9 3. Awarding, against Ergen and in favor of DISH, punitive damages for Ergen's  
10 willful and oppressive misconduct alleged herein;

11 4. Awarding to DISH restitution from all Defendants, and ordering disgorgement of  
12 all profits, benefits and other compensation that Ergen has or will receive as a result of his  
13 purchase of LightSquared debt;

14 5. Directing DISH to take all necessary actions to reform and improve its corporate  
15 governance and internal procedures to comply with DISH's existing governance obligations and  
16 all applicable laws and to protect DISH and DISH's public shareholders from a recurrence of the  
17 damaging events described herein;

18 6. Awarding Plaintiff the costs and disbursements of this action, including  
19 attorneys', accountants', and experts' fees, and costs and expenses; and  
20

21 ...

22 ...

23 ...

24 ...

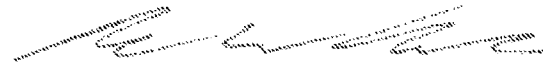
25 ...

26 ...

7. Granting such other and further relief as is just and equitable.

Dated this 25<sup>th</sup> day of July, 2014.

HOLLEY, DRIGGS, WALCH,  
PUZEY & THOMPSON



BRIAN W. BOSCHFE, ESQ. (NBN 7612)  
WILLIAM N. MILLER, ESQ. (NBN 11658)  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
*Liaison Counsel for Plaintiffs*

MARK LEBOVITCH, ESQ.  
New York Bar No. 3037272  
JEROEN VAN KWAWI GEN, ESQ.  
New York Bar No. 4228698  
ADAM D. HOLLANDER, ESQ.  
New York Bar No. 4498143  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
1285 Avenue of the Americas  
New York, New York 10019  
*Lead Counsel for Plaintiffs*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

Case No. A-13-686773-B  
Dept. No.: XI

**VERIFICATION OF JOHN KEANE IN SUPPORT OF SECOND VERIFIED AMENDED  
DERIVATIVE COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND  
PURSUANT TO THE NEVADA RULES OF CIVIL PROCEDURE RULE 23.1**

John Keane, being of full age, having been duly sworn according to law, upon his oath,  
deposes and says:

1. I am the Executive Director - Administrator for the Jacksonville Police and Fire Pension Fund ("Jacksonville Police"), plaintiff in the above captioned matter.

2. As stated in the Verified Second Amended Complaint (the "Complaint"), Jacksonville Police is and has been at all times relevant to the action a shareholder of nominal defendant Dish Network Corporation.

3. I have read the Complaint and consulted with counsel and the allegations therein are true based upon my personal knowledge, except for those matters set forth upon information and belief, in which case I believe them to be true.

4. I hereby declare under penalty of perjury that the foregoing is true and correct.



JACKSONVILLE POLICE AND FIRE  
PENSION FUND

By: John Keane  
John Keane  
Executive Director -- Administrator

STATE OF FLORIDA        :  
                                  : SS  
COUNTY OF DUVAL       :

SWORN TO AND SUBSCRIBED before me, a Notary Public in the State and County  
aforesaid, this 24th day of July, 2014.

Deborah W. Manning  
Notary Public

DEBORAH W. MANNING  
Notary Public, State of Florida  
My Comm. Expires Aug. 10, 2018  
Commission No. EE 201309

**EXHIBIT 1**

**EXHIBIT 1**

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

ATTORNEYS AT LAW

NEW YORK • CALIFORNIA • LOUISIANA • ILLINOIS

Mark Litowitch  
(212) 554-1519  
mark@blbglaw.com

September 23, 2013

BY EMAIL

Special Litigation Committee of Dish Network Corporation  
c/o Messrs. George R. Bruskaw and Tom A. Ortolf

Re: *Jacksonville Police and Fire Pension Fund on behalf of Dish Network Corporation v. Charles W. Ergen, et al.*

Dear Messrs. Bruskaw and Ortolf:

We represent the Jacksonville Police and Fire Pension Fund ("Jacksonville P&F") in the above-referenced derivative action on behalf of Dish Network Corporation ("Dish" or the "Company"). Late in the evening of September 18, 2013, we learned that the Dish board of directors (the "Board") created a special litigation committee (the "SLC") to assess the claims asserted in Jacksonville P&F's Verified Amended Shareholder Derivative Complaint (the "Complaint"), a copy of which is enclosed as Exhibit 1. During the September 19, 2013 hearing before the Hon. Elizabeth Gonzalez, counsel working for controlling shareholder Charles Ergen and Board members loyal to Mr. Ergen represented that although the SLC's founding resolution was not complete, it will have broad authority to investigate the claims in the Complaint and take actions the SLC deems beneficial for Dish and its minority shareholders.

Noting the timing of the SLC's creation, our continuing doubt about Mr. Ortolf's independence, and defense counsel's vague statements about the SLC's charge, we expressed to the Court our concerns about placing too much reliance on the SLC's ability to adequately protect the rights of Dish and its minority shareholders without regard to Mr. Ergen's personal desires, preferences and interference. In addition, Count I of the Complaint seeks an injunction to prevent Mr. Ergen or any directors lacking independence of Mr. Ergen from controlling, influencing or interfering with Dish's efforts to acquire LightSquared's spectrum assets. We reminded the Court that in light of the timing of LightSquared's auction process, any relief on Count I must either be granted or denied within a matter of weeks, not months, and any delay by the SLC in taking prompt corrective action will *de facto* constitute a denial of Count I in its entirety. The Court instructed Jacksonville P&F to make an immediate demand on the SLC, and allowed the SLC until October 3 to provide a response. The Court made clear that our sending this demand is not a concession that a pre-suit demand was required and does not waive any of Jacksonville P&F's rights.

1285 AVENUE OF THE AMERICAS • NEW YORK • NY 10019-6028  
TELEPHONE: 212 554 1400 • www.blbglaw.com • FACSIMILE: 212-554-1444

George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 2 of 10

As per the Court's instructions, and despite Mr. Orloff's significant ties to and dependence on Mr. Ergen, we are giving the SLC a chance to act in good faith to achieve for Dish and its minority shareholders the outcome that Jacksonville P&F will otherwise have to obtain through litigation. Thus, we send this letter to request information about the SLC and to demand that the SLC pursue – and/or support Jacksonville P&F's pursuit of – the claims in the Complaint. Below, we identify the information that should be produced immediately. Next, we provide a brief summary of the Complaint. Last, we outline Jacksonville P&F's immediate demands for SLC action (as to Count I of the Complaint) and its longer term demands.

This demand is made on the SLC only and not on the Board as a whole. For the reasons stated in the Complaint and Jacksonville P&F's motion for a preliminary injunction (enclosed as Exhibit 2), demand on the Board was and remains futile.<sup>1</sup> In order to protect and give any credence to the integrity of the SLC process, this letter must not be shared with Dish's controlling shareholder and chairman, defendant Charles W. Ergen ("Ergen"), Ergen's advisors (including Willie Farr & Gallagher, Sullivan & Cromwell, their respective Nevada counsel, or any other advisor subject to Ergen's control and influence), or other Board members who are defendants in this action until the SLC has responded to the demand as per the Court's instructions.<sup>2</sup> Moreover, we remind you that any influence that Mr. Ergen or the other defendants have into the SLC process, including the SLC's retention of counsel, investigation, and handling of its task, casts serious doubt about the SLC's independence and effectiveness.

Finally, we note our concern that even if the SLC members would otherwise like to act independently, Mr. Ergen may simply be too much of a micromanaging controlling shareholder to properly empower and not interfere with the SLC's actions. Nevertheless, we approach this demand with an open mind and in good faith. In particular, we encourage the SLC to open a genuine and ongoing dialogue with us throughout the SLC's process. In our experience working with other special litigation committees, we have found that committees that engage with us and maximize the sharing of information and ideas tend to achieve the best possible results. We are experienced advocates for shareholder rights, and in structuring resolutions and corrections to

<sup>1</sup> The Board's purported September 18, 2010 vote to create the SLC does not change the analysis for determining whether demand was futile when this action was brought. See *Fagin v. Gilman*, 432 F.3d 276, 284-85 (3d Cir. 2005) (district court improperly considered special litigation report on a motion to dismiss.)

<sup>2</sup> For the avoidance of doubt, by making this demand, Plaintiff does not concede that the SLC is independent, that its charge and scope of authority is proper, or that it has otherwise been given the opportunity to effectively protect the rights of Dish and its minority shareholders. See *London v. Tyrell*, 2010 WL 877528, at \*12 (Del. Ch. Mar. 11, 2010) (the special litigation committee has the burden of establishing its own independence "by a yardstick that must be like Caesar's wife --above reproach"). In addition, as explained below, the most immediate demand made on the SLC is to reconstitute the special committee that was formed to assess Dish's bid for HighSquared's assets. While disclosures and discussions that may yet take place between the SLC and Jacksonville P&F in connection with this process may shed light on what happened and clarify Mr. Orloff's role in the Board's prior breaches of duty, we note for present purposes that Mr. Orloff was not placed on that special committee for a reason, and he evidently supported the patently distasteful decision to disband the special committee long before his work was done.

George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 3 of 10

prior governance failures like those giving rise to the Complaint, we often supplement our own expertise with input and ideas from some of the nation's foremost corporate governance experts.

## **I. Request for Information**

During the September 19, 2013 hearing, Dish's counsel was unable to provide specific information concerning the SLC's purpose, authority, funding and counsel. Information about these issues is critically important to ensure the SLC's ability to perform its investigation independently and in a timely manner. Please inform us, no later than September 26, 2013: (i) the scope of the SLC's authority; (ii) the basis for the SLC's purported independence; (iii) how the SLC is funded; (iv) who will act as the SLC's counsel (and its other advisors, if any); and (v) the expected timing for the SLC's work. In this regard, please provide a copy of the Board minutes or Board resolution approving the creation of the SLC as well as comprehensive disclosure regarding any relationships between the SLC's members (including any of their relatives or business affiliates), on the one hand, and Dish and/or Ergen (including other companies controlled by Ergen), on the other hand.

In addition, we do not know whether Mr. Ergen has permitted Dish to properly notify the Company's directors' and officers' insurance carriers about the claims made in the Complaint. Recognizing that we have not seen the insurance policies and that certain of the claims made against Ergen may be subject to contractual exclusions, we believe many of the claims at issue may be properly covered by insurance policies. In order to provide maximum protection to Dish's ability to obtain relief, please provide us, by September 26, written confirmation that the SLC has directly informed Dish's insurers of the SLC's creation, scope of authority, anticipated timeline, and its assertion on Dish's behalf of all available rights under the insurance policies.

## **II. Summary of the Complaint<sup>3</sup>**

### **A. Events leading to the creation of the Special Transaction Committee**

Five years ago, Ergen determined that Dish should diversify its business by acquiring wireless spectrum assets. After prior success in acquiring out of bankruptcy certain spectrum owners, Dish's attempts to acquire Sprint or Clearwire failed, and Dish continues to search for a potential takeover target owning significant spectrum.

LightSquared has developed significant spectrum assets in the L-Band. Following certain problems with the Federal Communications Commission (the "FCC"), on May 14, 2012, LightSquared filed a petition pursuant to Chapter 11 of the Bankruptcy Code in the bankruptcy court for the Southern District of New York.

---

<sup>3</sup> This summary is for the SLC's convenience only, and does not attempt or purport to identify every material allegation or theory of the Complaint.



George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 4 of 10

Ergen created SP Special Opportunities, LLC ("Sound Point")—an investment vehicle to secretly purchase LightSquared debt using Ergen's personal funds. By April 2013, Ergen had spent almost \$850 million through Sound Point to purchase \$1 billion of LightSquared secured debt, making Ergen LightSquared's single largest creditor in bankruptcy. Ergen did not inform the Board of his actions.

Ergen's debt purchases create numerous fiduciary problems. First, Ergen clearly misappropriated Dish's confidential strategic plans to identify and insulate his ability to personally profit on LightSquared debt. Ergen's job is setting Dish's strategy, including a potential acquisition of LightSquared's spectrum assets. We are unaware of Ergen acting as a distressed debt investor for his personal account. The risk of buying LightSquared debt using personal wealth is a less risky proposition if the purchaser — Ergen — also controls a company that he knows is interested in and may have specific plans to buy LightSquared itself. Putting aside other fiduciary problems that his actions raise, Ergen's misuse of corporate information for personal profit is a breach of the duty of loyalty.

Second, Ergen's decision to indirectly and secretly buy LightSquared debt even though Dish clearly wants to buy LightSquared is itself a bad faith and disloyal act because his actions very predictably exposed Dish to the risk of serious harm. Three years ago, the same bankruptcy court overseeing the LightSquared bankruptcy found that Dish was not acting in good faith in the DBSD bankruptcy because Dish had purchased DBSD debt in an illicit effort to influence the bankruptcy proceedings so that it could obtain DBSD's spectrum rights. *In re DBSD North America, Inc.*, 421 B.R. 133, 139–40 (S.D.N.Y. Bankr. 2009). The bankruptcy court disqualified Dish's vote against a competing reorganization plan, finding that Dish improperly intended to "use [its] status as a creditor to provide advantages over proposing a plan as an outsider, or making a traditional bid for the company or its assets." *Id.* The district court and Second Circuit Court of Appeals affirmed the bankruptcy court's finding of Dish's bad faith. *See In re DBSD*, 2010 WL 1223109 (S.D.N.Y. March 24, 2010); *In re DBSD*, 627 F.3d 496 (2d Cir. 2010); *In re DBSD*, 634 F.3d 79, 104 (2d Cir. 2011) (finding that "DISH purchased the claims as votes it could use as levers to bend the bankruptcy process toward its own strategic objective of acquiring DBSD's spectrum rights, not toward protecting its claim").

Dish's recent history of being found to act in bad faith in a bankruptcy bidding process, coupled with LightSquared's effort to ensure that neither Dish nor affiliates working on Dish's behalf could use debt purchases to leverage a bankruptcy buyout, made it patently obvious that any debt purchases by Ergen would expose Dish to potentially catastrophic litigation. Indeed, the risk that his debt purchases would lead to problems similar to those Dish suffered in the DBSD case likely explains why Ergen did not inform the Board about his actions until it was too late for the Board to object to and stop those actions.

Third, and finally, to the extent that Dish was precluded from buying LightSquared debt

George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 5 of 10

on its own, it is likely that Ergen was equally precluded.<sup>4</sup> In contrast, if Ergen was able to buy LightSquared debt despite the restrictions in LightSquared's debt agreements, then it is possible Dish would also have been able to buy the debt for its own benefit. While the bankruptcy court is going to construe the scope of LightSquared's debt agreement, any ruling that would leave room for Dish to have bought the debt means Ergen misappropriated a corporate opportunity. As set forth in the Complaint and the motion papers, we do not believe that the language of the Dish charter actually insulates Ergen's actions here.

#### **B. The Termination of the Special Committee and Howard's Abrupt Resignation**

The Board evidently learned of Ergen's debt purchases when Ergen made a personal \$2 billion bid to buy LightSquared. Recognizing the absurdity of Ergen competing with Dish for assets that were strategically important to Dish, the Board formed a special transaction committee (the "STC") in May 2013 to determine how Dish should respond. Only directors Goodburn and Howard were arguably independent enough to serve on the committee.

In July 2013, the STC (assisted by Perella Weinberg and Cadwalader Wickersham & Taft) recommended that Dish make a \$2.2 billion stalking horse bid for LightSquared's spectrum assets, conditioned on: (1) the STC having an ongoing role in Dish's bid for the LightSquared assets; and (2) Dish being able to share in any profits arising from Ergen's LightSquared debt purchases. On July 21, 2013, a Sunday, the STC was suddenly disbanded, to the surprise of Messrs. Howard and Goodburn.

On July 23, 2013, a group of LightSquared's secured creditors, including Ergen (the "Ad Hoc Secured Group"), submitted a bankruptcy plan that, if approved, will result in the sale of LightSquared's assets in a public auction, which included a "stalking horse agreement" whereby Dish bid about \$2.2 billion to acquire substantially all of LightSquared's assets. The proposed stalking horse agreement contains significant deal protections favoring Dish. Two days later, on July 25, 2013, Howard abruptly resigned from the Board. Howard's resignation was so sudden and abrupt that Dish was in violation of NASDAQ listing rules.

#### **C. Harbinger's and LightSquared's Pending Claims**

On August 6, 2013, LightSquared's principal shareholder, Harbinger Capital Partners, LLC ("Harbinger"), sued both Dish and Ergen for more than \$4 billion in damages based on fraud and civil conspiracy. The crux of Harbinger's claims against Dish is that Ergen's LightSquared debt purchases and Dish's bid are part of a fraudulent conspiracy to manipulate the

---

<sup>4</sup> LightSquared's credit agreement (the "Credit Agreement") prohibited Dish from directly acquiring LightSquared's debt, but the ability of affiliates of Dish to do so is still subject to determination by the bankruptcy court. Harbinger has sued Ergen and Dish claiming that, among other things, Ergen and Dish are not "Eligible Assignees" (i.e., authorized purchasers) of LightSquared debt under the Credit Agreement.

George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 6 of 10

bankruptcy process so that Dish can obtain LightSquared's spectrum assets. LightSquared has filed a notice of intent to intervene as a plaintiff in the Harbinger action, seeking to equitably disallow Ergen's debt claims. In addition, LightSquared has submitted a proposed reorganization plan contemplating a bidding process led by LightSquared itself (not the secured lenders) in which Dish could be denied the coveted "stalking horse bidder" status.

On August 30, 2013, Harbinger filed its own reorganization plan, proposing to pay off all creditors *other than* Ergen's contested debt claims through the distribution of cash and new notes, and *without* selling LightSquared's spectrum. Harbinger's Disclosure Statement asserts a number of advantages of Harbinger's plan over the plan submitted by the Ad Hoc Secured Group (*i.e.*, Dish's \$2.2 billion bid), including that "Dish, the presumptive stalking horse purchaser is not a good faith purchaser." Harbinger's claims and plan hinge on Ergen's control over Dish and pose a significant risk to Dish's ability to purchase the LightSquared spectrum assets.

#### **D. Ergen's Continued Involvement in the Bid Confirms Harbinger's Claims and Puts Dish at Risk**

The risks created by Ergen's undisclosed debt purchases have materialized, and are being exacerbated by Ergen's refusal to permit independent directors to control Dish's actions in the bidding process. The Board's refusal to isolate Ergen from influencing Dish's bid is itself an act of bad faith. Put simply, if any truly independent board learned that one of its directors was the largest creditor of the company's principal takeover target with a personal financial interest in any bid, that independent board would surely isolate the director/creditor from the company's assessment and execution of its bidding efforts. Moreover, a board's refusal to completely exclude the director/creditor from the bidding process to show that the company should not be tainted by the director's potential wrongdoing when his debt position led to a multi-billion lawsuit against the company and legal filings that would impair the company's ability to execute its takeover strategy is plainly disloyal.

Here, Ergen's undisclosed debt purchases are continuing to harm the Company. Indeed, unless Dish distances itself from Ergen's influence and shows it is not part of a fraudulent conspiracy, Dish may be found not to be a good faith purchaser and barred from acting as a stalking horse or acquiring LightSquared's spectrum altogether. The bankruptcy court may also designate the votes associated with Ergen's LightSquared debt, otherwise jeopardize Dish's status as stalking horse, or support the Harbinger plan (ruling out any sale of LightSquared spectrum). As the *DBSD* rulings show, these risks are far from speculative and, in this case, all hinge on a finding that Dish is not acting independently from Ergen's personal interests. In sum, with Ergen in control of Dish's bid, Ergen remains protected at the expense of Dish and its public shareholders.

George R. Brokaw and Tom A. Orloff  
September 23, 2012  
Page 7 of 10

**E. COUNT I: Jacksonville P&F's Claim for Injunctive Relief**

As set forth in the Complaint and explained in the motion, Ergen's actions in becoming LightSquared's largest creditor knowing Dish's interest in acquiring LightSquared, together with his refusal to give up control over Dish's bid to acquire LightSquared from bankruptcy, have resulted in harm to Dish and threaten to continue to exacerbate that harm. Further, Defendant Ergen's personal interests are not aligned with those of the Company and its public shareholders. Ergen has an incentive to protect his personal investment of almost \$850 million in LightSquared debt even if doing so comes at the expense of Dish's interest in buying LightSquared's spectrum assets at the lowest possible price. In contrast, Dish and its public shareholders have an interest in achieving Dish's strategic objective of acquiring LightSquared's assets on the best terms, regardless whether the best way to do so would result in impairment of Ergen's personal claims.

In all events, the risk that Dish will suffer additional harm in the LightSquared bankruptcy proceedings is significantly greater if Ergen continues to control Dish's bid. Ergen and the rest of the Board owe a duty to allow Dish to pursue its strategic objectives without interference or influence from Ergen and to mount a stronger defense against Harbinger's claims by attacking the factual premise for Harbinger's claims: Ergen's control over Dish and Dish's \$2.2 billion bid. Because Ergen and the Ergen-controlled directors refuse to give up control over Dish's actions in the LightSquared bankruptcy, they are continuing and increasing the risk that Dish will suffer billions of dollars of monetary damages and that Dish's ability to acquire LightSquared will be delayed or impaired.

Since the opportunity to acquire LightSquared in connection with the bidding process set to close on December 6, 2013 is a unique opportunity, the impairment of which is irreparable, Jacksonville P&F seeks an injunction against Ergen or any of the directors he controls from controlling, further interfering with or influencing Dish's efforts to buy LightSquared. To be frank, a reconstitution of the STC that was improperly disbanded would solve many problems.

**F. COUNTS II THROUGH V: Jacksonville P&F's Claims for Money Damages**

Ergen's debt purchases and influence over Dish's bidding efforts after the Board improperly terminated the STC have harmed Dish by increasing the risk that Dish will suffer monetary damages, will need to pay additional money for acquiring LightSquared or its assets (including because of Ergen's bid setting an artificial floor for LightSquared's assets), and incurs related costs defending itself from LightSquared's claims. In addition, Dish is entitled to share in any profits that Ergen realizes on debt purchases that he made based on Dish's confidential information, using Dish's bid, and without disclosing the opportunity to the Board. Accordingly, Counts II through V of the Complaint seek monetary damages from Ergen and the Ergen-controlled directors on the Board.

Specifically, Count II of the Complaint seeks an award of monetary damages from Ergen

George R. Brokaw and Tom A. Orloff

September 23, 2012

Page 8 of 10

and the Ergen-controlled Board members reflecting the additional costs Dish has already incurred and will incur in its efforts to acquire LightSquared and defending itself against Harbinger's claims.

Count III seeks compensation for any damages caused by Ergen's decision not to inform the Board of his plan to purchase LightSquared debt. When Ergen decided to purchase LightSquared debt – a business opportunity that arose because of Ergen's access to confidential Dish information and that was likely to increase the risk to the Company's ability to purchase LightSquared's assets in the bankruptcy proceedings – Ergen was obligated to inform the Board of his plans. If Ergen had informed the Board, Dish's independent directors could have determined whether Ergen's pursuit of the opportunity should be permitted or should be conditioned in any respect to protect Dish's interests. For example, the independent directors could have protected Dish's interests by conditioning Ergen's debt purchases on an agreement that Ergen would not personally bid on LightSquared assets (to set a floor) and the formation of a special transaction committee to be exclusively in charge of a Dish bid for LightSquared assets (if any). Another condition could have been an agreement by Ergen to share with Dish in the profits from any debt purchases that were realized using Dish's confidential information. Ergen's improper decision to keep the Board in the dark precluded the Board from making any determination and imposing any conditions to protect Dish's interests.

Count IV seeks disgorgement of Ergen's profits on the LightSquared debt to compensate Dish for Ergen's usurpation of a corporate opportunity. Having identified an opportunity to profit from purchasing LightSquared debt because of his work on finding strategic targets for Dish, Ergen's fiduciary duties required that he disclose his interest in exploiting this opportunity to the Board and allow the Board's independent members to decide whether it was in Dish's best interests to purchase LightSquared's debt itself. Dish's Charter also required Ergen to inform Dish of the opportunity to buy LightSquared debt.<sup>5</sup>

Here, seeing that Ergen was able to buy the debt through a newly-formed company which he controlled despite various contractual restrictions, the independent directors may well have found a way for Dish to indirectly purchase LightSquared's debt for the Company, thus lowering the cost to Dish of purchasing LightSquared's assets from bankruptcy and enhancing Dish's leverage in any bidding contest for LightSquared's coveted spectrum.

Count V seeks damages for Ergen's unjust enrichment. Specifically, to the extent that Ergen ultimately profits on his LightSquared debt purchases, Ergen has been unjustly enriched at

---

<sup>5</sup> Although NRS § 78.079(2) allows Nevada corporations to renounce any interest or expectancy to participate in specified business opportunities, the statute does not excuse a director who breaches his or her duties when identifying or pursuing the opportunity, even if the corporation has otherwise renounced its interest in such opportunity. Also, neither the statute nor the charter permit Ergen to misuse confidential corporate information as a means to identify and protect his pursuit of an otherwise renounced opportunity.

George R. Brakaw and Tom A. Orloff

September 23, 2012

Page 9 of 10

Dish's expense because he identified and pursued the opportunity using confidential Dish information that he obtained in his capacity as Dish's Chairman.

### III. Demands

Jacksonville P&F demands that the SLC pursue -- or support Jacksonville P&F's continued pursuit of -- each of the claims asserted in the Complaint. Specifically, Jacksonville P&F demands:

#### 1. Immediate reconstitution of the STC.

- 1.1. The SLC must reconstitute the STC and give it sole and exclusive authority to act on behalf of Dish in the LightSquared bankruptcy proceedings.
- 1.2. To ensure continuity and to correct prior breaches, Steven Goodhart must be included in the STC (assuming that he is willing to serve).
- 1.3. The SLC must guarantee that the STC receive any funding that STC requests and can hire any experts and counsel that it believes appropriate (including the same financial and legal experts that advised the original STC), without input or interference from Ergen or other Board members who lack independence of Ergen.
- 1.4. The SLC as currently constituted must not be permitted to undertake work that would otherwise be done by the STC. With all due respect, Mr. Orloff's support for disbanding the STC disqualifies him from being a member of any reconstituted STC, even if Mr. Orloff personally believes he is independent. Moreover, we have uncovered significant information showing why Mr. Orloff would not have been a proper addition to the STC. Placing him on the STC, or allowing the SLC to do the work of the STC, simply raises the same problems that the original STC was supposed to avoid.
- 1.5. The Board must agree to provide the STC with information upon request, while the STC's process and analysis will only be shared with Ergen or other Board members to the extent the STC deems such disclosure proper and in the interest of Dish.
- 1.6. The STC should be asked to immediately inform the bankruptcy court deciding LightSquared's bankruptcy that Dish's bid is pursued independently from Ergen.

#### 2. Pursuit of money damages from Ergen and the Ergen-controlled directors.

- 2.1. Ergen's and the Board's prior disloyal acts, including Ergen's misuse of confidential corporate information to identify the opportunity to profit on LightSquared debt purchases. Ergen's purchase of the debt despite the known

George R. Brekaw and Tom A. Ortolf

September 23, 2012

Page 10 of 10

likelihood that those purchases would complicate or imperil Dish's ability to effectuate its strategic plan, Ergen's decision not to inform the Board about his LightSquared debt purchases until after he had made those purchases, the premature disbandment of the STC, the refusal to isolate Ergen from the Dish bid, and the Board's decision not to demand from Ergen that Dish share in the profits of the LightSquared debt purchases, have harmed and will further harm Dish financially.

- 2.2. Ergen should face disgorgement for any personal profits arising from his usurpation of a corporate opportunity belonging to Dish in a manner that breached his fiduciary duties, and (even if Dish could not directly take the opportunity) to account for Ergen's unjust enrichment.
- 2.3. The SLC should thoroughly investigate these claims and, preferably after articulating its assessment to and coordinating efforts with Jacksonville P&F, negotiate a significant monetary recovery for Dish's benefit.

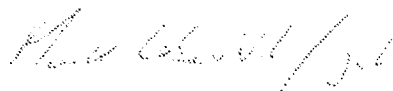
3. Implementation of comprehensive corporate governance improvements

- 3.1. The events giving rise to the Complaint reflect serious corporate governance breakdowns and deficiencies at Dish. The SLC should aggressively act to implement governance enhancements that are likely to prevent any similar breakdown in the future.
- 3.2. As noted, we have considerable expertise in crafting novel and meaningful corporate governance enhancements tailored to company-specific problems.

As the SLC is aware, the LightSquared bankruptcy proceedings are moving quickly and time is of the essence. A refusal to at least reconstitute the STC as set forth in Demand 1 above by October 3, 2013, would be a clear sign that the September 18, 2013 formation of the SLC is merely aimed at stalling the proceedings in this Action for the benefit of Ergen rather than a good faith attempt to investigate Jacksonville P&F's claims for the benefit of Dish.

Please contact us with any questions about Jacksonville P&F's demand or to discuss developments that may impact the demand. We are, of course, available to discuss possible solutions with the SLC in the interest of Dish.

Sincerely yours,



Mark Lebovitch

Encl. (2)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 25<sup>th</sup> day of July, 2014 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing VERIFIED  
SECOND AMENDED SHAREHOLDER DERIVATIVE  
COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND PURSUANT  
TO RULE 23.1 OF THE NEVADA RULES OF CIVIL PROCEDURE, postage prepaid and addressed to:

Joshua H. Reisman, Esq.  
Robert R. Warns III, Esq.  
REISMAN SOROKAC  
8965 South Eastern Avenue, Suite 382  
Las Vegas, Nevada 89123

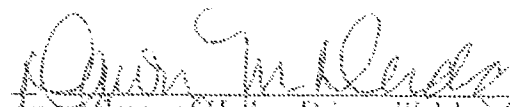
James C. Dugan, Esq.  
Tariq Mondiyi, Esq.  
WILLKIE, FARR & GALLAGHER, LLP  
787 Seventh Avenue  
New York, New York 10019  
*Attorneys for Charles W. Ergen*

Kirk B. Lenhard, Esq.  
Jeffrey S. Rugg, Esq.  
BROWNSTEIN HYATT FABER SCHREK  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106-4614

Brian T. Fowley, Esq.  
SULLIVAN & CROMWELL, LLP  
125 Broad Street  
New York, New York 10004  
*Attorneys for Defendant DISH NETWORK CORPORATION and Director Defendants*

J. Stephen Peck, Esq.  
Robert J. Cassidy, Esq.  
HOLLAND & HART, LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89134

David C. McBride, Esq.  
Robert S. Brady, Esq.  
C. Barr Flinn, Esq.  
YOUNG, CONWAY, STARGATT &  
TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, Delaware 19801  
*Counsel for the Special Litigation Committee*

  
An employee of Holley, Driggs, Walch  
Puzey & Thompson





McDONALD·CARANO·WILSON<sup>LLP</sup>

November 9, 2015

**VIA FEDERAL EXPRESS**

Arizona Corporation Commission  
Corporate Filings Section  
1300 W. Washington St.  
Phoenix, AZ 85007

**Re: Cummings Graduate Institute for Behavioral Health Studies, Inc. - EXPEDITE**

Dear Sir or Madam:

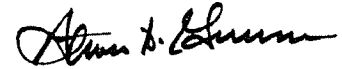
Enclosed are the following documents relating to the above-listed corporation:

1. Copy of your return letter dated October 21, 2015;
2. Arizona Corporation Commission Corporations Division Submission Cover Sheet;
3. Certificate Concerning Restated Articles of Incorporation for For-Profit Corporation (the "Certificate");
4. Articles of Restatement (the "Articles");
5. Statutory Agent Acceptance (the "Acceptance"); and
6. Check in the amount of \$65.00.

Please file the above-listed documents on an expedited basis and return one (1) certified copy of the Certificate and Articles to me by email to [mwhittaker@mcwlaw.com](mailto:mwhittaker@mcwlaw.com).







CLERK OF THE COURT

HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

1 **NEOJ**  
J. Stephen Peek  
2 Nevada Bar No. 1758  
Robert J. Cassity  
3 Nevada Bar No. 9779  
HOLLAND & HART LLP  
4 9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134  
5 Phone: (702) 669-4600  
Fax: (702) 669-4650  
6  
Holly Stein Sollod (*pro hac vice*)  
7 HOLLAND & HART LLP  
555 17th Street Suite 3200  
8 Denver, CO 80202  
Phone (303) 295-8000  
9 Fax: (303) 975-5395  
10 David C. McBride (*pro hac vice*)  
Robert S. Brady (*pro hac vice*)  
11 C. Barr Flinn (*pro hac vice*)  
Emily V. Burton (*pro hac vice*)  
12 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
13 1000 North King Street  
Wilmington, DE 19801  
14 Phone: (302) 571-6600  
Fax: (302) 571-1253  
15  
*Attorneys for the Special Litigation Committee*  
16 *of Dish Network Corporation*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 IN RE DISH NETWORK DERIVATIVE  
20 LITIGATION

Case No. A-13-686775-B  
Dept. No. XI

21 *Consolidated with A688882*

22 **NOTICE OF ENTRY OF FINDINGS OF**  
23 **FACT AND CONCLUSIONS OF LAW**  
24 **REGARDING THE MOTION TO DEFER**  
25 **TO THE SLC'S DETERMINATION**  
26 **THAT THE CLAIMS SHOULD BE**  
27 **DISMISSED**

28 PLEASE TAKE NOTICE that Findings of Fact and Conclusions of Law Regarding the  
Motion to Defer to the SLC's Determination that the Claims Should be Dismissed were entered

HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

1 on the 18th day of September 2015. A copy is attached.

2 DATED this 2nd day of October 2015

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

/s/ Robert J. Cassity

J. Stephen Peek  
Nevada Bar No. 1758  
Holly Stein Sollod  
Robert J. Cassity  
Nevada Bar No. 9779  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

Holly Stein Sollod (*pro hac vice*)  
HOLLAND & HART LLP  
555 17th Street Suite 3200  
Denver, CO 80202

David C. McBride (*pro hac vice*)  
Robert S. Brady (*pro hac vice*)  
C. Barr Flinn (*pro hac vice*)  
Emily V. Burton (*pro hac vice*)  
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

*Attorneys for the Special Litigation Committee  
of Dish Network Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of October 2015, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE MOTION TO DEFER TO THE SLC'S DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED** was served by the following method(s):

× Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

See the attached E-Service Master List

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:

/s/ Valerie Larsen  
An Employee of Holland & Hart LLP

**E-Service Master List  
For Case****null - Jacksonville Police and Fire Pension Fund, Plaintiff(s) vs. Charles Ergen, Defendant(s)****Bernstein Litowitz Berger & Grossmann LLP****Contact**Adam D. Hollander  
Jeroen Van Kwawegen  
Mark Lebovitch**Email**[adam.hollander@blbqlaw.com](mailto:adam.hollander@blbqlaw.com)  
[jeroen@blbqlaw.com](mailto:jeroen@blbqlaw.com)  
[markl@blbqlaw.com](mailto:markl@blbqlaw.com)**Brownstein Hyatt Farber Schreck, LLP****Contact**Jeffrey S. Rugg  
Karen Mandall  
Maximilien "Max" D. Fetaz**Email**[jrugg@bhfs.com](mailto:jrugg@bhfs.com)  
[kmandall@bhfs.com](mailto:kmandall@bhfs.com)  
[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)**Cadwalader Wickersham****Contact**Brittany Schulman  
Gregory Beaman  
William Foley**Email**[brittany.schulman@cwt.com](mailto:brittany.schulman@cwt.com)  
[Gregory.Beamen@cwt.com](mailto:Gregory.Beamen@cwt.com)  
[William.Foley@cwt.com](mailto:William.Foley@cwt.com)**Greenberg Traurig, LLP****Contact**6085 Joyce Heilich  
7132 Andrea Rosehill  
IOM Mark Ferrario  
LVGTDocketing  
RRW Randolph Westbrook**Email**[heilichj@qtlaw.com](mailto:heilichj@qtlaw.com)  
[rosehilla@qtlaw.com](mailto:rosehilla@qtlaw.com)  
[lvitdock@qtlaw.com](mailto:lvitdock@qtlaw.com)  
[lvitdock@qtlaw.com](mailto:lvitdock@qtlaw.com)  
[westbrookr@qtlaw.com](mailto:westbrookr@qtlaw.com)**Holland & Hart****Contact**

Steve Peek

**Email**[speek@hollandhart.com](mailto:speek@hollandhart.com)**Holland & Hart LLP****Contact**Robert Cassity  
Valerie Larsen**Email**[bcassity@hollandhart.com](mailto:bcassity@hollandhart.com)  
[vlarsen@hollandhart.com](mailto:vlarsen@hollandhart.com)**Holley Driggs Walch Fine Wray Puzey & Thompson****Contact**

Dawn Dudas

**Email**[ddudas@nevadafirm.com](mailto:ddudas@nevadafirm.com)**Holley Driggs Walch Puzey Thompson****Contact**

William N. Miller

**Email**[wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)**Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson****Contact**

Brian W. Boschee

**Email**[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)**Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson****Contact**

Brian W. Boschee, Esq.

**Email**[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)**Holley, Driggs, Walch, Puzey & Thompson****Contact**

William N. Miller

**Email**[wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)**Pisanelli Bice PLLC****Contact**Debra L. Spinelli  
Paul Garcia  
PB Lit**Email**[dls@pisanellibice.com](mailto:dls@pisanellibice.com)  
[pg@pisanellibice.com](mailto:pg@pisanellibice.com)  
[lit@pisanellibice.com](mailto:lit@pisanellibice.com)

---

**Reisman Sorokac****Contact**

Joshua H. Reisman, Esq.  
Kelly Wood

**Email**

[JReisman@rsnlaw.com](mailto:JReisman@rsnlaw.com)  
[kwood@rsnlaw.com](mailto:kwood@rsnlaw.com)

---

**Sullivan & Cromwell, LLP****Contact**

Andrew L. Van Houter  
Brian T. Frawley  
Heather Celeste Mitchell

**Email**

[vanhoutera@sullcrom.com](mailto:vanhoutera@sullcrom.com)  
[frawleyb@sullcrom.com](mailto:frawleyb@sullcrom.com)  
[MITCHELLH@SULLCROM.COM](mailto:MITCHELLH@SULLCROM.COM)

---

**Willkie, Farr & Gallagher LLP****Contact**

Tariq Mundiya

**Email**

[tmundiya@willkie.com](mailto:tmundiya@willkie.com)

---

**Winston & Strawn****Contact**

Bruce R. Braun

**Email**

[BBraun@winston.com](mailto:BBraun@winston.com)

---

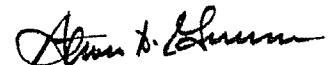
**Young, Conway, Stargatt & Taylor, LLP****Contact**

C. Barr Flinn

**Email**

[bflinn@ycst.com](mailto:bflinn@ycst.com)

---



CLERK OF THE COURT

1 **FFCL**

2 J. Stephen Peek  
3 Nevada Bar No. 1758  
4 Robert J. Cassity  
5 Nevada Bar No. 9779  
6 HOLLAND & HART LLP  
7 9555 Hillwood Drive, 2nd Floor  
8 Las Vegas, NV 89134  
9 Phone: (702) 669-4600  
10 Fax: (702) 669-4650

11 Holly Stein Sollod (*pro hac vice*)  
12 HOLLAND & HART LLP  
13 555 17th Street Suite 3200  
14 Denver, CO 80202  
15 Phone (303) 295-8000  
16 Fax: (303) 975-5395

17 David C. McBride (*pro hac vice*)  
18 Robert S. Brady (*pro hac vice*)  
19 C. Barr Flinn (*pro hac vice*)  
20 Emily V. Burton (*pro hac vice*)  
21 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
22 Rodney Square  
23 1000 North King Street  
24 Wilmington, DE 19801  
25 Phone: (302) 571-6600  
26 Fax: (302) 571-1253

27 *Attorneys for the Special Litigation Committee*  
28 *of DISH Network Corporation*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW REGARDING  
THE MOTION TO DEFER TO THE  
SLC'S DETERMINATION THAT THE  
CLAIMS SHOULD BE DISMISSED**

This matter came before the Court for hearing on the Motion to Defer to the SLC's Determination That the Claims Should Be Dismissed (the "Motion to Defer") on January 12, 2015 at 8:00 a.m. During oral argument, Plaintiff Jacksonville Police and Fire Pension Fund

HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134



1 (“Plaintiff” or “Jacksonville”) presented a motion and affidavit pursuant to Nevada Rule 56(f)  
2 requesting certain discovery. The Court granted Plaintiff discovery regarding the independence  
3 of the Special Litigation Committee of DISH Network Corporation (the “SLC”) and the  
4 thoroughness of its investigation. The Court also scheduled supplemental briefing following  
5 discovery and supplemental oral argument.

6 After Plaintiff completed its requested discovery, it filed a Supplemental Opposition to  
7 the Motion to Defer and the SLC filed a Supplemental Reply in support of the Motion to Defer.  
8 On July 16, 2015 at 8:00 a.m., the Court entertained supplemental oral argument on the SLC’s  
9 Motion to Defer. Plaintiff appeared by and through its counsel of record, Brian W. Boschee,  
10 Esq. and William N. Miller, Esq. of Cotton, Driggs, Walch, Holley, Woloson & Thompson,  
11 Mark Lebovitch, Esq. and Adam Hollander, Esq. of Bernstein Litowitz Berger & Grossman LLP,  
12 and Gregory Eric Del Gaizo, Esq. of Robbins Arroyo LLP; Defendants James DeFranco, David  
13 K. Moskowitz, and Carl E. Vogel (together the “Director Defendants”) appeared by and through  
14 their counsel of record Jeffrey S. Rugg, Esq. and Maximilien D. Fetaz, Esq. of Brownstein Hyatt  
15 Farber Schreck, LLP and Brian T. Frawley, Esq. of Sullivan & Cromwell LLP; Defendants  
16 Charles W. Ergen and Cantey M. Ergen (together the “Ergen Defendants” or the “Ergens”)  
17 appeared by and through their counsel of record Joshua H. Reisman, Esq. of Reisman Sorokac  
18 and Tariq Mundiya, Esq. of Willkie Farr & Gallagher LLP; Defendants R. Stanton Dodge,  
19 Thomas A. Cullen, and Jason Kiser (together the “Officer Defendants”) appeared by and through  
20 their counsel of record James J. Pisanelli, Esq. of Pisanelli Bice PLLC and Bruce Braun, Esq. of  
21 Sidley Austin LLP; and the SLC, consisting of Charles M. Lillis, George R. Brokaw, and Tom  
22 A. Ortolf, appeared by and through its counsel of record J. Stephen Peek, Esq., Holly Stein  
23 Sollod, Esq., telephonically, and Robert J. Cassity, Esq. of Holland & Hart LLP and C. Barr  
24 Flinn, Esq. and Emily V. Burton, Esq. of Young, Conaway, Stargatt & Taylor, LLP.

25 The Court, having reviewed and considered the pleadings and briefing submitted by the  
26 parties and the evidence attached thereto or introduced during hearings with respect to the SLC’s  
27 Motion to Dismiss for Failure to Plead Demand Futility, the Director Defendants’ Motion to  
28 Dismiss the Second Amended Complaint, the Officer Defendants’ Motion to Dismiss the Second

1 Amended Complaint, Defendants Charles W. Ergen and Cantey M. Ergen's Motion to Dismiss  
2 the Second Amended Derivative Complaint of Jacksonville Police and Fire Pension Fund, and  
3 the SLC's Motion to Defer and having reviewed and considered the Report of the Special  
4 Litigation Committee of DISH Network Corporation, dated October 24, 2014 (the "SLC  
5 Report") and the arguments of counsel with respect to the SLC's Motion to Defer, makes the  
6 following findings of fact and conclusions of law.

7 **FINDINGS OF FACT**

8 1. Through this action, Plaintiff seeks to assert, derivatively on behalf of DISH  
9 Network Corporation ("DISH" or the "Company"), certain claims arising from, among other  
10 things, (a) purchases by the Chairman of DISH's Board of Directors, Charles W. Ergen  
11 ("Ergen"), through SP Special Opportunities, LLC ("SPSO"), of secured debt of LightSquared  
12 L.P. ("LightSquared") in 2012 and 2013, (b) the termination of the special transaction committee  
13 (the "STC") established by the DISH Board of Directors (the "Board") to consider a bid for  
14 wireless spectrum and related assets of LightSquared (the "LightSquared Assets"), (c) the  
15 subsequent bid by DISH (the "DISH Bid") for the LightSquared Assets, (d) the withdrawal of the  
16 DISH Bid in early 2014, and (e) the establishment of the SLC.

17 **I. General Background**

18 2. DISH is a Nevada corporation in good standing.

19 3. The Ergens, along with James DeFranco ("DeFranco"), founded DISH in 1980.  
20 During the time addressed by Plaintiff's claims, Ergen served as the Chairman of DISH's Board.  
21 He and certain family trusts control more than 50% of the Company's outstanding equity and  
22 90% of DISH's voting power. DISH's filings with the United States Securities and Exchange  
23 Commission describe DISH as a "controlled company" within the meaning of the NASDAQ  
24 Marketplace Rules.

25 **II. Ergen's Purchases of Secured Debt and the DISH Bid**

26 4. On May 14, 2012, LightSquared and various of its affiliates filed for bankruptcy  
27 protection (the "LightSquared Bankruptcy").  
28

1           5.       Certain secured debt issued by LightSquared (the "Secured Debt") is governed by  
2 a credit agreement (the "Credit Agreement"). Among other things, the Credit Agreement limits  
3 the entities that may acquire the Secured Debt. As found by the Court overseeing the  
4 LightSquared Bankruptcy (the "LightSquared Bankruptcy Court"), "each of DISH and [EchoStar  
5 Corporation ("EchoStar")] is a 'Disqualified Company' under the Credit Agreement, and thus  
6 neither can be an 'Eligible Assignee' [of Secured Debt]." Memorandum Decision Granting  
7 Motions to Dismiss Complaint at 5, *In re LightSquared Inc.*, No. 12-12080 (SCC), Adv. Proc.  
8 No. 13-1390 (SCC) (Bankr. S.D.N.Y. Nov. 21, 2013) (Adversary Docket No. 68) (Nov. 21, 2013  
9 decision at 5). Under the LightSquared Bankruptcy Court ruling, DISH was not permitted to  
10 acquire the LightSquared Secured Debt directly under the Credit Agreement.

11           6.       Between the spring of 2012 and May 2013, Ergen, through SPSO, an entity that  
12 he owns and controls, agreed to acquire approximately \$1 billion of Secured Debt at prices  
13 discounted from face value. One of Ergen's purchases of Secured Debt was prevented from  
14 closing. As a result, Ergen ultimately acquired approximately \$850 million in face amount of  
15 Secured Debt, for a total purchase price of approximately \$690 million, using funds provided  
16 from Ergen's personal assets.

17           7.       On May 2, 2013, Ergen informed the DISH Board about the potential future  
18 availability of the LightSquared Assets for purchase through the LightSquared Bankruptcy and  
19 invited the DISH Board to consider whether DISH was interested in pursuing an acquisition of  
20 the LightSquared Assets. At that time, Ergen also affirmatively told the Board that he owned a  
21 substantial stake in LightSquared Secured Debt, and he recused himself from the Board's further  
22 consideration of whether DISH should pursue the LightSquared opportunity. Ergen also  
23 informed EchoStar, a separate publicly traded Nevada corporation controlled by Ergen, of the  
24 LightSquared opportunity.

25           8.       On May 8, 2013, at a meeting of the DISH Board held without the Ergens, the  
26 Board formed the STC, a committee of directors who were independent of Ergen and EchoStar,  
27 to consider a possible transaction between DISH and LightSquared. The STC consisted of Gary  
28

1 S. Howard ("Howard") and Steven R. Goodbarn ("Goodbarn"). The STC thereafter retained  
2 independent counsel and financial advisors.

3 9. On May 15, 2013, Ergen personally bid \$2 billion for the LightSquared Assets.  
4 Approximately two weeks later, on May 28, 2013, Ergen created an entity called L-Band  
5 Acquisition LLC ("LBAC"). LBAC, under Ergen's ownership and control, became the bidder  
6 for the LightSquared Assets. This bid (the "LBAC Bid" or "LBAC's Bid")<sup>1</sup> was not subject to a  
7 due diligence out or to FCC approval. The LBAC Bid specifically noted that the buyer under the  
8 bid would be "owned by one or more of Charles Ergen, affiliated companies and/or other third  
9 parties." Letter from Rachel Strickland to LightSquared LP (May 15, 2013) (attaching  
10 LightSquared Summary of Principal Terms of Proposed Sale Transaction, at 1) (SLC Report Ex.  
11 337).

12 10. On or about May 22, 2013, after learning of the formation of the STC, Ergen  
13 informed the STC of the LBAC Bid. Ergen offered to permit DISH to acquire LBAC or assume  
14 the LBAC Bid, if DISH chose to do so.

15 11. In connection with the LBAC Bid, during July of 2013, counsel for LBAC and  
16 Ergen began negotiating various documents related to the LBAC Bid with representatives of a  
17 group of LightSquared secured creditors (the "Ad Hoc Secured Group"). These documents  
18 included a joint plan for the reorganization of LightSquared (the "Ad Hoc Secured Group Plan").  
19 The Ad Hoc Secured Group Plan provided for an auction of the LightSquared Assets, and  
20 provided for LBAC to act as a so-called "stalking horse" bidder, such that the LBAC Bid would  
21 be qualified to serve as the initial bid subject to higher offers from other bidders, and subject to  
22 various negotiated rights protecting LBAC's Bid.

23 12. Counsel for LBAC, Ergen, and the Ad Hoc Secured Group also negotiated a plan  
24 support agreement (the "PSA"), which set forth the terms and conditions upon which the parties  
25 would support the Ad Hoc Secured Group Plan after it was filed in the LightSquared  
26 Bankruptcy. The PSA included a timeline for milestones towards Plan confirmation. If these

27 <sup>1</sup> Although LBAC did not exist when Ergen initially submitted his personal bid, that bid, which  
28 LBAC was formed to consummate, is referred to herein consistently as the LBAC Bid.

1 milestones were not met by the timeline set forth in the PSA, the parties to the PSA had the right  
2 to withdraw their support for the Ad Hoc Secured Group Plan.

3 13. Finally, counsel for LBAC, Ergen, and the Ad Hoc Secured Group also negotiated  
4 a proposed form of draft asset purchase agreement (the "APA") between LightSquared and  
5 LBAC governing the sale by LightSquared to LBAC of the LightSquared Assets, the final terms  
6 of which would be subject to further negotiation and agreement between LightSquared and  
7 LBAC. The draft form of APA included a footnote (the "Release Footnote") indicating that a  
8 broad release (the "Release") would be included in the agreement and would cover the purchaser  
9 and its affiliates. If LBAC acquired the LightSquared Assets pursuant to the APA, the Release  
10 would, among other things, release any claims that LightSquared had against LBAC and its  
11 affiliates, including, among others, Ergen, DISH, and SPSO.

12 14. Counsel for DISH and the STC were provided with advance copies of, reviewed,  
13 and commented on drafts of the Ad Hoc Secured Group Plan, the PSA, and the APA, although  
14 the STC had not then determined whether DISH should acquire LBAC from Ergen or pursue an  
15 acquisition of the LightSquared Assets.

16 15. On July 17, 2013, while negotiation of the Ad Hoc Secured Group Plan, the PSA,  
17 and the APA remained ongoing, the Ad Hoc Secured Group sent a letter to LBAC's counsel  
18 asking LBAC to increase the cash component of the LBAC Bid in order to obtain the Ad Hoc  
19 Secured Group's support for the LBAC Bid.

20 16. On July 21, 2013, after receipt of a fairness opinion from its financial advisor and  
21 advice of its counsel, the STC determined that a bid by DISH for the LightSquared Assets in an  
22 amount up to \$2.4 billion was in the best interests of DISH.

23 17. At a Board meeting on July 21, 2013, without the Ergen Defendants present, the  
24 STC recommended to the Board that DISH bid up to \$2.4 billion to acquire the LightSquared  
25 Assets on terms consistent with the draft APA. The STC further recommended that, if such bid  
26 were made through LBAC, DISH acquire LBAC from Ergen for a nominal fee and assume only  
27 LBAC's counsel fees associated with preparation of a bid for the LightSquared Assets. The  
28 DISH Board, among other things, resolved to accept the STC's recommendation. The DISH

1 Board authorized DISH to acquire LBAC for a nominal payment, and to submit the DISH Bid  
2 for the LightSquared Assets, at a price of up to \$2.4 billion, on terms substantially consistent  
3 with the terms set forth in the draft APA.

4 18. Further, at the same July 21, 2013 meeting, the DISH Board resolved to dissolve  
5 the STC, but reserved the right to reinstate the STC or another committee should the  
6 circumstances warrant. With the exception of STC members Howard and Goodbarn, all  
7 members of the Board present at the meeting voted in favor of terminating the STC. Howard and  
8 Goodbarn, the members of the STC, abstained.

9 19. On July 22, 2013, Ergen and DISH entered into a purchase and sale agreement  
10 under which Ergen sold all of the units in LBAC to DISH for nominal consideration, consistent  
11 with the STC's recommendation.

12 20. Contemporaneously, LBAC completed negotiations with the Ad Hoc Secured  
13 Group with respect to the Ad Hoc Secured Group Plan, a draft APA supported by the Ad Hoc  
14 Secured Group, and the PSA. Among other things, these documents memorialized the DISH  
15 Bid, made through LBAC, of \$2.22 billion for the LightSquared Assets, which did not include a  
16 due diligence out and was not conditioned upon FCC approval. The DISH Bid was increased to  
17 \$2.22 billion, from the \$2 billion LBAC Bid, based on the Ad Hoc Secured Group's July 17  
18 letter.

19 21. On July 23, 2013, the Ad Hoc Secured Group and SPSO filed the Ad Hoc  
20 Secured Group Plan in the LightSquared Bankruptcy.

21 22. LBAC and SPSO also entered into the PSA at or around the time the Ad Hoc  
22 Secured Group Plan was filed. Under the PSA, LBAC committed to support the Ad Hoc  
23 Secured Group Plan. LBAC was permitted to terminate the PSA and withdraw the bid if the Ad  
24 Hoc Secured Group Plan was not consummated in the LightSquared Bankruptcy on or before  
25 December 31, 2013.

26 23. On July 24, 2013, the members of the STC sent a letter to the DISH Board  
27 outlining various conditions to its approval of the DISH Bid and open matters that it believed  
28 should have been addressed by the STC before the committee was terminated by the Board. On

1 July 25, 2013, Howard resigned from the DISH Board, effective July 31, 2015. The issues raised  
2 in the July 24 letter from the STC, to the extent not moot, were investigated by the SLC and  
3 addressed in the SLC Report.

4 24. On October 1, 2013, the LightSquared Bankruptcy Court entered an agreed order  
5 designating LBAC as a stalking horse bidder for the LightSquared Assets under the Ad Hoc  
6 Secured Group Plan.

7 **III. The Adversary Proceedings in the LightSquared Bankruptcy**

8 25. On August 6, 2013, LightSquared's controlling shareholder, Harbinger Capital  
9 Partners, LLC and various funds under its control (collectively "Harbinger"), initiated an  
10 adversary proceeding against DISH, LBAC, Ergen, and others (the "Adversary Proceeding") in  
11 the LightSquared Bankruptcy.

12 26. Harbinger alleged that SPSO misrepresented that it was an "Eligible Assignee"  
13 under the Credit Agreement when purchasing the Secured Debt. *See* Complaint, *In re*  
14 *LightSquared Inc.*, No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Aug.  
15 6, 2013) (Adversary Docket No. 15) ("Harbinger Complaint"). It further alleged that Ergen,  
16 DISH, and other entities owned by Ergen "fraudulently infiltrated the senior-most tranche of  
17 LightSquared's capital structure, secretly amassing, based on knowing misrepresentations of  
18 fact, a position as the single largest holder of [Secured Debt]." *Id.* Harbinger alleged that "the  
19 DISH/EchoStar Defendants and Sound Point [then] disrupted Harbinger's efforts to negotiate a  
20 plan of reorganization[,] and to obtain exit financing for LightSquared by intentionally  
21 prolonging the closing of numerous trades for Secured Debt. *Id.* at ¶¶ 7-8. Finally, Harbinger  
22 alleged that DISH was trying to unfairly profit from this misconduct (1) by submitting a bid that  
23 undervalued the LightSquared Assets and (2) by having an unfair advantage in any sale of the  
24 LightSquared Assets, because, Harbinger contended, Ergen purchased and held the Secured Debt  
25 for the benefit of DISH. Harbinger Complaint ¶ 11. Based on this alleged misconduct,  
26 Harbinger asserted claims for fraud, tortious interference, and civil conspiracy.

27 27. On August 22, 2013, LightSquared intervened and partially joined in Harbinger's  
28 claims in the Adversary Proceeding. *See* LightSquared's Notice of Intervention, *In re*

1 *LightSquared Inc.*, No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC) (Bankr. S.D.N.Y. Aug.  
2 22, 2013) (Adversary Docket No. 15).

3 28. On September 9, 2013, the defendants named in the Harbinger Complaint moved  
4 to dismiss for, among other things, failure to state a claim. Notice of Motion to Dismiss  
5 Complaint, *In re LightSquared Inc.*, No. 12-12080 (SCC), Adv. Proc. No. 13-1390 (SCC)  
6 (Bankr. S.D.N.Y. Sept. 9, 2013) (Adversary Docket No. 29). On September 30, 2013, Harbinger  
7 amended the Harbinger Complaint. The defendants named in the amended Harbinger Complaint  
8 also moved to dismiss the Amended Complaint between October 3 and October 5, 2013.

9 29. On October 29, 2013, the LightSquared Bankruptcy Court dismissed the  
10 Harbinger Complaint. The LightSquared Bankruptcy Court gave LightSquared leave to re-plead  
11 the claims for itself on or before November 15, 2013, but only granted Harbinger “leave to file a  
12 Second Amended Complaint in the . . . adversary proceeding, setting forth an objection pursuant  
13 to Section 502 of the Bankruptcy Code.” Transcript, at 127-31, *In re LightSquared Inc.*, No. 12-  
14 12080-scc, Adv. Proc. No. 13-01390-scc (Bankr. S.D.N.Y. Oct. 29, 2013) (Adversary Docket  
15 No. 64).

16 30. On November 15, 2013, the special committee of LightSquared’s board formed to  
17 oversee its bankruptcy filed a Status Report in which it announced that it intended to pursue the  
18 adversary claims identified in the Harbinger Complaint against DISH, SPSO, and Ergen. The  
19 LightSquared special committee noted that pursuing these claims may prevent LightSquared  
20 from satisfying the milestones for plan confirmation set forth in the PSA and the Ad Hoc  
21 Secured Group Plan.

22 31. LightSquared then brought its own complaint (the “LightSquared Adversary  
23 Complaint”) in the Adversary Proceeding against Ergen, DISH, EchoStar, and SPSO. The  
24 LightSquared Adversary Complaint raised essentially the same claims as the Harbinger  
25 Complaint. LightSquared alleged, among other things, that Ergen’s purchases of Secured Debt  
26 were effectively purchases by DISH for DISH’s benefit. LightSquared also alleged that these  
27 purchases improved DISH’s ability to acquire the LightSquared Assets by forcing  
28 LightSquared’s creditors to support a plan under which DISH would acquire the LightSquared



1 Assets and by deterring any competing bidders. *See* Complaint-in-Intervention ¶¶ 3-6, *In re*  
2 *LightSquared Inc.*, No. 12-12080 (SCC), Adv. Proc. No. 13-01390 (SCC) (Bankr. S.D.N.Y. Nov.  
3 15, 2013) (Adversary Docket No. 66).

4 **IV. The Jacksonville Action**

5 32. On August 9, 2013, Plaintiff commenced this action by filing its Verified  
6 Derivative Complaint (the “Complaint”) in the Eighth Judicial District Court of Nevada, alleging  
7 that it was a stockholder of DISH and asserting claims derivatively allegedly on behalf of DISH  
8 against DISH Board members Ergen, Joseph P. Clayton (“Clayton”), DeFranco, Cantey M.  
9 Ergen (“Cantey Ergen”), Goodbarn, David K. Moskowitz (“Moskowitz”), Ortolf (“Ortolf”), and  
10 Carl E. Vogel (“Vogel”). Among other things, the Complaint alleged that (1) Ergen usurped a  
11 corporate opportunity belonging to DISH to acquire the Secured Debt, (2) Ergen’s acquisition of  
12 the Secured Debt and actions in the LightSquared Bankruptcy risked causing the LightSquared  
13 Bankruptcy Court to preclude DISH from participating in any auction for the LightSquared  
14 Assets, (3) Ergen breached fiduciary duties owed to DISH by causing DISH to submit the DISH  
15 Bid at an inflated price, and (4) Ergen would be unjustly enriched by this misconduct. Plaintiff  
16 also alleged in the Complaint that the other defendants breached fiduciary duties by “failing to  
17 require Ergen to fully recuse himself from the process resulting in the Board’s purported  
18 approval of the [DISH Bid].”

19 33. Shortly thereafter, Plaintiff filed an Ex Parte Motion for Order to Show Cause and  
20 Motion to (1) Expedite Discovery and (2) Set a hearing on a proposed Motion for Preliminary  
21 Injunction and a Memorandum of Points and Authorities in support thereof. Plaintiff sought a  
22 preliminary injunction to prevent “Ergen and his loyalists on the [Board] from interfering with or  
23 impairing DISH’s efforts to acquire LightSquared.”

24 34. On September 12, 2013, Plaintiff filed an Amended Verified Derivative  
25 Complaint (the “Amended Complaint”). Among other things, the Amended Complaint alleged  
26 that (1) the defendants named in the Amended Complaint breached their fiduciary duties to  
27 DISH by permitting Ergen to interfere with the DISH Bid for the LightSquared Assets and by  
28 permitting Ergen to remain involved in DISH’s efforts to acquire the LightSquared Assets

1 because Ergen's involvement led to an inflated DISH Bid, increased the cost of the DISH Bid,  
2 and threatened DISH's ability to pursue the DISH Bid, (2) Ergen usurped DISH's corporate  
3 opportunity to acquire the Secured Debt and, in doing so, imperiled DISH's future, allegedly  
4 foreseeable, efforts to acquire the LightSquared Assets, and (3) Ergen would be unjustly  
5 enriched as a result of this misconduct.

6 35. On September 13, 2013, Plaintiff filed its Motion for Preliminary Injunction.

7 **V. The Formation of the SLC**

8 36. On September 18, 2013, the Board, without the Ergens' participation, formed the  
9 SLC, a special litigation committee, to investigate the claims asserted in the Amended Verified  
10 Complaint and any amendments thereto and to determine whether it would be in DISH's best  
11 interest to pursue the claims asserted in the Amended Complaint and any amendments.

12 37. The resolutions forming the SLC specifically empowered the SLC to:

13 (1) review, investigate and evaluate the claims asserted in the  
14 Derivative Litigation; (2) file any and all pleadings and other  
15 papers on behalf of the Corporation which the Special Litigation  
16 Committee finds necessary or advisable in connection therewith;  
17 (3) determine whether it is in the best interests of the Corporation  
18 and/or to what extent it is advisable for the Corporation to pursue  
19 any or all of the claims asserted in the Derivative Litigation taking  
20 into consideration all relevant factors as determined by the Special  
21 Litigation Committee; (4) prosecute or dismiss on behalf of the  
22 Corporation any claims asserted in the Derivative Litigation; and  
23 (5) direct the Corporation to formulate and file any and all  
24 pleadings and other papers on behalf of the Corporation which the  
25 Special Litigation Committee finds necessary or advisable in  
26 connection therewith, including without limitation, the filing of  
27 other litigation and counterclaims or cross complaints, or motions  
28 to dismiss or stay the proceedings if the Special Litigation  
Committee determines that such action is advisable and in the best  
interests of the Corporation[.]

23 Status Report, at Ex. A (Oct. 3, 2013) (attaching Resolutions Forming SLC (Sept. 18, 2013)).

24 38. The resolutions forming the SLC also "authorized and empowered" the SLC to  
25 "retain and consult with such advisors, consultants and agents, including, without limitation,  
26 legal counsel and other experts or consultants, as the Special Litigation Committee deems  
27 necessary or advisable to perform such services, reach conclusions or otherwise advise and assist  
28 the Special Litigation Committee in connection with carrying out its duties," and to enter into

1 “contracts providing for the retention, compensation, reimbursement of expenses and  
2 indemnification of such legal counsel, accountants and other experts or consultants as the Special  
3 Litigation Committee deems necessary or advisable[.]” *Id.* The resolutions further directed  
4 DISH to “pay, on behalf of the Special Litigation Committee, all fees, expenses and  
5 disbursements of such legal counsel, experts and consultants on presentation of statements  
6 approved by the Special Litigation Committee[.]” *Id.*

7 39. The SLC initially consisted of George R. Brokaw (“Brokaw”), who joined the  
8 Board effective October 7, 2013, and long-standing Board member Ortolf.

9 40. The SLC retained Holland & Hart LLP and Young Conaway Stargatt & Taylor,  
10 LLP (“SLC Counsel”) as its attorneys. SLC Counsel are free of conflicts with any parties in this  
11 matter and are competent attorneys with experience handling and investigating claims of the type  
12 asserted in this litigation and also with respect to complex bankruptcy matters.

13 **VI. Plaintiff’s Motion for Preliminary Injunction**

14 41. On September 23, 2013, at the Court’s direction, Plaintiff made a demand upon  
15 the SLC. Among other things, Plaintiff demanded that the SLC take immediate action to obtain  
16 the relief that Plaintiff sought in its Motion for Preliminary Injunction.

17 42. On October 3, 2013, the SLC responded to Plaintiff’s demand. The SLC noted  
18 that “it t[ook] seriously the claims in the Complaint, would investigate them thoroughly and  
19 would decide whether they should be pursued, stayed or dismissed in the best interest of DISH  
20 and its stockholders.” Status Report, at 3 (Oct. 3, 2013). The SLC provided an anticipated  
21 timeline for its investigation. The SLC refused to take immediate action to obtain the relief  
22 sought by Plaintiff’s Motion for Preliminary Injunction because “the SLC [did] not believe that  
23 the requested relief, if granted, would serve the best interest of DISH.” Status Report, at 4-5  
24 (Oct. 3, 2013).

25 43. On October 4, 2013, this Court granted Plaintiff expedited discovery for purposes  
26 of Plaintiff’s Motion for Preliminary Injunction and set the Motion for hearing on November 25,  
27 2013.

1           44.     On October 8, 2013, Plaintiff stipulated to the dismissal of its claims against  
2     Goodbarn. This Court granted the dismissal on October 10, 2013.

3           45.     Between September 25, 2013 and November 20, 2013, the SLC investigated  
4     Jacksonville's assertion that a mandatory injunction should be imposed to require DISH to  
5     reconstitute a special transaction committee to control all aspects of the DISH Bid for the  
6     LightSquared Assets. In connection with that investigation, the SLC's counsel reviewed over  
7     20,000 pages of documents collected from members of the DISH Board, including Ergen,  
8     Goodbarn, and Howard, including all documents collected and produced in connection with  
9     Plaintiff's Preliminary Injunction Motion, concerning DISH's decision to submit the DISH Bid  
10    for the LightSquared Assets, the work of the STC, and Ergen's conflict of interest with respect to  
11    DISH's Bid. The SLC interviewed Clayton, DeFranco, Goodbarn, Ergen, Moskowitz, Vogel,  
12    and Rachel Strickland ("Strickland"), Andrew Sorkin, and Tariq Mundiya of Willkie Farr &  
13    Gallagher LLP about these topics and attended the depositions of Ergen, Ihsan Essaid, Goodbarn,  
14    and Howard taken in connection with the Motion for Preliminary Injunction. The SLC also  
15    received legal advice concerning a variety of topics, including the LightSquared Bankruptcy, the  
16    Board's fiduciary duties, and controlling stockholder fiduciary duties.

17          46.     On November 20, 2013, the SLC filed its Report of the Special Litigation  
18    Committee of DISH Network Corporation Regarding Plaintiff's Motion for Preliminary  
19    Injunction (the "Interim Report"). The Interim Report advised that Plaintiff's Motion for  
20    Preliminary Injunction was not necessary to protect DISH from irreparable harm and may itself  
21    harm DISH. The SLC reasoned that entrusting DISH's efforts to purchase the LightSquared  
22    Assets to only one director and possibly a newly added director (as Plaintiff requested) created a  
23    substantial risk of irreparable harm to DISH. In contrast to Plaintiff's assertions in support of its  
24    Motion, the SLC determined that Ergen no longer had a conflict of interest with respect to any  
25    increase in the amount of the DISH Bid, and any other risk of a conflict of interest between  
26    DISH and Ergen was speculative.

27          47.     This Court held a hearing on Plaintiff's Motion for Preliminary Injunction on  
28    November 25, 2013.

1           48.     On November 27, 2013, based on the pleadings, the SLC's Interim Report, and  
2 the November 25, 2013 hearing on the Motion for Preliminary Injunction, this Court issued  
3 findings of fact and conclusions of law, denying in part and granting in part Plaintiff's Motion  
4 for Preliminary Injunction. The Court denied the Motion to the extent that it sought to prevent  
5 directors other than Goodbarn and possibly Charles M. Lillis ("Lillis"), who joined the DISH  
6 Board on November 5, 2013, from "interfering" with DISH's efforts to acquire the LightSquared  
7 Assets. The Court however enjoined "Charles Ergen or anyone acting on his behalf . . . from  
8 participation, including any review, comment, or negotiations related to the [R]elease contained  
9 in the Ad Hoc LP Secured Group Plan pending before the Bankruptcy Court for any conduct  
10 which was outside or beyond the scope of his activities related to DISH and LBAC." Findings of  
11 Fact and Conclusions of Law, at 15 (Nov. 27, 2013).

12 **VII. Lillis's Addition to the SLC**

13           49.     On December 9, 2013, the Board resolved to add Lillis to the SLC.

14           50.     The resolutions adding Lillis to the SLC provided that "any and all actions or  
15 determinations of the Special Litigation Committee following the date of these resolutions must  
16 include the affirmative vote of Mr. Lillis and at least one (1) other committee member in order to  
17 constitute a valid and final action or determination of the Special Litigation Committee" (the  
18 "Required Vote Resolution"). Minutes of the Special Meeting of the Board of Directors of DISH  
19 Network Corporation, at 6-7 (Dec. 9, 2013).

20 **VIII. The Members of the SLC**

21           51.     Lillis is a member of the Board's Audit Committee and of the Board's  
22 Compensation Committee. Lillis is considered independent under the independence  
23 requirements of NASDAQ and the SEC's rules and regulations.

24           52.     Lillis was formerly the CEO of MediaOne Group, Inc. ("MediaOne"). He has  
25 served on multiple corporate boards, including Agilera, Inc., Ascent Entertainment Grp., Charter  
26 Communications, Inc. ("Charter") and various affiliates, Medco Health Solutions, Inc.,  
27 MediaOne, On Command Corporation, SUPERVALU Inc., Time Warner Entertainment  
28 Company, L.P., Williams Companies, Inc., and Washington Mutual Inc. and affiliated entities.

1           53. Lillis also has a distinguished record of public service in the academic arena. The  
2 Governor of Oregon appointed Lillis Chair of the Board of Trustees of the University of Oregon.  
3 He previously served on the University of Washington Business Advisory Board, the University  
4 of Washington Foundation Board, and the University of Colorado Foundation Board. Lillis was  
5 also the Dean of the University of Colorado's college of business and a professor at Washington  
6 State University.

7           54. During the time periods at issue, Lillis had no financial or business connection to  
8 any Defendant other than his service on the DISH Board and his ownership of DISH common  
9 stock.

10           55. Brokaw is a member of the DISH Board, a member of the Board's Audit  
11 Committee, and the Chair of the Board's Nominating Committee. Brokaw is considered  
12 independent under the independence requirements of NASDAQ and the SEC rules and  
13 regulations.

14           56. From 1996 to 2005, Brokaw worked at Lazard Freres & Co. LLC, where he  
15 ultimately became a Managing Director. Thereafter, Brokaw served as Managing Partner and  
16 Head of Private Equity at Perry Capital, L.L.C. for six years and as a Managing Director of  
17 Highbridge Principal Strategies, LLC until September 30, 2013. Brokaw is currently a  
18 Managing Partner in Traftlet Brokaw & Co., LLC.

19           57. Brokaw has served on the boards of directors of multiple other companies,  
20 including Alico, Inc. and North American Energy Partners Inc.

21           58. During the time periods at issue, Brokaw had no financial or business connection  
22 to any Defendant other than his service on the DISH Board and his ownership of options to  
23 acquire DISH common stock.

24           59. Ortolf is the Chair of the Board's Audit Committee, a member of the Board's  
25 Compensation Committee, and a member of the Board's Nominating Committee. Ortolf is  
26 considered independent under the independence requirements of NASDAQ and the SEC rules  
27 and regulations.

28

1           60.     Ortolf was the President and Chief Operating Officer of Echosphere L.L.C.  
2     ("Echosphere") from 1988 to 1991. Echosphere is a current DISH subsidiary, which predated  
3     DISH. Ortolf has been the President of Colorado Meadowlark Corp., a privately held investment  
4     management firm for over twenty years. Ortolf has been a member of the DISH Board of  
5     Directors since 2005.

6           61.     During the time periods at issue, Ortolf had no financial or business connection to  
7     any Defendant other than his service on the DISH Board, service on the board of EchoStar, and  
8     his ownership of DISH common stock.

9     **IX.    The SLC Begins its Investigation**

10          62.     The SLC began its investigation of the merits of the claims and issues raised in  
11     the Amended Complaint in early December 2013, following Lillis's addition to the SLC.

12          63.     The SLC and its counsel began collecting and reviewing tens of thousands of  
13     documents, including the documents produced in connection with the Motion for Preliminary  
14     Injunction in this action, documents produced by SPSO, DISH, Ergen, LBAC and others in the  
15     LightSquared Bankruptcy, and additional documents collected from DISH officers and directors  
16     specifically for the purposes of the SLC investigation, some dating back to 2005.

17          64.     The SLC also requested and reviewed briefing, transcripts and opinions from the  
18     LightSquared Bankruptcy.

19          65.     The full scope of the SLC's investigation is discussed in detail in paragraphs  
20     [[74]]-[[79]] *infra*.

21     **X.    The Termination of the DISH Bid**

22          66.     After LBAC made the DISH Bid, DISH engaged in due diligence with respect to  
23     the LightSquared Assets. When the DISH Bid was submitted, the DISH Board was aware of  
24     interference between LightSquared's downlink spectrum and the wireless spectrum used by GPS  
25     devices. According to the SLC, following due diligence, DISH management informed the DISH  
26     Board of an additional potential interference issue with LightSquared's uplink spectrum (the  
27     "Technical Issue"). If not resolved, this Technical Issue might, among other things, reduce the  
28     anticipated value of the LightSquared Assets, increase regulatory uncertainty surrounding

1 DISH's use of the LightSquared Assets, and impair or prevent DISH's contemplated use of  
2 LightSquared's spectrum.<sup>2</sup>

3 67. After considering the Technical Issue at several prior meetings, on December 23,  
4 2013, as reflected in the minutes, the DISH Board:

5 RESOLVED, that . . . (i) the Corporation and LBAC should  
6 continue to endeavor to address the above-described concerns,  
7 including without limitation negotiating with the LightSquared LP  
8 Lenders to add appropriate conditions or other terms to the PSA  
9 and LBAC Bid to address the potential technical issue regarding  
10 LightSquared's uplink spectrum; and (ii) in the event that the  
11 Corporation and LBAC are unsuccessful, the Corporation and  
12 LBAC shall be, and they hereby are, authorized to terminate the  
13 PSA and LBAC Bid[.]

14 Minutes of the Special Meeting of the Board of Directors of DISH Network Corporation, at 3-4  
15 (Dec. 23, 2013) (SLC Report Ex. 443).

16 68. On January 7, 2014, after efforts to modify the DISH bid to address the risk  
17 associated with the Technical Issue failed, and after the milestones provision in the PSA had  
18 been breached, DISH withdrew the DISH Bid and terminated the PSA. The Ad Hoc Secured  
19 Group opposed the termination and sought to compel DISH to specifically perform the DISH

20 <sup>2</sup> Following both trial in the Adversary Proceeding and plan confirmation proceedings in the  
21 LightSquared Bankruptcy (the "Plan Confirmation Proceeding"), the LightSquared Bankruptcy  
22 Court observed: "Whether LBAC terminated its bid because it 'believed' there was a technical  
23 issue (even though the record does not support a finding that there was or is such an issue), or  
24 because it wanted to make a lower conditional bid, or because Mr. Ergen decided to direct DISH  
25 and its capital elsewhere, or because of negative implications for DISH in connection with the  
26 Nevada shareholder litigation, remain[ed] unclear." See Decision Denying Confirmation of  
27 Debtors' Third Amended Joint Plan Pursuant to Chapter 11 of Bankruptcy Code, at 65, *In re*  
28 *LightSquared Inc.*, No. 12-12080 (SCC) (Bankr. S.D.N.Y. July 11, 2014). The SLC  
acknowledged the LightSquared Bankruptcy Court's findings in the SLC Report. However, the  
SLC determined, consistent with Nevada law, that the issue raised by the DISH Board was the  
financial risk to DISH from the uncertainties posed by the Technical Issue, and the DISH Board  
was entitled to rely on DISH's managements' well-informed recommendations as to the  
implications of the Technical Issue when determining whether it was in DISH's best interest to  
withdraw the DISH Bid. NRS 78.138(2)(a) ("In performing their respective duties, directors and  
officers are entitled to rely on information, opinions, [and] reports . . . that are prepared or  
presented by . . . [o]ne or more directors, officers or employees of the corporation reasonably  
believed to be reliable and competent in the matters prepared or presented."). According to the  
SLC, the DISH Board's determination to withdraw the DISH Bid is protected by the business  
judgment rule. As such, the SLC's determination that it would not be in DISH's best interest to  
pursue claims related to the termination of the DISH Bid is not inconsistent with the  
LightSquared Bankruptcy Court's ruling with respect to the Technical Issue.



1 Bid. DISH opposed the Ad Hoc Secured Group's Motion. The Bankruptcy Court held that  
2 DISH "was free to terminate the PSA and then terminate its bid for any reason once any of those  
3 milestones [in the PSA] was missed." Transcript, Hearing: Bench Decision in Adv. Proc. 13-  
4 01390-scc., at 151, *In re LightSquared Inc.*, No. 12-120808-scc, Adv. Proc. No. 13-01390-scc  
5 (Bankr. S.D.N.Y. May 8, 2014).

6 **XI. Conclusion of the LightSquared Bankruptcy Adversary Proceeding**

7 69. On June 10, 2014, following a full trial on the merits of the claims raised in the  
8 Adversary Proceeding, the LightSquared Bankruptcy Court issued an opinion determining that,  
9 although technically permissible, Ergen's purchases of the Secured Debt (through SPSO) in  
10 April 2013 "violated the spirit and purpose of the Credit Agreement restrictions designed to  
11 prevent competitors from purchasing Secured Debt and breached the Credit Agreement's implied  
12 covenant of good faith and fair dealing[.]" because it violated the purpose of the provisions of  
13 the Credit Agreement restricting which entities were permitted to acquire the Secured Debt.  
14 Post-Trial Findings of Fact and Conclusions of Law, at 154, *LightSquared LP v. Special*  
15 *Opportunities LLC (In re LightSquared Inc.)*, No. 12-12080 (SCC), Adv. Pro. No. 13-01390  
16 (Bankr. S.D.N.Y. June 10, 2014) (Bankruptcy Docket No. 165). The LightSquared Bankruptcy  
17 Court did, however, dismiss all of the claims against DISH. *Id.* at 99 n.48.

18 70. On July 25, 2014, Plaintiff filed the Verified Second Amended Shareholder  
19 Derivative Complaint of Jacksonville Police and Fire Pension Fund Pursuant to Rule 23.1 of the  
20 Nevada Rules of Civil Procedure (the "Second Amended Complaint"), in which Plaintiff  
21 asserted additional and modified derivative claims based upon the withdrawal of the DISH Bid.  
22 Plaintiff replaced its claim that Ergen had caused DISH to overpay for the LightSquared Assets  
23 through the DISH Bid with a claim that Ergen had deprived DISH of the beneficial ability to  
24 acquire the LightSquared Assets at the price of the DISH Bid. The Second Amended Complaint  
25 added Brokaw, Lillis, Cullen, Kiser, and Dodge as defendants.

1           71. Through the Second Amended Complaint, Plaintiff sought derivatively to compel  
2 DISH to pursue claims generally falling into eight categories:<sup>3</sup> First, Plaintiff claimed that Ergen  
3 or the Board breached fiduciary duties in connection with the termination of the DISH Bid (the  
4 “Bid Termination Claims”). Second, Plaintiff claimed that the inclusion of the Release in the  
5 APA caused LightSquared to refuse to proceed with the DISH Bid and to cancel the  
6 LightSquared Bankruptcy Auction, to the detriment of DISH. Plaintiff claimed that Ergen and  
7 the DISH Board breached fiduciary duties owed to DISH by including or by failing to remove  
8 the Release from the DISH Bid (the “Auction Cancellation Claims”). Third, Plaintiff claimed  
9 that by purchasing the Secured Debt, Ergen usurped a corporate opportunity of DISH and was  
10 unjustly enriched thereby (the “Corporate Opportunity Claims”). Fourth, Plaintiff claimed that  
11 in purchasing the Secured Debt, Ergen misused confidential DISH information concerning a  
12 strategy for DISH to acquire the LightSquared Assets and was unjustly enriched thereby (the  
13 “Confidential Information Claims”). Fifth, Plaintiff claimed that Ergen and the Officer  
14 Defendants breached fiduciary duties by failing to notify the Board of Ergen’s purchases of  
15 Secured Debt immediately, or upon learning of the purchases (the “Disclosure Claims”). Sixth,  
16 Plaintiff claimed that in purchasing the Secured Debt, Ergen and Kiser acted disloyally to DISH  
17 in using DISH resources for Ergen’s Secured Debt Purchases and that Ergen was unjustly  
18 enriched thereby (the “Corporate Resources Claims”). Seventh, Plaintiff claimed that Ergen  
19 breached fiduciary duties by exposing DISH to increased legal risk and legal fees in the  
20 LightSquared Bankruptcy by acquiring the Secured Debt, that the Board breached fiduciary  
21 duties by paying Ergen’s legal fees, and that Ergen was unjustly enriched as a result (the “Legal  
22 Fee Claims”). Eighth, Plaintiff alleged that the Board improperly terminated the STC (the “STC  
23 Termination Claim”).  
24  
25

---

26 <sup>3</sup> The Second Amended Complaint included five Counts, many of which raised multiple legal  
27 issues. The SLC Report organized the issues differently than the Second Amended Complaint  
28 did. The SLC Report addressed each of the issues raised through the Second Amended  
Complaint. This Court refers to the claims based on the SLC’s organization, as the parties have  
generally done in their briefing, for ease of reference.

**XII. The SLC Expanded its Investigation to Address the New Claims Raised in the Second Amended Complaint**

72. In July of 2014, when Plaintiff filed the Second Amended Complaint, the SLC had been investigating the claims in Jacksonville's Amended Complaint since December 9, 2013. After Plaintiff filed the Second Amended Complaint, the SLC expanded the scope of its investigation to include the additional claims raised in the Second Amended Complaint concerning the termination of the DISH Bid.

73. After receiving the Second Amended Complaint, the SLC and its counsel requested and reviewed additional documents from DISH, DISH's officers, and DISH's directors relevant to the new claims asserted.

74. In the full course of its investigation, the SLC's counsel reviewed more than 39,000 documents, (more than 357,000 pages) from the following custodians: Michael Abatemarco, Jeffrey Blum ("Blum"), Brokaw, Kenneth Carroll, Clayton, Cullen, DeFranco, Dodge, Mike Dugan, Brandon Ehrhart, Cantey Ergen, Ergen, Kevin Gerlitz, Goodbarn, Howard, Anders Johnson, Stephen Ketchum ("Ketchum"), John Kim, Kiser, Lillis, Jennifer Manner, Moskowitz, Ortolf, David Rayner, Rick Richert, Mariam Sorond ("Sorond"), Brad Schneider, Strickland, Vogel, David Zufall, and Sound Point Capital Management LP ("Sound Point"). These documents included all documents produced in this action, the materials produced by DISH, SPSO, Ergen, and Sound Point in the LightSquared Bankruptcy, and additional documents requested by the SLC from all DISH Board members, members of DISH management, and counsel to LBAC, the entity that made the DISH Bid. The members of the SLC personally reviewed the documents that were most pertinent to the SLC's investigation.

75. The SLC and its counsel monitored proceedings in the LightSquared Bankruptcy from the formation of the SLC through the completion of the SLC Report, and thereafter. Among other things, the SLC attended oral arguments in the Adversary Proceeding and monitored telephonically or reviewed transcripts of other substantive hearings, including telephonically monitoring or reviewing transcripts of the open portions of the entire trial on the Adversary Proceeding and the Plan Confirmation hearing.

1           76. Counsel for the SLC reviewed extensive briefing submitted in the LightSquared  
2 Bankruptcy, including the briefing concerning the Adversary Proceeding, the scheduling of the  
3 auction of the LightSquared Assets and certain other assets of LightSquared, the proceeding  
4 seeking confirmation of LightSquared's plan of reorganization (the "Confirmation Proceeding"),  
5 and the termination of the DISH Bid. Counsel for the SLC monitored significant hearings and  
6 reviewed testimony within the LightSquared Bankruptcy to the extent available under the  
7 confidentiality stipulation governing LightSquared's Bankruptcy, including reviewing all  
8 available transcripts concerning the submission of DISH's Bid, the auction scheduling, the  
9 termination of DISH's Bid, the Adversary Proceeding, and the Confirmation Proceeding.  
10 Counsel for the SLC also attended many of the aforementioned proceedings telephonically or in  
11 person. The SLC or its counsel reviewed transcripts of every deposition taken in the  
12 LightSquared Bankruptcy available for use in this proceeding under the confidentiality  
13 stipulation in the LightSquared Bankruptcy, including transcripts of the LightSquared  
14 Bankruptcy depositions of Cullen, Ergen, Howard, Ketchum, Kiser, Joseph Roddy, and Sorond.

15           77. The SLC interviewed numerous people including conducting formal interviews of  
16 present and former defendants: Clayton, Cullen, DeFranco, Dodge, Cantey Ergen, Ergen,  
17 Goodbarn, Howard, Kiser, Moskowitz, and Vogel; DISH senior executives and regulatory and  
18 technical experts: Blum and Sorond; and counsel for Ergen, LBAC and SPSO: Mundiya, Sorkin,  
19 and Strickland. Several people were interviewed both in connection with the SLC's  
20 investigation of Plaintiff's Motion for Preliminary Injunction and the SLC's investigation of  
21 Plaintiff's substantive claims. As a result, the SLC conducted a total of 21 interviews, of 16  
22 different people. In most cases, all three members of the SLC attended these interviews.

23           78. The SLC also requested interviews from Plaintiff, LightSquared, and the Ad Hoc  
24 Secured Group. However, each of these requests, including the request to interview Plaintiff,  
25 was refused.

26           79. Finally, the SLC received extensive legal advice on the issues raised by the  
27 matters under investigation at numerous points throughout its investigation.  
28

1 **XIII. Motions to Dismiss the Second Amended Complaint**

2 80. On August 29, 2014 the SLC moved to dismiss the Second Amended Complaint,  
3 pursuant to Rule 23.1, for failure to plead demand futility; the Director Defendants moved to  
4 dismiss the Second Amended Complaint, pursuant to NRCP 12(b)(5), for failure to state a claim  
5 upon which relief can be granted; and the Ergen Defendants moved to dismiss the Second  
6 Amended Complaint for failure to state a claim upon which relief can be granted.

7 81. On September 15, 2014, the Officer Defendants moved to dismiss the Second  
8 Amended Complaint, pursuant to NRCP 12(b)(5) and Rule 23.1, for failure to state a claim upon  
9 which relief can be granted and failure to plead demand futility.

10 **XIV. The SLC's Report and Subsequent Motion to Defer**

11 82. On October 24, 2014, the SLC filed with this Court the SLC Report, which  
12 detailed its investigation of the claims asserted in the Second Amended Complaint.

13 83. In its 330-page SLC Report, the SLC extensively described the scope and depth of  
14 its investigation and the facts that it found to be true based on that investigation. The SLC also  
15 analyzed the factual and legal bases for each of the claims asserted in the Second Amended  
16 Complaint. The SLC ultimately concluded that "it would not be in the best interests of DISH to  
17 pursue the claims asserted by Jacksonville in the Nevada Litigation." SLC Report, at 333.

18 84. It is beyond the scope of this opinion to capture the SLC's full reasoning, set forth  
19 in detail in the SLC Report. The SLC Report provides extensive factual, legal, and practical  
20 reasons why pursuit of each one of Plaintiff's claims would not be in the best interests of DISH.  
21 Among the reasons set forth in the SLC Report, the SLC determined that certain claims advanced  
22 by Plaintiff were foreclosed by DISH's certificate of incorporation, certain claims lacked a  
23 cognizable damages theory, certain claims were not meritorious as a matter of law, and certain  
24 claims could not be proven in light of uncontroversial factual determinations. The Court finds  
25 that each of the SLC's determinations is reasonable and neither egregious nor irrational.

26 85. On November 17, 2014, the SLC filed its Motion to Defer to the SLC's  
27 Determination That the Claims Should Be Dismissed (the "Motion to Defer"). In connection  
28

1 with the Motion to Defer, each SLC member filed a declaration addressing his independence  
2 from Defendants under the relevant legal standards.

3 86. Oral argument was initially held on the Motion to Defer on January 12, 2015. At  
4 oral argument, Plaintiff for the first time requested discovery pursuant to Nevada Rule 56(f).

5 87. This Court granted Plaintiff's request for discovery. The Court also scheduled  
6 supplemental briefing following discovery and supplemental oral argument.

7 88. Plaintiff was permitted to take, and did take, discovery into the independence of  
8 the SLC and the thoroughness of its investigation. The SLC gathered and produced documents  
9 from the files of the individual SLC members covering a six-year period, documents from the  
10 files of SLC counsel, and documents from the files of DISH Board members. Pursuant to a  
11 stipulation and order preserving the SLC's work product protection, the SLC also produced  
12 certain work product prepared in the course of its investigation, including summaries of the  
13 interviews that it conducted and the documents received by the SLC members in the course of  
14 the investigation. Plaintiff also deposed each of the SLC members: Lillis, Brokaw, and Ortolf.

15 89. On July 16, 2015, the supplemental oral argument was held on the SLC's Motion  
16 to Defer.

17 90. If any findings of fact are properly conclusions of law, they shall be treated as if  
18 appropriately identified and designated.

19 **CONCLUSIONS OF LAW**

20 1. This Court has subject matter jurisdiction over all claims asserted in the Second  
21 Amended Complaint and personal jurisdiction over all the parties.

22 2. "[U]nder Nevada's corporations laws, a corporation's 'board of directors has full  
23 control over the affairs of the corporation.'" *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632,  
24 137 P.3d 1171, 1178 (2006) (quoting NRS 78.120(1)). Therefore, in "managing the  
25 corporation's affairs, the board of directors may generally decide whether to take legal action on  
26 the corporation's behalf." *Id.*, 122 Nev. at 632, 137 P.3d at 1179; *see also In re Amerco*  
27 *Derivative Litig.*, 127 Nev. Adv. Op. 17, 252 P.3d 681, 705 (Nev. 2011) ("Among the matters  
28 entrusted to a corporation's directors is the decision to litigate -- or not to litigate -- a claim by

1 the corporation against third parties.”) (citing *In re Citigroup S’holder Derivative Litig.*, 964  
2 A.2d 106, 120 (Del. Ch. 2009)). Nevada law gives strong preference to honoring the business  
3 judgment of the boards of directors of Nevada corporations. *See Shoen*, 122 Nev. at 621, 137  
4 P.3d at 1181; NRS 78.138(3) (“Directors and officers, in deciding upon matters of business, are  
5 presumed to act in good faith, on an informed basis and with a view to the interests of the  
6 corporation.”).

7 3. Under Nevada law, a stockholder may pursue litigation on a corporation’s behalf  
8 only where the stockholder both alleges and proves “particularized factual statements . . . that  
9 making a demand [for the Board to cause the corporation to pursue the litigation] would be futile  
10 or otherwise inappropriate.” *Id.*, 122 Nev. at 634, 137 P.3d at 1179-80; *see also* NRS 41.520;  
11 NRCP 23.1.

12 4. If a stockholder makes this showing, the board nonetheless may properly delegate  
13 to a special litigation committee of the board authority to control the litigation and, if the  
14 committee determines that the litigation is not in the best interests of the corporation, to  
15 terminate the litigation. NRS 78.125; 13 William Meade Fletcher, *Fletcher Cyclopedic of the*  
16 *Law of Corporations* (“Fletcher Cyc. Corp.”) § 6019.50 (West 2014).

17 **I. Standard of Review for a Special Litigation Committee Motion Under Nevada Law**

18 5. No Nevada court has ruled on the standard by which to review a special litigation  
19 committee’s determination on behalf of the corporation as to whether or in what respect it is in  
20 the corporation’s best interest to pursue litigation. Most jurisdictions outside of Nevada follow a  
21 form of either the majority *Auerbach* standard or the minority *Zapata* standard. *See Auerbach v.*  
22 *Bennett*, 393 N.E.2d 994 (N.Y. 1979); *Zapata Corp. v. Maldonado*, 430 A.2d 779 (Del. 1981).

23 6. Under the *Auerbach* standard, a court defers to the business judgment of a special  
24 litigation committee if (a) the special litigation committee is independent and (b) its procedures  
25 and methodologies were not so deficient as to demonstrate a lack of good faith in the  
26 investigation. *See Auerbach*, 393 N.E.2d at 1003.

27 7. Under the *Zapata* standard, the Court applies these same considerations, but the  
28 *Zapata* standard also includes an optional “second step.” *See Carlton Invs. v. Tlc Beatrice Int’l*

1 *Holdings*, No. 13950, 1997 WL 305829, at \*2 (Del. Ch. May 30, 1997). If “the court could not  
2 consciously determine on the first leg of the analysis that there was no want of independence or  
3 good faith, [but] it nevertheless ‘felt’ that the result reached was ‘irrational’ or ‘egregious’ or  
4 some other such extreme word[,]” the second step of the *Zapata* standard permits the Court to  
5 apply its own business judgment review to determine whether the litigation is in the best interests  
6 of the corporation. *Id.* Delaware courts, which developed the *Zapata* standard, have noted that  
7 “courts should not make such judgments but for reasons of legitimacy and for reasons of  
8 shareholder welfare.” *Id.*

9         8. In this case, the determination of whether *Auerbach* or *Zapata* is the appropriate  
10 standard under Nevada law is not dispositive. If *Zapata* were to apply, the SLC’s determination  
11 is not “irrational” or “egregious” so as to merit review under the optional second step of a *Zapata*  
12 analysis. This Court therefore need not determine which standard of review is appropriate.

13         9. Nevada gives strong preference to honoring the business judgment of boards and  
14 their committees. NRS 78.125, 78.138. Nevada further recognizes that disclosed conflicts do not  
15 necessarily prevent business judgment from being exercised. NRS 78.140. Here, in considering  
16 the Motion to Defer, the Court focuses on two issues: thoroughness and independence of the  
17 SLC. This is consistent with the standards adopted outside of Nevada, which generally defer to  
18 the business judgment of a special committee that is independent and investigated the claims in  
19 good faith, even where the court may have approached the investigation differently. *In re*  
20 *Consumers Power Co. Derivative Litig.*, No. 87-CV-60103-AA, 132 F.R.D. 455, 483 (E.D.  
21 Mich. 1990) (“[F]or the business judgment rule to apply, a corporation is not required to  
22 undertake the ideal or perfect investigation[.]”); *see also Hirsch v. Jones Intercable, Inc.*, 984  
23 P.2d 629, 637-38 (Colo. 1999) (“[B]ecause most courts are ill equipped and infrequently called  
24 on to evaluate what are and must be essentially business judgments, . . . the role of a . . . trial  
25 court in reviewing an SLC’s decision regarding derivative litigation should be limited to  
26 inquiring into the independence and good faith of the committee.”) (citation omitted).



1     **II.     The SLC Is Independent.**<sup>4</sup>

2           10.     A director lacks independence if the director is “beholden” to an interested  
3 person. *See, e.g., Jacobi v. Ergen*, 2:12-CV-2075-JAD-GWF, 2015 WL 1442223, at \*5 (D. Nev.  
4 Mar. 30, 2015). Beholdenness is generally shown through financial dependence. *See La. Mun.*  
5 *Police Emples. Ret. Sys. v. Wynn*, 2:12-CV-509 JCM GWF, 2014 WL 994616, at \*5 (D. Nev.  
6 Mar. 13, 2013), *appeal docketed*, No. 14-15695 (9th Cir. April 11, 2014).<sup>5</sup>

7           11.     It is well-settled that “long-standing personal and business ties” are insufficient to  
8 “overcome the presumption of independence that all directors . . . are afforded.” *In re Walt*  
9 *Disney Co. Derivative Litig.*, 731 A.2d 342, 355 (Del. Ch. 1998), *aff’d in part, rev’d in part on*  
10 *other grounds sub nom. Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *see also Wynn*, 2014 WL  
11 994616, at \*6-7, \*18 (“Allegations of a lengthy friendship are not enough” to find a director  
12 “beholden[.]” including allegations that directors had “been close . . . since they were young” as  
13 a result of their fathers’ business together and the interested director’s past employment of the  
14 other director and the other director’s siblings); *Highland Legacy Ltd. v. Singer*, No. 1566-N,  
15 2006 WL 741939, at \*5 (Del. Ch. Mar. 17, 2006) (“It is well settled that the naked assertion of a  
16 previous business relationship is not enough to overcome the presumption of a director’s  
17 independence.”) (internal quotation marks omitted); *Ankerson v. Epik Corp.*, 2005 WI App 1, at

18           <sup>4</sup> The parties disagree as to whether the burden on these issues lies with the SLC or Plaintiff.  
19 Nevada courts have not addressed this question previously. In most jurisdictions, the special  
20 litigation committee bears the burden to establish its own independence and the good faith,  
21 thoroughness of its investigation. The SLC however argues that, due to the statutory  
22 presumption of N.R.S. 78.138(3), the members of the SLC are presumed to have acted in good  
23 faith and on a fully informed basis, and that shifting the burden to the SLC would be inconsistent  
24 with this presumption. The Court need not address this issue because it concludes that the SLC  
25 was independent and conducted a good faith, thorough investigation and that the motion should  
26 be granted, irrespective of which party bears the burden.

27           <sup>5</sup> The substantive test for special litigation committee independence is no different from the  
28 substantive test for director independence generally. *See In re ITT Derivative Litig.*, 932 N.E.2d  
664, 666 (Ind. 2010) (“[T]he same standard [applies] for showing ‘lack of disinterestedness’ both  
as to the composition of special board committees . . . and to the requirement that a shareholder  
must make a demand.”); *see also St. Clair Shores Gen. Emps. Ret. Sys. v. Eibeler*, No. 06 Civ.  
688(SWK), 2008 WL 2941174, at \*8 n.7 (S.D.N.Y. July 30, 2008) (stating that demand futility  
cases are “relevant to the [SLC] context” in terms of their “treatment of director independence”  
and explaining that the “formula for evaluating independence of special litigation committees is  
consistent with that which pertains in demand excusal cases”) (citing *In re Oracle Corp.*  
*Derivative Litig.*, 824 A.2d 917, 938-39 (Del. Ch. 2003)). Thus, this Court cites authority from  
both contexts interchangeably.

1 \*3, 690 N.W.2d 885 (Wis. Ct. App. 2004) (TABLE) (“A director may be independent even if he  
2 or she has had some personal or business relation with an individual director accused of  
3 wrongdoing.”); *Jacobi*, 2015 WL 1442223, at \*5 (“Even allegations of friendship or affinity are  
4 insufficient to rebut the presumption that a director acts independently.”); *Freedman v. Redstone*,  
5 No. CV 12-1052-SLR, 2013 WL 3753426, at \*8 (D. Del. July 16, 2013) *aff’d*, 753 F.3d 416 (3d  
6 Cir. 2014) (“Standing alone, plaintiff’s allegation that Greenberg is a close friend and advisor to  
7 an interested director defendant does not create a reasonable doubt that Greenberg would have  
8 been ‘beholden’ to another director.”) (emphasis added).

9 12. Plaintiff argues that Lillis lacks independence from Cullen because Lillis and  
10 Cullen were both employed at MediaOne during the same time period, Lillis worked with Cullen  
11 at LoneTree Capital Partners, and Lillis and Cullen continue to see each other socially perhaps  
12 twice per year, including attending occasional football games together. Plaintiff also argues that  
13 Lillis lacks independence from Vogel because Vogel was the President and Chief Executive  
14 Officer of Charter when Lillis served on Charter’s board.

15 13. There is no evidence that Lillis is beholden to Cullen, Vogel, or any other  
16 defendant. During the relevant time period, Lillis had no financial or business connection to any  
17 defendant other than his service on the DISH Board. As detailed above, professional  
18 relationships and friendships do not suffice to negate independence. The relationships between  
19 Lillis and Cullen and Vogel do not undermine Lillis’s independence. Based upon all of the  
20 evidence presented, including Lillis’s declaration, exhibits provided by Plaintiff, briefing on the  
21 subject, and oral argument, the Court finds that there is no genuine issue of material fact as to  
22 Lillis’ independence. Lillis is clearly not beholden and therefore is clearly independent under the  
23 relevant legal authority.

24 14. A special litigation committee is generally independent if the committee cannot  
25 lawfully act without the approval of at least one director who is independent. *See Johnson v.*  
26 *Hui*, 811 F.Supp. 479, 486-87 (N.D. Cal. 1991); *see also Struogo ex rel. Brazil Fund v. Padege*,  
27 27 F. Supp. 2d 442, 450 n.3 (S.D.N.Y. 1998); *In re Oracle Sec’s Litig.*, 852 F. Supp. 1437, 1442

28

1 (N.D. Cal. 1994).<sup>6</sup> This is true even if there is reason to doubt the independence of another  
2 member or other members of the special litigation committee.

3 15. The voting structure of the SLC requires that Lillis vote affirmatively in favor of  
4 any resolution of the SLC in order for it to have effect. The evidence of the independence of  
5 Messrs. Brokaw and Ortolf coupled with the unusual voting structure of the SLC demonstrates  
6 that the SLC is independent.

7 16. Plaintiff makes numerous assertions concerning the independence of the other  
8 members of the SLC, Messrs. Brokaw and Ortolf,<sup>7</sup> the significance of which the SLC disputes.<sup>8</sup>  
9 In all events, after considering the evidence concerning the independence of Messrs. Brokaw and  
10 Ortolf, together with the evidence concerning the independence of Mr. Lillis and his voting  
11 power, the Court is persuaded that the SLC as a whole was independent and acted independently.

12 17. Plaintiff's assertions, which follow expansive discovery into the SLC's  
13 independence, do not raise any genuine issue of material fact with respect to whether the SLC as  
14 a whole acted independently.<sup>9</sup>

15 18. The Court thus concludes that there is no genuine issue of material fact with  
16 respect to whether the SLC's business judgment is independent as a matter of Nevada law. *See*  
17 *Johnson v. Hui*, 811 F.Supp. 479, 486-87 (N.D. Cal. 1991) (special litigation committee is  
18 generally independent if the committee cannot lawfully act without the approval of at least one  
19 director who is independent); *see also Struogo ex rel. Brazil Fund v. Padegs*, 27 F. Supp. 2d 442,

20  
21 <sup>6</sup> The same might not hold if the independent director was overcome by a director who lacks  
independence. Such was not this case here.

22 <sup>7</sup> Generally, with respect to Brokaw, Plaintiff argues that Brokaw lacks independence because  
23 Brokaw has a social relationship with the Ergens, in which Cantey Ergen is godmother to one of  
Brokaw's children. Generally, with respect to Ortolf, Plaintiff argues that Ortolf lacks  
24 independence because Ortolf has a close friendship with the Ergens.

25 <sup>8</sup> Numerous courts considering facts similar to those raised by Plaintiff have determined that  
such social relationships, even close friendships, do not render a director lacking independence.  
26 *See, e.g., Jacobi*, 2015 WL 1442223, at \*5 ("Even allegations of friendship or affinity are  
insufficient to rebut the presumption that a director acts independently.").

27 <sup>9</sup> Moreover, Plaintiff has not identified any genuine issue of material fact with respect to whether  
the issues that it raises with respect to Brokaw and Ortolf were disclosed. The disclosure of all  
28 potential challenges to the SLC members' independence provides an additional basis to find the  
SLC as a whole independent in light of Lillis' independence.

1 450 n.3 (S.D.N.Y. 1998); *In re Oracle Sec's Litig.*, 852 F. Supp. 1437, 1442 (N.D. Cal. 1994).

2 The SLC as a whole is independent given all of the evidence presented.

3 19. Plaintiff also argues that the SLC members lack independence because the Second  
4 Amended Complaint asserts claims against them.<sup>10</sup> Allowing a putative derivative plaintiff to  
5 disqualify members of an independent committee simply by asserting claims against those  
6 members, regardless of the merits of the claims, would give a putative derivative plaintiff the  
7 power to unilaterally nullify the strong presumption of the business judgement rule under  
8 Nevada law and, *a fortiori*, replace the business judgement of any board or committee thereof  
9 with that of the plaintiff in every putative derivative action. Asserting claims against a director  
10 neutralizes the director's ability to objectively assess the merits of the litigation for the  
11 corporation only "in those 'rare case[s]' . . . where defendants' actions were so egregious that a  
12 substantial likelihood of director liability exists"" as a result of the claim. *Shoen*, 122 Nev. at  
13 639-40, 137 P.3d at 1184 (quoting *Seminaris v. Landa*, 662 A.2d 1350, 1354 (Del. Ch. 1995)).

14 20. DISH's articles of incorporation indemnify and exculpate DISH's Board of  
15 Directors (the "Board") from liability for any breach of the fiduciary duty of care.

16 21. Particularly in light of the exculpation and indemnification provision in DISH's  
17 articles of incorporation — and the fact that Lillis joined the DISH Board four months after this  
18 action was filed — the challenged actions of the SLC members, even if they might potentially  
19 give rise to liability, were not so "egregious that a substantial likelihood of director liability  
20 exists." Thus, there is no genuine issue of material fact with respect to whether the claims  
21 asserted against the SLC members undermine the independence of the SLC.

22 22. Based upon the above and all the evidence and legal authority presented, the  
23 Court is persuaded that there is no genuine issue of material fact as to the independence of the  
24 SLC. The SLC is independent.

25  
26 <sup>10</sup> Often courts frame the analysis of whether claims asserted against a director neutralize that  
27 director's exercise of business judgment as a question of interest, rather than of independence.  
28 This opinion addresses the issue as one of independence because Plaintiff frames the issue in that  
manner. The question would be analyzed in the same manner and with the same outcome if  
framed as a question of the SLC members' disinterest.

1 **III. The SLC Conducted a Good Faith, Thorough Investigation.**

2 23. Both *Auerbach* and *Zapata* establish the same standard by which a court should  
3 analyze the good faith, thoroughness of a special litigation committee's investigation:

4 What has been uncovered and the relative weight accorded in  
5 evaluating and balancing the several factors and considerations are  
6 beyond the scope of judicial concern. Proof, however, that the  
7 investigation has been so restricted in scope, so shallow in  
8 execution, or otherwise so pro forma or halfhearted as to constitute  
a pretext or sham, consistent with the principles underlying the  
application of the business judgment doctrine, would raise  
questions of good faith or conceivably fraud which would never be  
shielded by that doctrine.

9 *Auerbach*, 393 N.E.2d at 1002-03. See also *Stein v. Bailey*, 531 F. Supp. 684, 691, 695  
10 (S.D.N.Y. 1982) (under the *Zapata* standard, "[p]roof . . . that the investigation has been so  
11 restricted in scope, so shallow in execution, or otherwise so pro forma or halfhearted as to  
12 constitute a pretext or sham . . . would raise questions of good faith") (internal quotation marks  
13 omitted); *Hasan v. CleveTrust Realty Investors*, 729 F.2d 372, 378 (6th Cir. 1984) (*Auerbach*  
14 and *Zapata* "are convergent in their approach to the issues of good faith and thoroughness.").

15 24. Regardless of which standard applies, the Court finds that the SLC conducted a  
16 good faith, thorough investigation. As detailed above, the SLC reviewed thousands of  
17 documents, interviewed numerous witnesses and thoroughly analyzed each of the claims in its  
18 330-page Report. See *supra*, paragraphs [[74]] – [[86]] and [[83]] – [[84]]. The SLC Report  
19 addressed each of the significant concerns raised by the Second Amended Complaint.

20 25. Although Plaintiff makes numerous assertions concerning supposed deficiencies  
21 or bad faith of the SLC's investigation, none of the assertions has merit:

22 26. Among other assertions, Plaintiff asserts that the SLC failed to address or  
23 concealed evidence concerning compliance by Ergen and his counsel with this Court's partial  
24 preliminary injunction. Contrary to Plaintiff's assertion, the SLC disclosed the comments that  
25 counsel for SPSO made concerning the Release to the LightSquared Bankruptcy Court and  
26 addressed the implications of those statements, based upon the full record. Furthermore, there is  
27 no evidence that Ergen or his counsel failed to comply with this Court's partial preliminary  
28 injunction.

1           27.     Plaintiff also asserts that the SLC failed to analyze the STC Termination Claim.  
2     Contrary to Plaintiff's assertion, the SLC Report addressed this issue at pages 325 to 327 of the  
3     SLC Report.

4           28.     Plaintiff also asserts that the SLC failed to address Plaintiff's derivative claim for  
5     unjust enrichment. Contrary to Plaintiff's assertion, the SLC addressed Plaintiff's claim for  
6     unjust enrichment in connection with the SLC's consideration of Plaintiff's other claims as set  
7     forth at pages 301-02, 312-13, 321-22, and 324-25 of the SLC Report.

8           29.     Regardless of whether Plaintiff may have preferred that its claims be investigated  
9     differently, Plaintiff has not identified a genuine issue of material fact with respect to whether the  
10    SLC's investigation of the claims set forth in the Second Amended Complaint was thorough and  
11    conducted in good faith.

12          30.     The Court concludes that there is no genuine issue of material fact as to the  
13    thoroughness or good faith of the SLC's extensive investigation. The SLC is independent and  
14    conducted a good faith, thorough investigation. For this reason, the Court grants the SLC's  
15    Motion and dismisses this action with prejudice. The Court does so based upon the  
16    independence of the SLC and thoroughness and good faith of its investigation.

17          31.     If this Court were to adopt the *Zapata* standard, this Court likewise would find  
18    that standard met, for, among other reasons, the conclusions in the SLC Report were neither  
19    irrational nor egregious.

20    **IV.    The Remaining Motions to Dismiss Are Moot.**

21          32.     The SLC's Motion to Dismiss under Rule 23.1 and the Director Defendants',  
22    Officer Defendants', and Ergen Defendants' Motions to Dismiss are moot at this time.


23          33.     If any conclusions of law are properly findings of fact, they shall be treated as if  
24    appropriately identified and designated.

25                 THEREFORE, having made the foregoing Findings of Fact and Conclusions of Law, and  
26    good cause appearing,

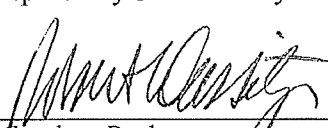
1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the SLC's Motion to  
2 Defer to the SLC's Determination That the Claims Should Be Dismissed is hereby GRANTED  
3 and this action is dismissed with prejudice.

4 IT IS FURTHER ORDERED that in light of the Court's ruling on the SLC's Motion to  
5 Defer, the Court need not rule upon the SLC's Motion to Dismiss for Failure to Plead Demand  
6 Futility, the Director Defendants' Motion to Dismiss the Second Amended Complaint, The  
7 Officer Defendants' Motion to Dismiss the Second Amended Complaint, and Defendants  
8 Charles W. Ergen and Cantey M. Ergen's Motion to Dismiss the Second Amended Derivative  
9 Complaint of Jacksonville Police and Fire Pension Fund. These and any other pending motions  
10 are hereby denied without prejudice as moot.

11 DATED this 19<sup>th</sup> day of September 2015.

12   
13 DISTRICT COURT JUDGE  
14

15 Respectfully submitted by:

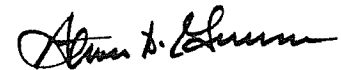
16   
17 J. Stephen Peek  
18 Robert J. Cassity  
19 HOLLAND & HART LLP  
20 9555 Hillwood Drive, 2nd Floor  
21 Las Vegas, NV 89134

22 Holly Stein Sollod (*pro hac vice*)  
23 HOLLAND & HART LLP  
24 555 17th Street Suite 3200  
25 Denver, CO 80202

26 David C. McBride (*pro hac vice*)  
27 Robert S. Brady (*pro hac vice*)  
28 C. Barr Flinn (*pro hac vice*)  
Emily V. Burton (*pro hac vice*)  
YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
*Attorneys for the Special Litigation Committee  
of DISH Network Corporation*







CLERK OF THE COURT

1 **NJUD**  
J. Stephen Peek  
2 Nevada Bar 1758  
Robert J. Cassity  
3 Nevada Bar 9779  
HOLLAND & HART LLP  
4 9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134  
5 Phone: (702) 669-4600  
Fax: (702) 669-4650  
6  
Holly Stein Sollod (*pro hac vice*)  
7 HOLLAND & HART LLP  
555 17th Street Suite 3200  
8 Denver, CO 80202  
Phone (303) 295-8000  
9 Fax: (303) 975-5395  
10 David C. McBride (*pro hac vice*)  
Robert S. Brady (*pro hac vice*)  
11 C. Barr Flinn (*pro hac vice*)  
Emily V. Burton (*pro hac vice*)  
12 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
13 1000 North King Street  
Wilmington, DE 19801  
14 Phone: (302) 571-6600  
Fax: (302) 571-1253  
15  
16 *Attorneys for the Special Litigation Committee  
of Dish Network Corporation*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

17  
18  
19  
20 IN RE DISH NETWORK DERIVATIVE  
LITIGATION

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**NOTICE OF ENTRY OF JUDGMENT**

21  
22  
23  
24  
25  
26  
27 ///

28 ///

HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

1 PLEASE TAKE NOTICE that the attached Judgment was entered on the 15th day of  
2 October 2015.

3 DATED this 20th day of October 2015  
4

5 /s/ Robert J. Cassity  
6 J. Stephen Peek  
7 Nevada Bar No. 1758  
8 Holly Stein Sollod  
9 Robert J. Cassity  
Nevada Bar No. 9779  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

10 Holly Stein Sollod (*pro hac vice*)  
11 HOLLAND & HART LLP  
555 17th Street Suite 3200  
Denver, CO 80202

12 David C. McBride (*pro hac vice*)  
13 Robert S. Brady (*pro hac vice*)  
14 C. Barr Flinn (*pro hac vice*)  
15 Emily V. Burton (*pro hac vice*)  
16 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

17 *Attorneys for the Special Litigation Committee*  
18 *of Dish Network Corporation*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of October 2015, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** was served by the following method(s):

× Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

See the attached E-Service Master List

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:

/s/ Valerie Larsen  
An Employee of Holland & Hart LLP

**E-Service Master List  
For Case**

**null - Jacksonville Police and Fire Pension Fund, Plaintiff(s) vs. Charles Ergen, Defendant(s)**

**Bernstein Litowitz Berger & Grossmann LLP**

**Contact**

Adam D. Hollander  
Jeroen Van Kwawegen  
Mark Lebovitch

**Email**

[adam.hollander@blbqlaw.com](mailto:adam.hollander@blbqlaw.com)  
[jeroen@blbqlaw.com](mailto:jeroen@blbqlaw.com)  
[markl@blbqlaw.com](mailto:markl@blbqlaw.com)

**Brownstein Hyatt Farber Schreck, LLP**

**Contact**

Jeffrey S. Rugg  
Karen Mandall  
Maximilien "Max" D. Fetaz

**Email**

[jrugg@bhfs.com](mailto:jrugg@bhfs.com)  
[kmandall@bhfs.com](mailto:kmandall@bhfs.com)  
[MFetaz@BHFS.com](mailto:MFetaz@BHFS.com)

**Cadwalader Wickersham**

**Contact**

Brittany Schulman  
Gregory Beaman  
William Foley

**Email**

[brittany.schulman@cwt.com](mailto:brittany.schulman@cwt.com)  
[Gregory.Beaman@cwt.com](mailto:Gregory.Beaman@cwt.com)  
[William.Foley@cwt.com](mailto:William.Foley@cwt.com)

**Greenberg Traurig, LLP**

**Contact**

6085 Joyce Heilich  
7132 Andrea Rosehill  
IOM Mark Ferrario  
LVGT Docketing  
RRW Randolph Westbrook

**Email**

[heilichj@qtlaw.com](mailto:heilichj@qtlaw.com)  
[rosehilla@qtlaw.com](mailto:rosehilla@qtlaw.com)  
[lvitdock@qtlaw.com](mailto:lvitdock@qtlaw.com)  
[lvitdock@qtlaw.com](mailto:lvitdock@qtlaw.com)  
[westbrookr@qtlaw.com](mailto:westbrookr@qtlaw.com)

**Holland & Hart**

**Contact**

Steve Peek

**Email**

[speek@hollandhart.com](mailto:speek@hollandhart.com)

**Holland & Hart LLP**

**Contact**

Robert Cassity  
Valerie Larsen

**Email**

[bcassity@hollandhart.com](mailto:bcassity@hollandhart.com)  
[vlarsen@hollandhart.com](mailto:vlarsen@hollandhart.com)

**Holley Driggs Walch Fine Wray Puzey & Thompson**

**Contact**

Dawn Dudas

**Email**

[ddudas@nevadafirm.com](mailto:ddudas@nevadafirm.com)

**Holley Driggs Walch Puzey Thompson**

**Contact**

William N. Miller

**Email**

[wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)

**Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson**

**Contact**

Brian W. Boschee

**Email**

[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)

**Holley, Driggs, Walch, Fine, Wray, Puzey & Thompson**

**Contact**

Brian W. Boschee, Esq.

**Email**

[bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)

**Holley, Driggs, Walch, Puzey & Thompson**

**Contact**

William N. Miller

**Email**

[wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)

**McDonald Carano Wilson LLP**

**Contact**

Amanda Yen  
CaraMia Gerard  
Jeff Silvestri

**Email**

[ayen@mcdonaldcarano.com](mailto:ayen@mcdonaldcarano.com)  
[cgerard@mcdonaldcarano.com](mailto:cgerard@mcdonaldcarano.com)  
[jsilvestri@mcdonaldcarano.com](mailto:jsilvestri@mcdonaldcarano.com)

Michelle Wade

[mwade@mcdonaldcarano.com](mailto:mwade@mcdonaldcarano.com)

---

**Pisanelli Bice PLLC****Contact**Debra L. Spinelli  
Paul Garcia  
PB Lit**Email**[dls@pisanellibice.com](mailto:dls@pisanellibice.com)  
[pg@pisanellibice.com](mailto:pg@pisanellibice.com)  
[lit@pisanellibice.com](mailto:lit@pisanellibice.com)

---

**Reisman Sorokac****Contact**Joshua H. Reisman, Esq.  
Kelly Wood**Email**[JReisman@rsnlaw.com](mailto:JReisman@rsnlaw.com)  
[kwood@rsnlaw.com](mailto:kwood@rsnlaw.com)

---

**Sullivan & Cromwell, LLP****Contact**Andrew L. Van Houter  
Brian T. Frawley  
Heather Celeste Mitchell**Email**[vanhoutera@sullcrom.com](mailto:vanhoutera@sullcrom.com)  
[frawleyb@sullcrom.com](mailto:frawleyb@sullcrom.com)  
[MITCHELLH@SULLCROM.COM](mailto:MITCHELLH@SULLCROM.COM)

---

**Willkie, Farr & Gallagher LLP****Contact**

Tariq Mundiya

**Email**[tmundiya@willkie.com](mailto:tmundiya@willkie.com)

---

**Winston & Strawn****Contact**

Bruce R. Braun

**Email**[BBraun@winston.com](mailto:BBraun@winston.com)

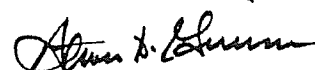
---

**Young, Conway, Stargatt & Taylor, LLP****Contact**

C. Barr Flinn

**Email**[bflinn@ycst.com](mailto:bflinn@ycst.com)

---



CLERK OF THE COURT

1 **JUDG**  
J. Stephen Peek  
2 Nevada Bar No. 1758  
Robert J. Cassity  
3 Nevada Bar No. 9779  
HOLLAND & HART LLP  
4 9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134  
5 Phone: (702) 669-4600  
Fax: (702) 669-4650

6  
Holly Stein Sollod (*pro hac vice*)  
7 HOLLAND & HART LLP  
555 17th Street Suite 3200  
8 Denver, CO 80202  
Phone (303) 295-8000  
9 Fax: (303) 975-5395

10 David C. McBride (*pro hac vice*)  
Robert S. Brady (*pro hac vice*)  
11 C. Barr Flinn (*pro hac vice*)  
Emily V. Burton (*pro hac vice*)  
12 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
Rodney Square  
13 1000 North King Street  
Wilmington, DE 19801  
14 Phone: (302) 571-6600  
Fax: (302) 571-1253

15 *Attorneys for the Special Litigation Committee*  
16 *of Dish Network Corporation*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19  
20 **IN RE DISH NETWORK CORPORATION**  
**DERIVATIVE LITIGATION**

Case No. A-13-686775-B  
Dept. No. XI

*Consolidated with A688882*

**JUDGMENT**

21  
22  
23  
24  
25 The Court having entered Findings of Fact and Conclusions of Law Regarding the  
26 Motion to Defer to the SLC's Determination that the Claims Should be Dismissed, filed  
27 September 18, 2015, and good cause appearing:  
28

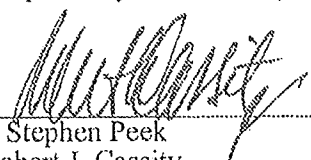
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Judgment of  
2 dismissal with prejudice of Plaintiffs' claims is entered in favor of the Defendants and the SLC,  
3 on behalf of nominal defendant DISH Network Corporation, and against Plaintiffs.

4 DATED this 15<sup>th</sup> day of October 2015

5  
6   
DISTRICT COURT JUDGE

7 Respectfully submitted by:

8   
9 J. Stephen Peek  
10 Robert J. Cassity  
11 HOLLAND & HART LLP  
12 9555 Hillwood Drive, 2nd Floor  
13 Las Vegas, NV 89134

14 Holly Stein Sollod (*pro hac vice*)  
15 HOLLAND & HART LLP  
16 555 17th Street Suite 3200  
17 Denver, CO 80202

18 David C. McBride (*pro hac vice*)  
19 Robert S. Brady (*pro hac vice*)  
20 C. Barr Flinn (*pro hac vice*)  
21 Emily V. Burton (*pro hac vice*)  
22 YOUNG, CONAWAY, STARGATT & TAYLOR, LLP  
23 Rodney Square  
24 1000 North King Street  
25 Wilmington, DE 19801

26 *Attorneys for the Special Litigation Committee*  
27 *of Dish Network Corporation*  
28

1 **NEOJ**

2 BRIAN W. BOSCHKEE, ESQ.

3 Nevada Bar No. 7612

4 E-mail: [bboschke@nevadafirm.com](mailto:bboschke@nevadafirm.com)

5 WILLIAM N. MILLER, ESQ.

6 Nevada Bar No. 11658

7 E-mail: [wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)

8 COTTON, DRIGGS, WALCH,

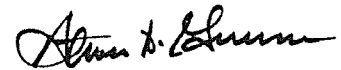
9 HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

Electronically Filed  
10/08/2013 12:02:28 PM



CLERK OF THE COURT

MARK LBOVITCH, ESQ. (admitted *Pro hac vice*)

New York Bar No. 3037272

E-mail: [markl@blbglaw.com](mailto:markl@blbglaw.com)

JEROEN VAN KWAEGEN, ESQ. (*Pro hac vice pending*)

New York Bar No. 4228698

E-mail: [jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)

JEREMY FRIEDMAN, ESQ. (admitted *Pro hac vice*)

New York Bar No. 4622569

E-mail: [jeremyf@blbglaw.com](mailto:jeremyf@blbglaw.com)

BERNSTEIN LITOWITZ BERGER

& GROSSMANN LLP

1285 Avenue of the Americas

New York, New York 10019

Telephone: 212/554-1400

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACKSONVILLE POLICE AND FIRE  
PENSION FUND, derivatively on behalf of  
nominal defendant DISH NETWORK  
CORPORATION,

Plaintiff,

v.

CHARLES W. ERGEN; JOSEPH P.  
CLAYTON; JAMES DEFRANCO; CANTEY  
M. ERGEN; STEVEN R. GOODBARN; DAVID  
K. MOSKOWITZ; TOM A. ORTOLF; CARL  
E. VOGEL; DOES I-X, inclusive and ROE  
ENTITIES I-X, inclusive,

Defendants.

DISH NETWORK CORPORATION, a Nevada  
corporation,

Nominal Defendant.

Case No: A-13-686775-B  
Dept. No.: XI

**NOTICE OF ENTRY OF STIPULATION  
AND ORDER FOR DISMISSAL  
WITHOUT PREJUDICE FOR  
DEFENDANT STEVEN R. GOODBARN**



YOU, and each of you, will please take notice that a **STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE FOR DEFENDANT STEVEN R. GOODBARN** in the above-entitled matter was filed and entered by the Clerk of the above-entitled Court on the 8<sup>th</sup> day of October, 2013, a copy of which is attached hereto.

Dated this 8<sup>th</sup> day of October, 2013.

**COTTON, DRIGGS, WALCH,  
HOLLEY, WOLOSON & THOMPSON**

✓

BRIAN W. BOSCHKE, ESQ.  
Nevada Bar No. 7612  
WILLIAM N. MILLER, ESQ.  
Nevada Bar No. 11658  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

MARK LBOVITCH, ESQ.  
New York Bar No. 3037272  
JEROEN VAN KWAEGEN, ESQ.  
New York Bar No. 4228698  
JEREMY FRIEDMAN, ESQ.  
New York Bar No. 4622569  
**BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP**  
1285 Avenue of the Americas  
New York, New York 10019

*Attorneys for Plaintiff*

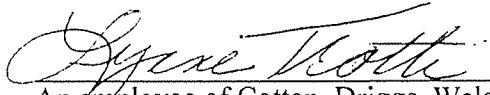
1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that, on the 8th day of October, 2013 and pursuant to NRCGP  
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**  
4 **OF ENTRY OF STIPULATION AND ORDER FOR DISMISSAL WITHOUT**  
5 **PREJUDICE FOR DEFENDANT STEVEN R. GOODBARN**, postage prepaid and addressed  
6 to:

7 Joshua H. Reisman, Esq.  
8 Robert R. Warns III, Esq.  
9 REISMAN SOROKAC  
8965 South Eastern Avenue, Suite 382  
Las Vegas, Nevada 89123  
*Attorneys for Charles W. Ergen*

10 Kirk B. Lenhard, Esq.  
11 Jeffrey S. Rugg, Esq.  
12 BROWNSTEIN HYATT FABER SCHREK  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106-4614  
*Attorneys for Defendant DISH NETWORK*  
*CORPORATION and Director Defendants*

14 Mark E. Ferrario, Esq.  
15 Jack Burns, Esq.  
16 GREENBERG TRAURIG, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, Nevada 89169  
*Attorneys for Defendant Steven R. Goodbarn*

18  
19   
20 An employee of Cotton, Driggs, Walch,  
Holley, Woloson & Thompson  
21  
22  
23  
24  
25  
26  
27  
28

  
CLERK OF THE COURT

**SODWOP**

BRIAN W. BOSCHKEE, ESQ.

Nevada Bar No. 7612

E-mail: [bboschkee@nevadafirm.com](mailto:bboschkee@nevadafirm.com)

WILLIAM N. MILLER, ESQ.

Nevada Bar No. 11658

E-mail: [wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)

COTTON, DRIGGS, WALCH,

HOLLEY, WOLOSON & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

MARK LEBOVITCH, ESQ. (admitted *Pro hac vice*)

New York Bar No. 3037272

E-mail: [markl@blbglaw.com](mailto:markl@blbglaw.com)

JEROEN VAN KWAWEGEN, ESQ. (*Pro hac vice pending*)

New York Bar No. 4228698

E-mail: [jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)

JEREMY FRIEDMAN, ESQ. (admitted *Pro hac vice*)

New York Bar No. 4622569

E-mail: [jeremyf@blbglaw.com](mailto:jeremyf@blbglaw.com)

BERNSTEIN LITOWITZ BERGER

& GROSSMANN LLP

1285 Avenue of the Americas

New York, New York 10019

Telephone: 212/554-1400

*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JACKSONVILLE POLICE AND FIRE  
PENSION FUND, derivatively on behalf of  
nominal defendant DISH NETWORK  
CORPORATION,

Plaintiff,

v.

CHARLES W. ERGEN; JOSEPH P.  
CLAYTON; JAMES DEFRANCO; CANTEY  
M. ERGEN; STEVEN R. GOODBARN; DAVID  
K. MOSKOWITZ,; TOM A. ORTOLF; CARL  
E. VOGEL; DOES I-X, inclusive and ROE  
ENTITIES I-X, inclusive,

Defendants.

DISH NETWORK CORPORATION, a Nevada  
corporation,

Nominal Defendant.

Case No.: A-13-686775-B

Dept. No.: XI

**STIPULATION AND ORDER FOR  
DISMISSAL WITHOUT PREJUDICE  
FOR DEFENDANT STEVEN R.  
GOODBARN**

10-01-13P04:25 RCVD

1                   **STIPULATION AND ORDER FOR DISMISSAL WITHOUT PREJUDICE FOR**  
2                   **DEFENDANT STEVEN R. GOODBARN**

3                   WHEREAS, on September 12, 2013, Jacksonville Police and Fire Pension Fund  
4                   ("Plaintiff") filed a Verified Amended Shareholder Derivative Complaint on behalf of Dish  
5                   Network Corporation ("Dish") in the above-referenced action (the "Action"), naming Steven R.  
6                   Goodbarn ("Defendant Goodbarn") among others as a defendant;

7                   WHEREAS, on September 13, 2013, Plaintiff filed a Motion for Preliminary Injunction  
8                   and for Discovery on an Order Shortening Time;

9                   WHEREAS, on September 18, 2013, Defendant Goodbarn filed a Motion to Dismiss the  
10                  Amended Complaint Pursuant to Nev. R. Civ. P. 12(b)(5);

11                  WHEREAS, on September 18, 2013, Defendant Goodbarn filed a Supplemental  
12                  Response to Plaintiff's Motion for Expedited Discovery; and

13                  WHEREAS, Defendant Goodbarn has represented that he is willing to serve as a member  
14                  of an independent special committee of the Dish board of directors charged with evaluating any  
15                  participation by Dish in bidding for LightSquared L.P. ("LightSquared") or certain LightSquared  
16                  assets, provided that such special committee is independent and has an adequate charge, scope of  
17                  authority and funding to act solely in Dish's interests.  
18

19                                   **IT IS HEREBY STIPULATED THAT:**  
20

- 21                   1. Defendant Goodbarn is dismissed without prejudice as a defendant from this Action;  
22                   2. Defendant Goodbarn's Motion to Dismiss the Amended Complaint Pursuant to Nev.  
23                   R. Civ. P. 12(b)(5) filed on September 18, 2013 is withdrawn without prejudice;  
24                   3. Defendant Goodbarn's Supplemental Response to Plaintiff's Motion for Expedited  
25                   Discovery filed on September 18, 2013 is withdrawn without prejudice;  
26                   4. Defendant Goodbarn will be subject to discovery as if he was a party to this Action;  
27                   and  
28                   5. If invited, Defendant Goodbarn will serve on an appropriately funded and structured  
                    independent committee for the benefit of Dish and its shareholders.

1  
2 Dated: 10/1/2013

Dated: 10/1/2013

3  
4 COTTON, DRIGGS, WALCH  
HOLLEY, WOLOSON & THOMPSON

GREENBERG TRAURIG, LLP

5 By W. — G. (NBN 11658)  
6 Brian W. Boschee, Esq. (NBN 7612)  
7 400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101

By Mark E. Ferrario, Esq. (NBN 1625)  
3773 Howard Hughes P'way, Suite 400 North  
Las Vegas, Nevada 89169

8 Mark Lebovitch, Esq.  
9 New York Bar No. 3037272  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
10 1285 Avenue of the Americas  
11 New York, New York 10019

Gregory A. Markel, Esq.  
New York Bar No. 1379437  
CADWALADER, WICKERSHAM  
& TAFT LLP  
One World Financial Center  
New York, New York 10281

12 *Attorneys for Plaintiff*

*Attorneys for Defendant Steven R. Goodbarn*

13 **ORDER**

14 UPON STIPULATION OF THE PARTIES, and good cause appearing therefore, it is  
15 HEREBY ORDERED, ADJUDGED and DECREED that:

- 16 1. Defendant Goodbarn is dismissed without prejudice as a defendant from this Action;  
17 2. Defendant Goodbarn will be subject to discovery as if he was a party to this Action;  
18 and

19 Dated this 10 day of October, 2013.

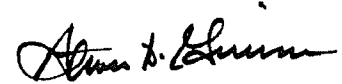
20   
21 DISTRICT COURT JUDGE *mk*

22 Respectfully submitted by:

23 COTTON, DRIGGS, WALCH,  
24 HOLLEY, WOLOSON & THOMPSON

25 W. —  
26 BRIAN W. BOSCHEE, ESQ. (NBN 7612)  
27 WILLIAM N. MILLER, ESQ. (NBN 11658)  
28 400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101





CLERK OF THE COURT

SACOM

BRIAN W. BOSCHEE, ESQ.

Nevada Bar No. 7612

E-mail: [bboschee@nevadafirm.com](mailto:bboschee@nevadafirm.com)

WILLIAM N. MILLER, ESQ.

Nevada Bar No. 11658

E-mail: [wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)

HOLLEY, DRIGGS, WALCH,

PUZEY & THOMPSON

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Telephone: 702/791-0308

*Liaison Counsel for Plaintiffs*

MARK LEBOVITCH, ESQ. (admitted *Pro hac vice*)

New York Bar No. 3037272

E-mail: [markl@blbglaw.com](mailto:markl@blbglaw.com)

JEROEN VAN KWAWESEN, ESQ. (admitted *Pro hac vice*)

New York Bar No. 4228698

E-mail: [jeroen@blbglaw.com](mailto:jeroen@blbglaw.com)

ADAM D. HOLLANDER, ESQ. (admitted *Pro hac vice*)

New York Bar No. 4498143

E-mail: [adam.hollander@blbglaw.com](mailto:adam.hollander@blbglaw.com)

BERNSTEIN LITOWITZ BERGER

& GROSSMANN LLP

1285 Avenue of the Americas

New York, New York 10019

Telephone: 212/554-1400

*Lead Counsel for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION  
DERIVATIVE LITIGATION

Case No.: A-13-686775-B  
Dept. No.: XI

VERIFIED SECOND AMENDED  
SHAREHOLDER DERIVATIVE  
COMPLAINT OF JACKSONVILLE  
POLICE AND FIRE PENSION FUND  
PURSUANT TO RULE 23.1 OF THE  
NEVADA RULES OF CIVIL  
PROCEDURE

(Arbitration Exemption Requested:  
Damages Exceed \$50,000)

1                   **VERIFIED SECOND AMENDED SHAREHOLDER DERIVATIVE**  
2                   **COMPLAINT OF JACKSONVILLE POLICE AND FIRE PENSION FUND PURSUANT**  
3                   **TO RULE 23.1 OF THE NEVADA RULES OF CIVIL PROCEDURE**

4           Plaintiff, Jacksonville Police and Fire Pension Fund ("Jacksonville Police" or "Plaintiff"),  
5           for the benefit of nominal defendant DISH Network Corporation ("DISH" or the "Company"),  
6           brings the following Verified Second Amended Shareholder Derivative Complaint (the  
7           "Complaint") against the Company's founder, chairman, and controlling shareholder Charles W.  
8           Ergen ("Ergen") other members of the board of directors of DISH (the "DISH Board" or  
9           "Board"), and senior DISH executives Thomas A. Cullen, Stanton Dodge, and Kyle Jason Kiser.  
10          The allegations of the Complaint are based on the knowledge of Plaintiff as to itself, and on  
11          information and belief, including the investigation of counsel and review of publicly available  
12          information as to all other matters.

13                                   **I. INTRODUCTION**

14          1.       DISH's controlling shareholder, Chairman and founder, Charlie Ergen, is  
15          personally pocketing hundreds of millions of dollars in investment profits because he secretly  
16          misappropriated corporate resources and a corporate opportunity. DISH's and Ergen's own  
17          lawyers previously told this Court that no such opportunity was possible and even said that  
18          Plaintiff made a frivolous filing for suggesting to the contrary. Those same lawyers have taken  
19          the opposite position in federal court, readily admitting that DISH was as able to take the  
20          opportunity as Ergen was. Making matters worse, Ergen's self-interest and domination of all  
21          things DISH resulted in the Company's failure to acquire strategically critical spectrum assets,  
22          depriving the company of billions of dollars in anticipated increased value.

23          2.       There is no corporate governance at DISH to protect DISH's public shareholders.  
24          Neither Ergen nor his hand-picked board of directors ever considers the interests of DISH's  
25          public stockholders. There is what Ergen wants, nothing more, nothing less. Indeed, following a  
26          several months' long trial, United States Bankruptcy Judge Shelley E. Chapman reached the  
27          following conclusion, which fairly sums up the state of corporate governance at DISH:

28                   From his stunning lack of candor with the DISH Board and  
                    management to the stonewalling and disbanding of the Special  
                    Committee, the message is loud and clear: no one crosses or even



questions the actions of the Chairman. Charles Ergen is, in every sense, the controlling shareholder of DISH and wields that control as he sees fit.

3. In a normal public corporation, when a Chairman or CEO flagrantly takes corporate opportunities or pursues self-interested actions that harm the interests of the company's public shareholders, there is a board of directors – or at least a subset of directors – that is willing and able to take a stand to protect the company and its public shareholders. Nevada law “requires the board and its directors to maintain, in good faith, the corporation’s and its shareholders’ best interests *over anyone else’s interest*.” *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006).<sup>1</sup>

4. This case arises because Ergen and the Board simply cannot conceive of how shareholders of "his" company could ever have interests other than Ergen's wants or needs. Thus, the DISH Board did not, has not and will not ever protect the interests of DISH and its public shareholders when those interests conflict with Ergen's personal interests. Even when a Board subcommittee is created in the face of flagrant conflicts of interests -- be it a special transaction committee or a special litigation committee -- Ergen makes sure that it is either populated by loyalists who would never cross him or he undermines any *bona fide* efforts to exercise genuine independence.

5. This case began because Ergen used his control over DISH and the Board for his personal profit. Without telling the Board or sharing this opportunity with DISH, Ergen bought more than \$1 billion in distressed debt of LightSquared – a company that DISH had a powerful strategic incentive to purchase out of bankruptcy. After keeping his Board in the dark for more than a year, Ergen finally came clean in May 2013 and made clear that he expected DISH to immediately make a \$2 billion bid for LightSquared that would protect his personal investment and ensure a personal profit of at least \$150 million.

6. When the surprised Board did not immediately fall in line, Ergen eliminated the Board's options to act in any way other than his preferred course of action. Ergen made a

<sup>1</sup> Emphasis is added unless otherwise indicated.

1 personal \$2 billion bid for LightSquared through a personal acquisition vehicle, L-Band  
2 Acquisition LLC ("LBAC"), setting a "floor" for DISH's inevitable bid that was exactly high  
3 enough to protect Ergen's personal investment. As the Bankruptcy Court found:

4           Given the control Mr. Ergen exercised over the DISH Board (as  
5           evidenced in particular by his bullying of the Special Committee),  
6           it is clear that Mr. Ergen believed that, after making the LBAC  
7           Bid, he could and would get DISH to step in as purchaser.

8           7. Ergen deliberately undermined efforts by a special transaction committee (the  
9           "Transaction Committee") consisting of the Board's only two independent members, Steven  
10          Goodham ("Goodham") and Gary Howard ("Howard"), when they dared show actual  
11          independence by asking to investigate Ergen's personal debt purchases and protect DISH's  
12          interests. Ergen refused to provide basic information about his debt purchases that would have  
13          shown that: (i) Ergen had been purchasing LightSquared debt for more than a year without  
14          telling the Board; (ii) DISH's own counsel understood that DISH could have pursued the  
15          opportunity to buy the debt the same way Ergen did; and (iii) Ergen stood to personally reap at  
16          least \$150 million in profits, plus significant interest, if DISH bid \$2 billion for LightSquared.

17          8. Ergen bullied the Transaction Committee into delaying its retention of legal and  
18          financial advisors. He then artificially rushed its efforts by threatening to buy LightSquared out  
19          of bankruptcy through the Ergen-controlled company EchoStar, depriving DISH of valuable  
20          spectrum, unless the Transaction Committee immediately approved a \$2 billion DISH bid.  
21          Despite this onslaught, the Transaction Committee *expressly conditioned* its endorsement of a  
22          \$2.22 billion bid for LightSquared on the Committee's continuing involvement (including the  
23          negotiation of final contracts) and a continuing investigation into Ergen's debt purchases.

24          9. The Board invariably favored the interests of Ergen over the interests of DISH  
25          and DISH's public shareholders. *First*, when Goodham and Howard asked for standard  
26          compensation and indemnification for their work on the Transaction Committee in investigating  
27          Ergen's conflicting interests, the Board sided with Ergen and deliberately withheld it.

28          10. *Second*, when the Transaction Committee crossed Ergen by *conditionally*  
authorizing a \$2.2 billion DISH bid for LightSquared (expressly requiring that the Transaction

1 Committee be allowed, among other things, to continue its investigation of Ergen, to continue to  
2 oversee any further developments in the LightSquared bidding process, *and* to negotiate the  
3 terms of the agreements reflecting DISH's bid for LightSquared's spectrum), the Board in bad  
4 faith disbanded the committee without prior notice and in willful derogation of the Committee's  
5 enabling resolution.

6 11. *Third*, when Plaintiff brought this action (the "Action") on behalf of DISH, the  
7 Board created a plainly non-independent special litigation committee (the "SLC") as a cynical  
8 ploy to avoid expedited discovery and derail this lawsuit. The SLC consisted of a long-time  
9 close business associate of Ergen's whose own children depended on Ergen's largesse for their  
10 continued paychecks, and a second man who named Ergen's wife (and fellow DISH Board  
11 member) Catey Ergen as the godmother to his own child. Taking no chances in light of the  
12 Transaction Committee's resistance, Ergen knew and ensured that the SLC would inevitably do  
13 his bidding.

14 12. After showing from their first telephone call to Plaintiffs' counsel that a  
15 whitewash was well in the works, the SLC misled this Court in its first report, hiding the fact that  
16 Ortolf's own children have been and are employed by DISH, rendering ridiculous any notion that  
17 he would take a position contrary to Ergen. Moreover, from the outset, and long before  
18 conducting any semblance of an investigation into the allegations, the SLC not only fully aligned  
19 itself with Ergen and his loyalists on the Board, it actually took the lead in presenting the  
20 substantive arguments in Defendants' favor. The SLC urged the Court not to allow expedited  
21 discovery, and when the Court properly required that sunlight be cast on what had happened to  
22 the Transaction Committee, the SLC inexplicably argued on the merits that Ergen had never  
23 done anything wrong and that, therefore, there was no reason to grant injunctive relief. An SLC  
24 that predetermines its conclusions before even conducting its investigation is a whitewash and  
25 cannot warrant the slightest judicial deference. Indeed, as history has now shown, the only  
26 genuine assertion that the SLC presented to this Court (in complete unison with Ergen and the  
27 Board, when this point still suited them) was that acquiring LightSquared's spectrum was a  
28 strategic imperative for DISH.

1           13. From its creation, the SLC has abandoned any semblance of independence  
2 (consistent with the fact that its members are not independent), making a mockery of the notion  
3 that its members had any interest in lifting a finger against Ergen's conflicting interests. To the  
4 contrary, the SLC has consistently ignored evidence of Ergen's and the Board's breaches of  
5 fiduciary duty, aligned itself with Ergen and the Board, and vigorously opposed any effort for  
6 this Court to hold Ergen accountable.

7           14. Ergen's and his Board's misconduct have caused staggering harm to DISH while  
8 Ergen, whose interests the Board protected, stands to profit handsomely. By November 2013,  
9 the sales process for LightSquared was headed for an auction where DISH's bid would serve as  
10 the Court-approved "stalking horse." The Bankruptcy Court had dismissed a lawsuit brought by  
11 LightSquared's controlling shareholder, Harbinger, and there were no other bidders. DISH's bid  
12 was destined to be successful, giving DISH the ability to pay \$2.22 billion for spectrum that,  
13 Ergen's own valuations made clear, was worth \$7.085 billion to DISH.

14           15. However, as LightSquared contemplated bringing a lawsuit against Ergen based  
15 on his debt purchases, Ergen threatened that DISH could pull its bid at any time. When  
16 LightSquared nevertheless persisted and brought the lawsuit, Ergen informed the Bankruptcy  
17 Court that DISH's bid for LightSquared's spectrum was not only conditioned upon  
18 LightSquared's release of claims against Ergen, but also upon Ergen being paid in full on his  
19 personal claims for \$1 billion of LightSquared debt. LightSquared was prepared to sell its  
20 spectrum to DISH. But it predictably could not complete the sale if it also had to drop viable  
21 claims against Ergen that should have had nothing to do with DISH's bid.

22           16. The Board's counsel and counsel for the SLC were present in the Bankruptcy  
23 Court when Ergen threatened to pull DISH's bid unless his personal claims for \$1 billion of  
24 LightSquared debt were paid in full.<sup>2</sup> Plaintiff also informed the Board and the SLC repeatedly  
25 of Ergen's threats to pull DISH's bid. The Board and SLC again disloyally refused to protect  
26 DISH's interests. Indeed, even after Judge Chapman and the U.S. Bankruptcy Trustee (the "US

27           <sup>2</sup> On November 20, 2013, the SLC represented in this Court that its counsel had been directed to  
28 attend the hearings in the Bankruptcy Court.

1 Trustee") raised serious concerns about why a release drafted in a bid agreement by DISH's  
2 wholly owned subsidiary, LBAC, would include Ergen and his personal investment vehicle,  
3 SPSO, the SLC denied there was any conflict of interest, solemnly assured this Court that it  
4 could and would take action if any future conflict emerged, and vigorously opposed any judicial  
5 relief.

6 17. Fortunately, this Court correctly did not defer to the SLC's insistence that no  
7 injunctive relief should be granted. Instead, the Court enjoined Ergen and his affiliates from  
8 controlling DISH's handling of the release as it pertained to the LightSquared spectrum auction  
9 process. In addition, speaking to the balance of the claims (for which no injunction would be  
10 granted), this Court stated that "you've got loyalty issues that you're going to be able to allege  
11 and get past a motion to dismiss and probably a motion for summary judgment based on what  
12 I've seen."

13 18. Unfortunately, for DISH and its public shareholders, the release turned out to play  
14 a critical role in the LightSquared spectrum auction, and the SLC and the Board completely  
15 abdicated their duties and abused the trust that the Court had placed in their willingness to  
16 protect DISH. In early December 2013, *after the Court granted its injunction*, the LightSquared  
17 special committee overseeing the auction made absolutely clear that because no competing  
18 bidder had emerged, DISH would be able to acquire the spectrum for the \$2.2 billion stalking  
19 horse bid, provided it carved LightSquared's personal claims against Ergen and SPSO out of the  
20 release. Instead, as is the case with all things DISH-related, Ergen did what was good for Ergen.  
21 His personal lawyers at Wilkie Farr & Gallagher LLP ("Wilkie Farr") spoke on LBAC's behalf,  
22 refusing to modify the release and threatening to withdraw the bid unless LightSquared dropped  
23 its claims against Ergen. In complete derogation of this Court's injunction, neither the Board nor  
24 the SLC spoke for DISH on this issue. Indeed, Brokaw (representing the SLC) and Vogel  
25 (representing the Board) were present when the LightSquared special committee canceled the  
26 auction as a result of Ergen's self-interested condition, yet said nothing on DISH's behalf.

27 19. At the December 19, 2013 hearing before this Court, the SLC and the Board  
28 falsely represented to this Court that Ergen had never conditioned DISH's bid for LightSquared's

1 spectrum on receiving payment of his personal claims of LightSquared debt, and that *Plaintiff*  
2 was somehow putting at risk DISH's ability to acquire strategically important spectrum -- worth  
3 billions of dollars -- by insisting that independent directors should oversee DISH's bidding effort.  
4 Rather than follow up on the Bankruptcy Court's question as to "why does the bid of DISH care  
5 about whether or not [Ergen] gets his claims paid in full?" and investigate Plaintiff's serious  
6 concerns that Ergen was using DISH's bid to protect his personal profits, the Board falsely told  
7 this Court that "Nobody's ever made a threat to withdraw the bid." The SLC further  
8 misrepresented to this Court as follows:

9 I'm troubled that the Court has concerns and the presentation that  
10 was made by [Plaintiff's counsel] about the fact that DISH said  
11 that it would pull its bid if the release is changed. *That never --*  
12 *that didn't happen. . . .*

13 20. On January 7, 2014 -- two days before the trial against Ergen was scheduled to  
14 start -- DISH terminated the plan support agreement with the other lenders who were supporting  
15 DISH's bid. On January 22, 2014, Ergen's personal lawyers at Willkie Farr, again acting for  
16 LBAC and again showing contempt for this Court's unambiguous instructions, informed the  
17 Bankruptcy Court: "*The stalking horse bidder hereby withdraws its bid.*" Counsel for the Board  
18 was present, yet said nothing.

19 21. After a full trial and hearing extensive testimony and citing a "troubling pattern of  
20 non-credible testimony" by Ergen, the Bankruptcy Court conclusively established the following  
21 facts.

- 22 • Ergen used DISH resources and his position as DISH's Chairman to purchase  
23 LightSquared debt for his personal profit (Post-Trial Findings at ¶¶ 7, 44, 96- 98);
- 24 • DISH could have acquired LightSquared debt through an affiliate, just like Ergen;  
25 (Post-Trial Findings at 105);
- 26 • Ergen and the Officer Defendants deliberately did not inform the Board that  
27 Ergen was purchasing LightSquared debt until after Ergen had placed his final  
28 trade (Post-Trial Findings at ¶¶ 7, 44, 96- 98);
- Ergen used his control over DISH's Board to protect his personal investment in  
LightSquared debt (Post Trial Findings at 122);
- The Board and the Officer Defendants consciously did not protect the interests of

1 DISH and DISH's public shareholders against Ergen's conflicting personal  
2 interest (Post Trial Findings at 102-04) (noting "the apparent attitude of members  
3 of the DISH board and senior management that where Mr. Ergen was concerned,  
4 it was better not to ask a lot of questions and to let him conduct his business as he  
5 saw fit");

- 6 • Ergen deliberately interfered with the Transaction Committee's ability to perform  
7 its task (Post-Trial Findings at 113);
- 8 • The Board terminated the Transaction Committee in violation of the May 8, 2013  
9 resolution and without advance notice (Post-Trial Findings at ¶¶ 159-160, pp.  
10 117-18); and
- 11 • The purported "technical issue" for pulling DISH's bid was a pretext and,  
12 regardless, the Board did not take any steps to determine whether it could resolve  
13 any "technical issue" and secure LightSquared's valuable spectrum assets for  
14 DISH (Confirmation Opinion at 40, 56-57, 63-65 & n.82).

15 22. Ergen's and the Board's misconduct have deprived DISH of the opportunity to  
16 buy for \$2.22 billion LightSquared spectrum worth \$7.085 billion. The Bankruptcy Court  
17 described this opportunity as a "freebie" to the Company. Meanwhile, the Board is allowing  
18 Ergen to reap huge profits on his personal LightSquared debt investment, even as DISH pays the  
19 substantial legal fees that the Company incurred as a result of Ergen's misconduct (likely  
20 including millions of dollars to Ergen's lawyers for monopolizing the representation of DISH's  
21 wholly-owned subsidiary LBAC throughout the bankruptcy). Ergen and the Board disloyally  
22 and in bad faith elevated Ergen's personal interests over the interests of DISH and DISH's public  
23 shareholders. If the duty of loyalty is to mean anything at all, they must be held accountable.

## 24 II. JURISDICTION

25 23. This Court has jurisdiction over all causes of action asserted herein pursuant to  
26 the Constitution of the State of Nevada, Article 6, Section 6 and pursuant to N.R.S. 14.065(1).  
27 This Court has jurisdiction over each defendant named herein because each Defendant is either a  
28 corporation or an individual who has sufficient minimum contacts with Nevada, to render the  
exercise of jurisdiction by the Nevada courts permissible under traditional notions of fair play  
and substantial justice. DISH is a public corporation incorporated under the laws of the State of  
Nevada, and the Defendants are members of the DISH Board and DISH senior executives that

1 have directly harmed DISH.

2 24. This forum is proper because this Action involves significant issues of Nevada  
3 corporate law and is therefore suitable for adjudication before Nevada's Business Court.

4 **III. THE PARTIES**

5 **A. Plaintiff**

6 25. Plaintiff Jacksonville Police and Fire Pension Fund ("Plaintiff" or the "Fund") is a  
7 single-employer contributing defined benefit pension plan covering all full-time police officers  
8 and firefighters of the Consolidated City of Jacksonville. The Fund was created in 1937 and is  
9 structured as an independent agency of the City of Jacksonville. The Fund is administered solely  
10 by a five-member board of trustees. The Fund currently owns shares of DISH Class A common  
11 stock, owned shares while the events and transactions complained of herein transpired, and will  
12 continue to own DISH Class A common stock throughout this litigation.

13 **B. The Director Defendants**

14 26. Defendant Charles W. Ergen ("Ergen") is founder, Chairman and controlling  
15 shareholder of DISH. Ergen beneficially owns approximately 59.7% of the Company's total  
16 equity and possesses approximately 85.1% of the Company's total voting power through his  
17 ownership of the Company's super-voting Class B common stock. Ergen co-founded DISH in  
18 1980 with his wife Cantey Ergen and their close friend James DeFranco ("DeFranco"). From the  
19 Company's founding until June 2011 when he stepped down as CEO, Ergen held DISH's Chief  
20 Executive Officer ("CEO") and Chairman positions. Ergen continues to serve as the Company's  
21 Chairman.

22 27. Defendant George R. Brokaw ("Brokaw") has served as a member of the DISH  
23 Board since October 7, 2013. Ergen and Brokaw have a longstanding family relationship,  
24 including that Ergen's wife, DISH director Cantey Ergen, is the godmother to Brokaw's son.  
25 Brokaw has served on the Company's Executive Compensation Committee, Nominating  
26 Committee, and Audit Committee. Brokaw is and has been a member of the SLC since  
27 September 18, 2013. For Brokaw's two-plus months of Board service in 2013 alone, he was  
28 paid \$35,250. Brokaw is a Defendant in this Action because he breached his duty of loyalty to



1 DISH by placing the interests of Ergen ahead of the interests of the Company, including by: (1)  
2 allowing Ergen to ignore this Court's clear instructions that were aimed at protecting DISH's bid  
3 for LightSquared spectrum from interference by Ergen's personal interests in a release of  
4 LightSquared's claims; (2) not interfering when Ergen caused DISH to pull its bid for  
5 LightSquared spectrum to serve his personal interests; and (3) not conducting a good faith  
6 investigation of Ergen's and the Board's breaches of duty in connection with DISH's pursuit of  
7 LightSquared's spectrum assets.

8 28. Defendant James DeFranco ("DeFranco") is an Executive Vice President at DISH  
9 and has been a member of the DISH Board since the Company's formation in 1980. The bulk of  
10 DeFranco's personal wealth, including his personal stake in DISH, and compensation he has  
11 received as a DISH executive and director, is due to his relationship with Ergen. DeFranco co-  
12 founded the company that became DISH with Charles Ergen and Cantey Ergen in 1980. On July  
13 21, 2014, DeFranco voted to disband the special transaction committee consisting of Messrs.  
14 Goodburn and Howard. DeFranco is a Defendant in this Action because he breached his duty of  
15 loyalty to DISH by placing the interests of Ergen ahead of the interests of the Company,  
16 including by: (1) voting to disband the Transaction Committee to protect Ergen's personal  
17 interest in LightSquared debt purchases; (2) allowing Ergen to ignore this Court's clear  
18 instructions that were aimed at protecting DISH's bid for LightSquared spectrum from  
19 interference by Ergen's personal interests in a release of LightSquared's claims; and (3) not  
20 interfering when Ergen caused DISH to pull its bid for LightSquared spectrum to serve his  
21 personal interests.

22 29. Defendant Cantey Ergen is Charles Ergen's wife, has served on the DISH Board  
23 since May 2001, is currently a senior advisor to the Company, and has had a variety of  
24 operational responsibilities with DISH since the Company's formation. Cantey Ergen co-  
25 founded the company that became DISH with Defendants Charles Ergen and DeFranco. Cantey  
26 Ergen is a Defendant in this Action because she breached her duty of loyalty to DISH by placing  
27 the interests of Charles Ergen ahead of the interests of the Company, including by: (1) allowing  
28 Charles Ergen to ignore this Court's clear instructions that were aimed at protecting DISH's bid

1 for LightSquared spectrum from interference by Charles Ergen's personal interests in a release of  
2 LightSquared's claims; and (2) not interfering when Charles Ergen caused DISH to pull its bid  
3 for LightSquared spectrum to serve his personal interests.

4 30. Defendant David K. Moskowitz ("Moskowitz") has served as a member of the  
5 DISH Board since 1998. Moskowitz is a senior advisor to Ergen, and was an Executive Vice  
6 President as well as the Company's Secretary and General Counsel until 2007. Moskowitz  
7 continues to work for DISH at the pleasure of Ergen. In addition, Moskowitz served as a  
8 member of the board of directors of EchoStar (another company controlled by Ergen) from  
9 October 2007 until May 2012. Moskowitz owes the compensation he has received, and  
10 continues to receive as a DISH executive and director and a former Echostar director to his  
11 relationship with Ergen. Moskowitz is a Defendant in this Action because he breached his duty  
12 of loyalty to DISH by placing the interests of Ergen ahead of the interests of the Company,  
13 including by: (1) proposing to disband and voting in favor of disbanding the transaction  
14 Committee to protect Ergen's personal interest in LightSquared debt purchases; (2) allowing  
15 Ergen to ignore this Court's clear instructions that were aimed at protecting DISH's bid for  
16 LightSquared spectrum from interference by Ergen's personal interests in a release of  
17 LightSquared's claims; and (3) not interfering when Ergen caused DISH to pull its bid for  
18 LightSquared spectrum to serve his personal interests.

19 31. Defendant Charles M. Lillis ("Lillis") has served as a member of the DISH Board  
20 since November 2013. Lillis is a member of the SLC. Further, Lillis has deep ties to Defendants  
21 Thomas A. Cullen ("Cullen") and Carl E. Vogel ("Vogel") that go back more than fifteen years.  
22 They know each other from MediaOne Group ("MediaOne"), where Lillis was chairman of the  
23 board and CEO between 1995 and 2000 and worked closely with Cullen, then President of  
24 MediaOne subsidiary MediaOne Ventures Inc.. Lillis sold MediaOne to AT&T, where Vogel  
25 spearheaded the acquisition. Following the acquisition, Lillis and Cullen formed private equity  
26 firm LoneTree Capital and Vogel became chairman of the board and CEO of Charter  
27 Communications ("Charter"). Two years later, in 2003, Vogel hired Lillis as a director and  
28 Cullen as senior vice-president. As a member of the board, one of Lillis' first orders of business

1 was arranging a special \$500,000 bonus for Vogel. When Vogel left Charter in January 2005,  
2 Lillis immediately stepped down from the board. As he had done before, after Vogel joined the  
3 DISH Board, Vogel brought over Cullen and then Lillis. When Ergen was looking for a new  
4 member of the DISH Board who could potentially serve on the deeply flawed Special Litigation  
5 Committee that was supposed to investigate potential claims against Vogel, Vogel and Cullen  
6 (who was by then Ergen's right-hand man and closest confidante on all things wireless)  
7 supported appointing Lillis. Lillis is a Defendant in this Action because he breached his duty of  
8 loyalty to DISH by placing the interests of Vogel and Ergen ahead of the interests of the  
9 Company, including by: (1) allowing Ergen to ignore this Court's clear instructions that were  
10 aimed at protecting DISH's bid for LightSquared spectrum from interference by Ergen's  
11 personal interests in a release of LightSquared's claims; (2) not interfering when Ergen caused  
12 DISH to pull its bid for LightSquared spectrum to serve his personal interests; and (3) not  
13 conducting a good-faith investigation of Ergen's, Vogel's, and the Board's breaches of duty in  
14 connection with DISH's pursuit of LightSquared's spectrum assets.

15 32. Defendant Fran A. Ortolfo ("Ortolfo") served as DISH's President and Chief  
16 Operating Officer from 1988 until 1991 and has been a member of the DISH Board since May  
17 2005. In addition, Ortolfo has served as a member of the board of directors of EchoStar since  
18 October 2007. Ortolfo is also a member of the SLC. Ortolfo owes his significant compensation  
19 from DISH and EchoStar -- including over \$385,000 in director fees between 2011 and 2013  
20 alone -- to his personal relationship with Ergen. In addition, Ortolfo's children worked for DISH at  
21 the pleasure of Ergen (a fact that was inexplicably omitted from the SLC's status reports to this  
22 Court). Ortolfo is a Defendant in this Action because he breached his duty of loyalty to DISH by  
23 placing the interests of Ergen ahead of the interests of the Company, including by: (1) voting to  
24 disband the Transaction Committee to protect Ergen's personal interest in LightSquared debt  
25 purchases; (2) allowing Ergen to ignore this Court's clear instructions that were aimed at  
26 protecting DISH's bid for LightSquared spectrum from interference by Ergen's personal interests  
27 in a release of LightSquared's claims; (3) not interfering when Ergen caused DISH to pull its bid  
28 for LightSquared spectrum to serve his personal interests; and (4) not conducting a good-faith

1 investigation of Ergen's and the Board's breaches of duty in connection with DISH's pursuit of  
2 LightSquared's spectrum assets.

3 33. Defendant Carl E. Vogel has been a member of the DISH Board since May 2005  
4 and is paid as a "senior advisor" to the Company. Vogel has been working on and off for Ergen  
5 since at least 1995, when he was DISH's President for the first time. Vogel was DISH's  
6 President again from September 2006 until February 2008 and served as the Company's Vice  
7 Chairman from June 2005 until March 2009. From October 2007 until March 2009, Vogel also  
8 served as Vice Chairman of the board of directors of EchoStar, where he was also a senior  
9 advisor. Vogel owes his significant compensation from DISH and EchoStar to his relationship  
10 with Ergen. As discussed above at ¶ 31, Vogel also has longstanding ties to Defendants Cullen  
11 and Lillis. Vogel is a Defendant in this Action because he breached his duty of loyalty to DISH  
12 by placing the interests of Ergen ahead of the interests of the Company, including by: (1) voting  
13 in favor of disbanding the Transaction Committee to protect Ergen's personal interest in  
14 LightSquared debt purchases; (2) allowing Ergen to ignore this Court's clear instructions that  
15 were aimed at protecting DISH's bid for LightSquared spectrum from interference by Ergen's  
16 personal interests in a release of LightSquared's claims; and (3) not interfering when Ergen  
17 caused DISH to pull its bid for LightSquared spectrum to serve his personal interests.

18 34. The Defendants listed in paragraphs 26 through 33 above are collectively referred  
19 to herein as the "Director Defendants."

#### 20 **C. The Officer Defendants**

21 35. Defendant Thomas A. Cullen is Executive Vice President of Corporate  
22 Development at DISH. Ergen hired Cullen at DISH in 2007, and according to a May 3, 2013  
23 *Reuters* profile, Cullen has come to be Ergen's "right hand man . . . since Ergen started seriously  
24 considering wireless in 2007" and is "Ergen's closest confidante on all things wireless, with an  
25 office next to Ergen's." Cullen was at all relevant times an executive officer of DISH, paid  
26 significant compensation by DISH, and owed fiduciary duties to DISH. Cullen is a Defendant in  
27 this Action because he breached his duty of loyalty to DISH by placing the interests of Ergen  
28 ahead of the interests of the Company, including by deliberately withholding information about

1 Ergen's personal purchases of LightSquared debt from the Board.

2 36. Defendant Kyle Jason Kiser ("Kiser") is a Vice President and the Treasurer of  
3 DISH. Kiser has worked for Ergen for approximately twenty-seven years, since Ergen hired  
4 Kiser straight out of college to work as a financial analyst at Echosphere Corporation, a  
5 predecessor company to DISH. Kiser was at all relevant times an executive officer of DISH,  
6 paid significant compensation by DISH, and owed fiduciary duties to DISH. Kiser is a  
7 Defendant in this Action because he breached his duty of loyalty to DISH by placing the interests  
8 of Ergen ahead of the interests of the Company, including by: (1) executing Ergen's purchases of  
9 LightSquared debt for Ergen's personal profit at the expense of DISH; and (2) deliberately  
10 withholding information about Ergen's personal purchases of LightSquared debt from the Board.

11 37. Defendant R. Stanton Dodge ("Dodge") is Executive Vice President, General  
12 Counsel, and Secretary of DISH. Dodge was at all relevant times an executive officer of DISH,  
13 paid significant compensation by DISH, and owed fiduciary duties to DISH. In the Bankruptcy  
14 Court, Ergen testified that "[b]efore any trades closed, I had a conversation with [Dodge]. And it  
15 is my understanding that general counsel of DISH, before I closed any trade, checked with  
16 outside counsel himself as to whether there was any opportunity for DISH." The Bankruptcy  
17 Court found that this testimony by Ergen was "inconsistent with all other evidence in the  
18 record." (Post-Trial Findings at 103 n. 53). Either Ergen lied in the Bankruptcy Court or Dodge  
19 breached his duty of loyalty to DISH by withholding critical information about Ergen's personal  
20 debt purchases from the Board.

21 38. The Defendants listed in paragraphs 35 through 37 above are collectively referred  
22 to herein as the "Officer Defendants" and together with the Director Defendants as the  
23 "Individual Defendants."

#### 24 **D. The Nominal Defendant**

25 39. Nominal Defendant DISH Network Corporation ("DISH" or the "Company"),  
26 through its subsidiary DISH Network L.L.C., provides satellite TV services to approximately 14  
27 million customers as of May 8, 2014. DISH is incorporated under the laws of the State of  
28 Nevada, with its principal executive offices located at 9601 South Meridian Boulevard,

1 Englewood, Colorado. The Company is publicly traded on the NASDAQ under the ticker  
2 symbol "DISH." DISH has not held an annual meeting of shareholders since May 2, 2013.

3 **E. Relevant Third Parties**

4 40. Steven R. Goodbarn ("Goodbarn") has been a member of the DISH Board since  
5 December 2002. At the time that the Transaction Committee was formed in May 2013,  
6 Goodbarn was one of only two independent directors of the Company, along with Gary Howard.  
7 Goodbarn serves on the Board's Audit Committee, Compensation Committee, and Nominating  
8 Committee. Goodbarn served on the Transaction Committee, until it was prematurely disbanded  
9 on July 21, 2013. Goodbarn explained that the Transaction Committee never determined that the  
10 acquisition of LightSquared spectrum assets as proposed was fair to DISH and DISH's public  
11 shareholders because the Transaction Committee was prevented from analyzing Ergen's personal  
12 debt purchases. As Goodbarn testified in response to questions by the Board's counsel:

13 And was the judgment of the special committee at the time it made  
14 that recommendation that the transaction recommended to the  
board was fair to the DISH shareholders?

15 A. No, because we had not completed the process. We only reached a  
16 conclusion on the valuation. We did not reach a conclusion  
17 regarding the conflict of interest, and that's really integral to that  
decision. That has not been -- that decision has not been reached.

18 Q. So in what respect would any decision-making on the conflict  
19 affect your judgment as to the recommendation of the transaction?

20 A. What -- okay. In the context of what I just said, what do you  
21 mean? We only reached a conclusion on the valuation. We did  
22 not participate or review in the transaction, that was separate -- that  
took place after the committee was dismissed. . . . So it -- I mean,  
am I making myself clear? The process was not complete.

23 (Goodbarn Tr. at 236:14-237:11).

24 41. George S. Howard ("Gary Howard" or "Howard") served as a member of the  
25 DISH Board from November 2005 until his abrupt resignation on July 23, 2013, effective July  
26 31, 2013, following the Board's decision to disband the Transaction Committee. At the time the  
27 Transaction Committee was formed in May 2013, Howard was one of only two independent  
28

1 directors of the Company, along with Goodbarn. Howard served on the Transaction Committee  
2 until it was prematurely disbanded on July 21, 2013. In a sworn affidavit in this matter, Howard  
3 testified that, [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 42. LightSquared Inc. ("LightSquared"), along with various LightSquared-affiliated  
7 entities, is a company that owns significant wireless broadband spectrum and that has sought to  
8 use that spectrum to develop a wireless communications network. On May 14, 2012,  
9 LightSquared filed for Chapter 11 bankruptcy protection. LightSquared is majority owned by  
10 Harbinger Capital Partners ("Harbinger"), a private hedge fund run by Philip A. Falcone  
11 ("Falcone").

#### 12 IV. SUBSTANTIVE ALLEGATIONS

##### 13 A. Ergen Completely Controls DISH

14 43. In 1980, Charles Ergen founded a company called EchoSphere, now known as  
15 EchoStar Communications Corporation, with his wife, Defendant Caney Ergen, and their close  
16 friend Defendant DeFranco. Initially, EchoStar's business consisted of Ergen and DeFranco  
17 selling satellite dishes door-to-door in Colorado.

18 44. EchoStar began using DISH as its consumer brand in March 1996, after the  
19 successful launch of its first satellite, EchoStar I, in December 1995. In January 2008, DISH was  
20 spun-off from EchoStar. DISH now provides subscription satellite TV service to the Company's  
21 customers and EchoStar owns and operates the technology and infrastructure, including the  
22 satellites that DISH utilizes to provide its services.

23 45. Since the Company's founding in 1980 and continuing through to the present,  
24 Ergen has dominated and controlled both EchoStar's and DISH's business and affairs. Indeed,  
25 DISH readily concedes Ergen's control in the Company's public filings. For example, DISH's  
26 annual report filed with the U.S. Securities and Exchange Commission (the "SEC") on February  
27 20, 2013, states:

28 Through his voting power, *Mr. Ergen has the ability to elect a*

majority of our directors and to control all other matters requiring the approval of our stockholders. As a result, DISH network is a "controlled company" as defined in the Nasdaq listing rules and is, therefore, not subject to Nasdaq requirements that would otherwise require us to have: (i) a majority of independent directors; (ii) a nominating committee composed solely of independent directors; (iii) compensation of our executive officers determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (iv) director nominees selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors.

46. Similarly, according to the Company's definitive proxy statement, filed with the SEC on March 22, 2013 in connection with DISH's 2013 annual meeting of shareholders (the "2013 DISH Annual Meeting Proxy"):

*We are a "controlled company" within the meaning of the NASDAQ Marketplace Rules because more than 50% of our voting power is held by Charles W. Ergen, our Chairman. Mr. Ergen beneficially owns approximately 52.1% of our total equity securities and possesses approximately 88.0% of the total voting power.*

47. The 2013 DISH Annual Meeting Proxy added that "[t]he Board concluded that Mr. Ergen should continue to serve on the Board due to, among other things, his role as our co-founder and controlling shareholder," and that "[t]he Board of Directors places substantial weight on Mr. Ergen's recommendations in light of his role as Chairman and as co-founder and controlling shareholder of DISH Network."

48. Ergen's control over the Company and the Board is further highlighted by the many transactions into which Ergen has caused DISH to enter with members of his immediate family. For example, in 2012, DISH invested \$500,000 in Youtabytes Ventures LLC, a technology start-up in which Ergen's son, Christopher, holds a significant ownership stake. In 2011, DISH paid \$100,000 to an online marketing company that is 50% owned by another of Ergen's children, Chaz. Moreover, Ergen's wife, Defendant Cautley Ergen, serves as a director and senior adviser, and was paid approximately \$100,000 during 2012 for her purported senior



1 adviser services to the Company.

2 49. Ergen's control at DISH extends even to DISH's executives' political donations.  
3 According to a Federal Election Commission ("FEC") complaint filed by the advocacy group  
4 Cause of Action, Ergen "forced Bernard Han, DISH's Chief Operating Officer and Executive  
5 Vice President, to donate to a Democratic candidate and/or party in 2009/2010 and encouraged  
6 Han to attend Democratic functions and fundraisers. Ergen allegedly made similar statements to  
7 other C-level executives. . . . Ergen appeared unconcerned whether employees wanted to donate  
8 or agreed with who/what they were donating to." (internal quotation marks omitted). According  
9 to the FEC complaint, Ergen insinuated to Han that "you still have your job," but that Han would  
10 "suffer consequences if he failed to follow Ergen's orders."

11 50. Ergen's control over DISH is so complete that, as reported in a January 2, 2013  
12 Business Week article entitled "DISH Network, the Meanest Company in America," Ergen  
13 requires DISH employees to use a fingerprint scanner when reporting to work each morning. If a  
14 worker is late, an email is immediately sent to human resources, which then sends another to that  
15 person's boss and, sometimes, directly to Ergen. According to that same article, Ergen  
16 personally signed every check that left DISH headquarters until a few years ago. He now signs  
17 every one of the Company's checks over \$100,000.

18 51. Indeed, Ergen is a self-described "micromanager." When Ergen stepped down as  
19 CEO of DISH in 2011 to focus on the Company's strategic responsibilities, he personally  
20 selected incoming CEO Clayton. "I'm freeing Charlie to focus on the big picture," Clayton  
21 stated at the time. In that "big picture" role, Ergen's current work is to find and develop strategic  
22 opportunities for DISH, such as the opportunities Ergen pursued for himself to buy LightSquared  
23 debt and the bankrupt LightSquared's spectrum assets.

24 52. As Ergen acknowledged during his testimony in the proceedings concerning  
25 LightSquared's bankruptcy (the "Bankruptcy Proceedings"), Ergen determines the strategic  
26 direction of DISH, which includes acquisitions and strategic investments. Ergen has played a  
27 controlling role in a number of DISH's strategic acquisition initiatives, including its 2013  
28 attempt to buy the Clearwire Corporation ("Clearwire"). Ergen has acknowledged that this

1 attempt was driven by Clearwire's significant spectrum assets. As Ergen testified during a  
2 deposition in this Action, [REDACTED]

3 [REDACTED]  
4 53. To that end, Ergen has been involved in DISH's efforts to acquire DBSD North  
5 America, Inc. ("DBSD"), Clearwire, Sprint, SiriusXM, and TerreStar Networks, Inc.  
6 ("TerreStar"), each of which had and/or has significant spectrum assets. In the course of those  
7 efforts, DISH acquired debt issued by DBSD, Clearwire, and SiriusXM.

8 **B. DISH Seeks to Diversify into the Wireless Business by Acquiring Spectrum**

9 54. While DISH was historically successful in the pay satellite-TV business, that  
10 business has started to decline. Consumers are increasingly tuning to content delivered via  
11 streaming videos to smartphones, tablets, and other mobile devices -- as well as devices such as  
12 Apple TV or Roku that connect to consumers' televisions -- from content providers that deliver  
13 streaming content, such as Netflix and Hulu. As a result, the growth in DISH's subscriber base  
14 has slowed significantly, increasing at an average rate of just 0.4% for the past five years.  
15 Indeed, in a July 27, 2013 article in *PC World*, Chetan Sharma, founder of technology-consulting  
16 firm Chetan Sharma Consulting, described DISH's predicament as follows: "If they don't have  
17 some form of wireless play, then it's very hard for them to survive longer term."

18 55. Ergen has repeatedly recognized the need for DISH to diversify, and that  
19 acquiring spectrum was necessary to do so. For instance, in a February 11, 2013 interview at the  
20 "D: Dive Into Media" conference, Ergen told the audience that five years prior, Ergen had  
21 determined that "the wireless side was probably a place we needed to go." To clarify, Ergen  
22 explained that "[i]deally [DISH] would compete against the AT&T and Verizons and to do that,  
23 we would need more [wireless] spectrum." *Id.*

24 56. In 2007, Defendant Cullen joined DISH as an executive vice president for  
25 corporate development. As a May 3, 2013 profile by *Reuters* explained, Cullen "has become  
26 Ergen's closest confidante on all things wireless, with an office next to Ergen's on DISH's fourth  
27 floor, the highest rung of the building." Per the *Reuters* profile, "Cullen . . . has been Ergen's  
28 right hand man for the past few years, since Ergen started seriously considering wireless in 2007.

1           57.     DISH has taken several steps in its effort to become a wireless player. First,  
2     DISH has spent billions of dollars to purchase wireless spectrum licenses. In 2008, DISH spent  
3     \$712 million to acquire certain 700 MHz wireless spectrum licenses. In March 2012, DISH  
4     spent an additional \$2.86 billion to complete acquisitions in bankruptcy of 100% of the equity of  
5     satellite operator DBSD and substantially all of the assets of TerreStar. In these transactions,  
6     DISH acquired, among other things, 40 MHz of 2 GHz wireless spectrum licenses. According to  
7     a May 3, 2013 *Reuters* profile of Cullen, “[a]fter DISH made \$3 billion in spectrum acquisitions  
8     in 2011, Cullen headed to Washington to work with DISH’s policy team to lobby the U.S.  
9     Federal Communications Commission to let DISH use its spectrum how it wanted.”

10           58.     In May 2013, as part of the Company’s strategy to become a player in the wireless  
11     industry, DISH proposed a merger with Sprint and raised approximately \$2.5 billion in capital,  
12     purportedly for this merger. DISH then made a public offer to acquire Clearwire, the holder of a  
13     significant amount of wireless spectrum, which Sprint controlled. DISH was ultimately  
14     unsuccessful in its attempts to acquire either Sprint or Clearwire. Spectrum is a limited  
15     commodity, however, and DISH has remained dedicated to acquiring as much wireless spectrum  
16     as reasonably possible, primarily through government auctions and strategic transactions with or  
17     acquisitions of companies that already own spectrum.

18           **C. LightSquared’s Spectrum Presents a Valuable and Unique Opportunity for DISH**

19           59.     LightSquared is a mobile satellite communications services company that has  
20     operated in the North American market with two geostationary satellites since 1995. Since 2004,  
21     LightSquared also controls a block of spectrum in the L-Band (the “L-Band Spectrum” or  
22     “LightSquared’s Spectrum”). The U.S. Federal Communications Commission (the “FCC”)   
23     authorized LightSquared in January 2011 to use the L-Band Spectrum for the purpose of building  
24     a nationwide wireless broadband network, provided that LightSquared would resolve identified  
25     interference concerns with part of its spectrum due to its proximity to spectrum utilized by global  
26     positioning system (“GPS”) services.

27           60.     In late 2010, companies that provide GPS services, including the United States  
28     Air Force (which operates the GPS system), objected to the use of LightSquared’s downlink

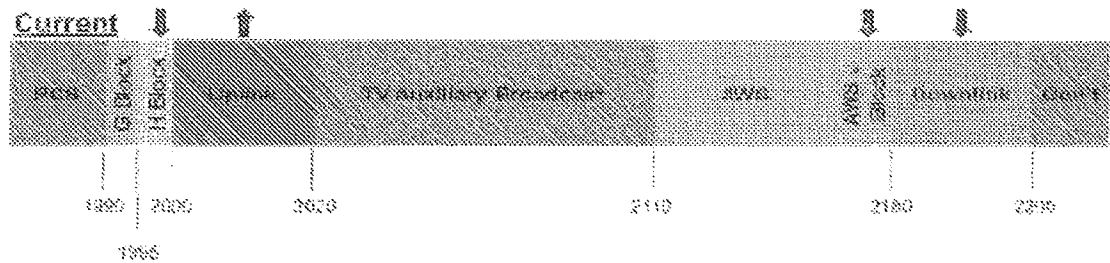
1 spectrum at 1525-1559 MHz because it would interfere with their GPS services in the adjacent  
2 spectrum. LightSquared's separate uplink spectrum at 1626.5-1660.5 MHz was not  
3 objectionable, but was nevertheless unusable unless it was paired up with downlink spectrum.

4 61. On February 14, 2012, the FCC moved to bar LightSquared's planned national  
5 broadband network after the National Telecommunications and Information Administration (the  
6 federal agency that coordinates spectrum uses for the military and other federal government  
7 entities) informed the FCC that there was, as of that time, no practical way to mitigate potential  
8 interference by LightSquared's spectrum.

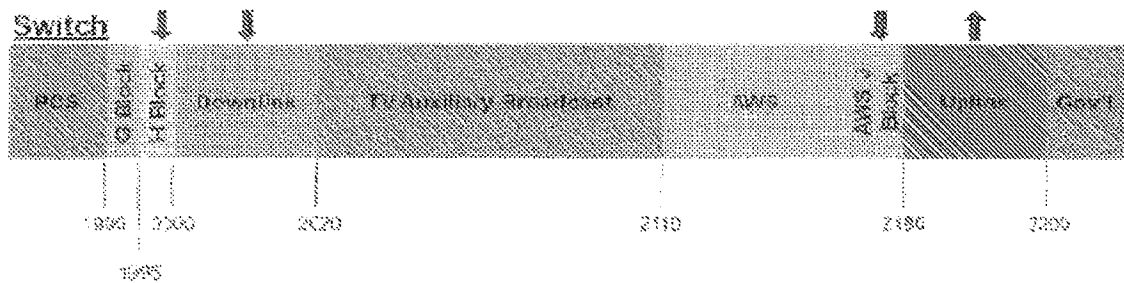
9 62. The FCC's decision to revoke its earlier conditional authorization impaired a  
10 significant part of LightSquared's downlink spectrum. Scrambling to salvage its assets,  
11 LightSquared proposed to the FCC on April 25, 2012 to include LightSquared's L-Band  
12 Spectrum in the FCC's ongoing regulatory review of ways to free up spectrum to address the  
13 nation's growing demand for broadband spectrum. Specifically, LightSquared proposed that the  
14 FCC consider LightSquared's spectrum when the agency was considering the modification and  
15 replacement of existing spectrum licenses – including licenses held by DISH – to optimize the  
16 available spectrum for broadband use. In essence, LightSquared asked the FCC to consider the  
17 potential uses of LightSquared's spectrum as the FCC reshuffled spectrum licenses.

18 63. LightSquared's April 25, 2012 letter to the FCC was publicly filed and gave  
19 Ergen the idea to pair up LightSquared's spectrum with the spectrum owned by DISH.  
20 LightSquared's unimpaired uplink spectrum is a natural fit for the spectrum that DISH acquired  
21 from DBSD and TerreStar, especially if part of DISH's spectrum is converted from "uplink" to  
22 "downlink." A September 3, 2013 article by Hogan Lovells entitled "Why Would DISH Want to  
23 Acquire LightSquared's Spectrum?" explained this as follows:

24 DISH's current spectrum holdings – 40 MHz at 2000-2020 MHz  
25 (uplink) and 2180-2200 MHz (downlink) – are adjacent to the  
26 downlink PCS H Block. The juxtaposition of uplink next to  
27 downlink creates a risk of harmful interference and the FCC's  
28 current rules limiting interference into PCS effectively require  
DISH to dedicate up to 5 MHz of their uplink spectrum as a guard  
band for PCS H Block, as shown here:

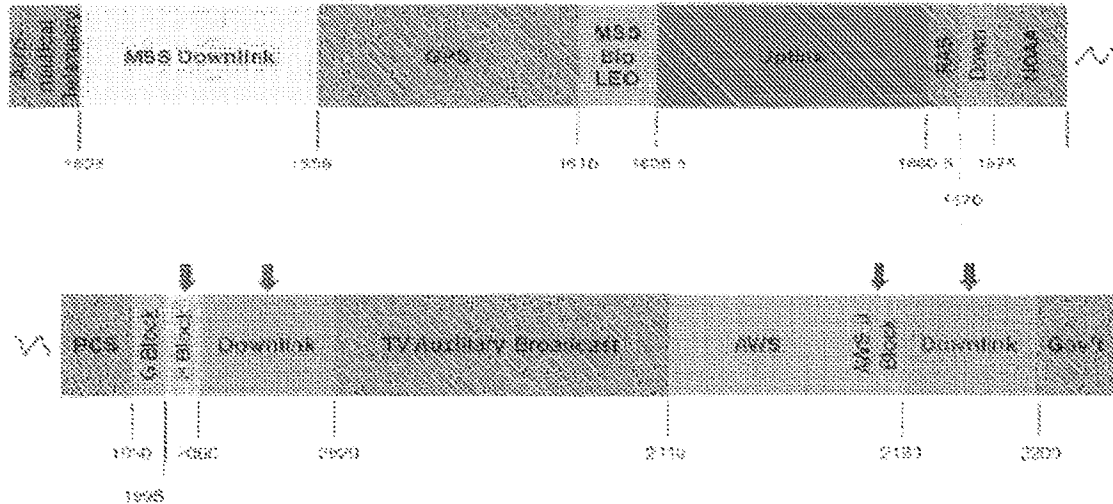


If DISH wants to recapture that five megahertz block for its own use, one potential option is to request a reversal of the uplink and the downlink operations, as shown here:



This proposal removes the interference concerns emanating from the H Block and could result in DISH competing vigorously for H Block spectrum in the upcoming auction. However, this protocol creates new concerns because, under this approach, the AWS J Block downlink would be adjacent to DISH's uplink. By acquiring LightSquared's spectrum though, DISH could make *all* of its current spectrum downlink, pair that with LightSquared's current uplink spectrum, and so resolve its interference concerns, as shown here:

### LightSquared acquisition



64. In other words, acquiring LightSquared's spectrum would not only add to DISH's total inventory, but that spectrum would materially increase the utility of DISH's own preexisting spectrum, providing value that DISH uniquely could realize. By converting DISH's entire 2000-2020 MHz spectrum from uplink to downlink, DISH's spectrum would become more attractive for pairing with LightSquared's L-Band uplink spectrum *and* for pairing it with the government's H Block spectrum that would be auctioned off in the future.

65. Understanding the resulting increase in value of DISH's spectrum, Ergen asked the Chairman of the FCC in early 2012 whether DISH could change its 2000-2020 MHz spectrum from uplink to downlink. As Ergen testified in the Bankruptcy Court, he approached the FCC Chairman "because we wanted to know what optionality we would have with the spectrum, because depending on what optionality we would have on spectrum would depend on how valuable that spectrum would be."

66. LightSquared's CEO Douglas Smith confirmed that LightSquared's spectrum and DISH's spectrum are a "very natural pairing of spectrum" and, moreover, that there is no other uplink spectrum available for purchase that can be paired with DISH's spectrum. As Mr. Smith

1 testified in the Bankruptcy Court:

2 A. . . . So I think the LightSquared spectrum, we have had issues with  
3 GPS that have centered around mostly the downlink spectrum we  
4 have. Our uplink spectrum is safe to use as uplink spectrum. So if  
5 you look at the two bands, the AWS-4 band that DISH has and the  
6 LightSquared band, it really makes a lot of sense to put the two  
7 together in terms of a pairing that way. So seeing that all of the  
8 DISH spectrum is usable for downlink spectrum, it became very  
9 obvious why DISH is interested in the LightSquared spectrum.

10 Q. Are you presently aware of any equivalent source of available  
11 uplink spectrum that DISH might acquire?

12 A. No, I'm not. It is really — most spectrum is paired. And as I look at  
13 what's happening with spectrum auctions and other spectrum that's  
14 available, I don't see other uplink-only spectrum.

15 67. In a May 10, 2012 article, Tim Farrar ("Farrar"), a mobile satellite industry  
16 analyst who served as one of DISH's experts in the DBSD bankruptcy proceedings, also agreed  
17 that LightSquared's unimpaired uplink spectrum is a natural fit for DISH's spectrum and  
18 tremendously valuable to DISH. Farrar stated:

19 why couldn't LightSquared's L-band MSS spectrum be repurposed  
20 as uplink-only spectrum and then paired with the DISH 2GHz  
21 spectrum, which could all be converted to downlinks (a proposal  
22 already made in the FCC's 2GHz NOI)? Then Ergen would have  
23 access to a total of up to 80MHz of spectrum which could be  
24 authorized for terrestrial use (four 10MHz uplink blocks in the L-  
25 band and two 20MHz downlink blocks in the 2GHz band).<sup>3</sup>

26 68. As Farrar explained, acquiring LightSquared's spectrum would be uniquely  
27 valuable to DISH because "DISH could . . . benefit hugely from having access to 40MHz of  
28 downlink spectrum instead of 20MHz. Indeed DISH might even be able to sell off or lease some  
of this spectrum to another operator and still build a network." Cullen forwarded Farrar's  
analysis to Ergen on May 25, 2012.

69. In fact, when Plaintiff requested the Court's permission for expedited discovery,  
the Board opposed this request by asserting that "the market" had purportedly validated the

<sup>3</sup> Tim Farrar, "Up, down, spin around?" *TML Associates MSS blog* (May 10, 2012),  
<http://timfussociates.com/blog/2012/05/10/up-down-spin-around/>.

1 Board's actions. According to the Board, "[t]he analyst's report from Citi Research shows that  
2 DISH has put itself in a position to make a seventeen — to increase the stock price by \$17."  
3 (Sept. 19, 2013 Tr. at 37: 25-38:3). As of September 2013, there were approximately 456  
4 million shares of DISH stock outstanding, so that an increase in the stock price by \$17 per share  
5 would represent a value of approximately *\$7.7 billion*.

6 70. Multiple valuations presented in the Bankruptcy Court have confirmed that the  
7 LightSquared spectrum is extremely valuable to DISH. A July 8, 2013 presentation to DISH's  
8 Board by Ergen described the value of LightSquared's assets to DISH as between \$5.174 billion  
9 and \$8.996 billion, with a midpoint of *\$7.085 billion*. Ergen's presentation to the Board  
10 included an estimate of: (a) the standalone value of LightSquared's spectrum assets; (b) the  
11 increase in value of DISH's existing spectrum that would flow from DISH's acquisition of  
12 LightSquared spectrum, which would permit unusable and impaired uplink [DISH] spectrum to  
13 be converted to downlink; and (c) Ergen's range of values for 20 megahertz of LightSquared's  
14 downlink spectrum. In this regard, Ergen informed the Board that the standalone value of  
15 LightSquared spectrum assets was between \$3.291 billion and \$5.213 billion, with a midpoint of  
16 *\$4.277 billion* and that simply by acquiring LightSquared's spectrum, the value of DISH's  
17 *preexisting* spectrum would increase by \$1.833 billion to \$3.783 billion, with a midpoint of  
18 *\$2.308 billion*.

19 71. As the Bankruptcy Court found after an extensive trial, including weeks of  
20 testimony, "in DISH's hands this was a freebie, that *there was so much value here that this was*  
21 *a freebie . . . there was so much value that DISH was not even going to feel that 2.2 billion*  
22 *dollars walk out its door.*" (May 8, 2014 Tr. at 177:15-20).

23 72. The Transaction Committee's financial advisor, Perella Weinberg Partners L.P.  
24 ("Perella Weinberg"), also concluded that the LightSquared spectrum is extremely valuable to  
25 DISH. Specifically, Perella Weinberg informed the Transaction Committee that the value of  
26 acquiring LightSquared spectrum to DISH would be between \$4.4 billion and \$13.5 billion, with  
27 a midpoint of *\$8.85 billion*. This range included the standalone value of LightSquared spectrum  
28 and an estimate accounting for various ways in which LightSquared's spectrum would enhance



1 the value of DISH's preexisting spectrum.

2 73. On September 9, 2013, DISH formally requested permission from the FCC to  
3 give DISH the option to change its 2000-2020 MHz uplink spectrum to downlink spectrum,  
4 making DISH's spectrum directly compatible with LightSquared's spectrum *and* the H-block  
5 spectrum. In exchange, DISH agreed to drop objections to use of an unrelated band of spectrum  
6 and committed to bid in the FCC's auction of the H-block that was scheduled for early 2014. As  
7 Farrar explained in an October 14, 2013 article:

8 DISH has secured a pretty good deal in Washington from interim  
9 FCC Chairman Clyburn: *in exchange for DISH agreeing to low*  
10 *power use of the 700MHz E block (and bidding \$0.50 per*  
11 *MHzPOP in the H block auction), DISH appears set to obtain an*  
12 *option to reband its AWS-4 uplinks to downlinks and an extension*  
13 *of the AWS-4 buildout milestones. . . .*

14 This gives DISH a *significant advantage both in the upcoming*  
15 *LightSquared bankruptcy auction*, where no-one really expects  
16 any alternative bidder to emerge for the L-band spectrum, because  
17 the FCC has all but guaranteed it will not propose the so-called  
18 spectrum "swap" that LightSquared has asked for: it's understood  
19 that Ergen will simply drop the request when he buys  
20 LightSquared's satellite assets, so there is no point in the FCC  
21 annoying those in Congress who would want to see the 1675-  
22 80MHz spectrum band auctioned instead.

23 More importantly, if DISH is given an option but not an obligation  
24 to reband the AWS-4 uplinks (DISH has asked for 30 months to  
25 decide, but I would expect the FCC to only allow 12-18 months at  
26 most), then *it also has a huge advantage in the H-block auction*,  
27 because if Sprint were to win the spectrum then DISH could hold  
28 up standardization of the band (and delay any ability for Sprint to  
use the H block to relieve capacity constraints in its PCS G block  
LTE network).

29 74. On December 20, 2013, the FCC approved DISH's application, taking up DISH  
30 on its offer to bid at least \$1.564 billion in the upcoming H-Block auction. DISH submitted the  
31 agreed bid and won the auction on February 27, 2014. As analyst Walter Piccyk of BTIG, LLC  
32 noted, "the closing price [at DISH's agreed bid] is pretty strong evidence that this was more of a  
33 negotiated deal with the FCC, rather than an auction."

34 ...

35 ...

36 ...

1       **B. Ergen Purchases LightSquared Debt to Make a Personal Profit by Using his Control**  
2       **over Dish.**

3               **1.       Ergen Aided By DISH Senior Management, Precludes DISH from**  
4               **Assessing the Opportunity to Buy LightSquared Debt**

5       75.     In the Fall of 2011, it became increasingly clear that LightSquared was unable to  
6     resolve the GPS interference issues with respect to its uplink spectrum assets and, therefore, to  
7     meet the FCC's condition for approving the use of LightSquared's L-Band Spectrum to build a  
8     nationwide wireless broadband network. The resulting uncertainty about LightSquared's future  
9     caused the price of LightSquared debt to decline.

10    76.     Sensing an opportunity, Ergen began to investigate acquiring LightSquared debt  
11    that would be secured with liens on LightSquared spectrum assets. Ergen has admitted that he  
12    knew this was a corporate opportunity for DISH. As Ergen testified in the Bankruptcy Court:

13               Well, I as chairman of DISH, I knew I had a fiduciary  
14               responsibility to the company and that first and foremost, if this  
15               was an investment that DISH was interested in, that first and  
16               foremost, they should be given the opportunity for that investment.  
17               (Jan. 13 Tr. at 33:7-11)

18    77.     LightSquared's credit agreement with UBS provided that only "eligible  
19    assignees" were permitted to acquire LightSquared debt. Excluded from the definition of  
20    eligible assignees were (i) natural persons such as Ergen and (ii) disqualified companies, defined  
21    as any company set forth on schedule 101-A of the credit agreement and "any known subsidiary  
22    thereof." The credit agreement defined "subsidiary" as including "any other person that is  
23    otherwise Controlled by the parent." By its terms, the credit agreement allowed *affiliates* of  
24    disqualified companies to buy LightSquared debt.

25    78.     Ergen asked his longtime pupil and DISH's Treasurer, Defendant Kiser, to look  
26    into whether DISH could invest in LightSquared debt. As Kiser testified in the Bankruptcy  
27    Court:

28               Q.     Now, there came a time, Mr. Kiser, when Mr. Ergen contacted you about the  
possibility of purchasing LightSquared debt, correct?

A.     That's correct.

1 Q. Okay. And when was that?

2 A. That was -- I think it originally started in the fall of 2011.

3 Q. And what did Mr. Ergen -- what did you talk to Mr. Ergen about in  
4 that initial conversation?

5 A. Well, LightSquared had been in the news quite a bit. You know,  
6 it's a company that holds spectrum, and obviously that's an  
7 industry that we follow as the company. And Charlie follows it as  
8 the company and personally as well.

9 And, you know, they were going through a lot of issues. It was in  
10 the news, a lot of things that we all know about here today. And  
11 you know, he came and said, hey, this is something that might be  
12 interesting. Can you take a look at it, find out if the company can  
13 invest in it . . .

14 79. Kiser reviewed the LightSquared credit agreement and consulted with DISH's  
15 counsel at Sullivan & Cromwell LLP ("Sullivan & Cromwell") and Ergen's personal banker. As  
16 explained below, DISH's counsel at Sullivan & Cromwell advised that under the plain language  
17 of the LightSquared credit agreement, DISH could buy LightSquared debt through an affiliate.

18 80. Ergen as a "natural person," was expressly prohibited from buying LightSquared  
19 debt. As of November 2011, however, DISH was not even listed on schedule 101-A of the credit  
20 agreement. Although Ergen-controlled company EchoStar was listed on schedule 101-A, DISH  
21 was not a "subsidiary" of EchoStar (only an "affiliate") and, therefore, was not barred from  
22 buying LightSquared debt. As DISH's counsel from Sullivan & Cromwell confirmed in the  
23 Bankruptcy Court proceedings: "*I don't think that DISH . . . [is] an ineligible assignee.*" (Dec.  
24 10, 2013 Tr. at 61:10-11). There is no basis to infer that Sullivan & Cromwell's advice to Kiser  
25 was inconsistent with its representation to the federal Bankruptcy Judge.

26 81. Ignoring the advice of DISH's counsel that the plain language of the credit  
27 agreement allowed DISH to buy LightSquared debt, Ergen and Kiser decided that Ergen would  
28 buy LightSquared debt through a wholly-owned entity, SP Special Opportunities LLC ("SPSO"),  
without sharing the opportunity with DISH. SPSO was an affiliate but not a subsidiary of  
EchoStar, just like DISH.

82. In December 2011, Kiser directed Ergen's personal banker, Stephen Ketchum

1 ("Ketchum"), to create a special purpose vehicle for Ergen to buy LightSquared debt on his own.  
2 After initially creating an entity that inadvertently listed an address in the same town as where  
3 Ergen lives, Ketchum created SPSO in order to obscure the real buyer's identity. Ketchum  
4 suggested that Ergen and Kiser use this name because it would suggest that SPSO was owned by  
5 Ketchum's financial advisory company, Sound Point Capital Management, L.P. ("SoundPoint"),  
6 rather than Ergen. SPSO was a shell company without any assets that Ergen and Kiser  
7 specifically created for the benefit of Ergen.

8 83. In May 2012, LightSquared amended the credit agreement to add DISH to  
9 schedule 101-A, thereby prohibiting DISH (like Ergen personally) from buying LightSquared  
10 debt directly. However, DISH's counsel at Sullivan & Cromwell believed that DISH could still  
11 buy LightSquared debt through an affiliate, including SPSO. As DISH's counsel stated in the  
12 Bankruptcy Court proceedings on March 17, 2014:

13 The Court: So you agree with me, with my point from  
14 several hours ago, that an affiliate of DISH could  
15 have done this investment without running afoul  
of the credit agreement, right? . . .

16 Mr. Gioffra: Well, on the words of the contract, yes.

17 84. Ergen's lawyers at Willkie Farr admitted in the Bankruptcy Court that DISH  
18 could have bought LightSquared debt through an affiliate:

19 The Court: So you folks concede that an affiliate of DISH  
20 could have bought the debt, correct?

21 Mr. Dugan: That an affiliate of DISH could buy the debt.

22 The Court: Could buy the debt?

23 Mr. Dugan: Yes. As long as that affiliate is not a  
24 subsidiary.

25 85. But Ergen had no intention whatsoever of sharing the potential profits resulting  
26 from investments in LightSquared debt with DISH. In this Court, counsel for Ergen argued that  
27 the LightSquared credit agreement *barred* DISH from buying LightSquared debt. For example,  
28 Ergen stated in his status report, also submitted on November 20, 2013, that "***DISH*** was, and is,

1 *prohibited from purchasing under the LightSquared credit agreement."*

2 86. The Director Defendants repeated Ergen's representations in this Court and also  
3 argued that the LightSquared credit agreement barred DISH from buying LightSquared debt. On  
4 September 19, 2013, counsel for the Board stated:

5 The other thing . . . is the credit agreement. It goes back to what  
6 Harbinger's motivation here is. Harbinger was in the process of  
7 trying to keep everybody out of its debt so that none of them when  
8 it went bankrupt could come in and buy its assets from the  
9 preferred position of the stalking horse. *They knocked out Dish.*  
10 *We don't dispute that. . . . But they did not knock out Mr. Ergen,*  
11 *and Mr. Ergen made the purchases.* (Sept. 19, 2013 Tr. at 35:8-  
12 21).

13 87. The Director Defendants repeated this false assertion in a November 20, 2013  
14 status report to this Court, stating that "Plaintiff's corporate opportunity claims are . . . in all  
15 events meritless because the LightSquared credit agreement expressly barred DISH from  
16 purchasing the debt." Their own counsel knew this was not true.

17 88. The SLC's November 20, 2013 status report to this Court similarly stated that  
18 "[b]ased upon its review [of the LightSquared credit agreement], the SLC has determined that  
19 *DISH and any subsidiary of DISH were Ineligible Transferees at the time that the secured*  
20 *debt was transferred to Mr. Ergen."*

21 89. The only fair inference is that the Board and the SLC were attempting to protect  
22 Ergen's interests in this Court by deliberately misrepresenting DISH's ability to purchase  
23 LightSquared debt. By making those misrepresentations, the Board and the SLC misled this  
24 Court and prejudiced DISH's claims against Ergen.

25 **2. Ergen Uses DISH Resources to Buy LightSquared Debt for His Personal**  
26 **Benefit**

27 90. Between April 13, 2012 and April 26, 2013, SP50 contracted to purchase  
28 LightSquared debt with a total face value of over \$1 billion, of which it actually closed trades for  
\$844,323,097.83 in face amount. When a trade was scheduled to close, Kiser would contact  
Ergen's personal asset manager at Bear Creek and tell it how much money was needed. Ergen  
would then authorize a wire transfer and Bear Creek would liquidate investments to fund the

transfer. Ergen's personal purchases of LightSquared debt through SPSO are shown in the following chart:

Trade Date	Closing Date	Par	Price	Cost	Status
04/13/12	09/06/12	5,000,000	48.75	2,437,500	Settled
05/03/12	07/23/12	4,545,500	59.00	2,681,845	Settled
05/03/12	07/26/12	20,000,000	59.25	11,850,000	Settled
05/03/12	09/06/12	3,000,000	58.75	1,762,500	Settled
05/03/12	09/06/12	2,000,000	58.50	1,170,000	Settled
05/03/12	07/23/12	5,000,000	59.00	2,950,000	Settled
05/04/12	05/31/12	247,239,046	60.25	148,973,576	Settled
10/04/12	11/30/12	19,417,287	78.50	15,242,571	Settled
10/23/12	02/06/13	3,000,000	83.75	2,512,500	Settled
11/15/12	01/08/13	7,997,057	81.75	6,537,594	Settled
12/12/12	06/11/13	2,000,000	84.00	1,680,000	Settled
12/13/12	03/12/13	7,000,000	86.00	6,020,000	Settled
12/20/12	04/09/13	14,782,302	85.50	12,934,515	Settled
12/28/12	03/13/13	15,000,000	88.50	13,275,000	Settled
01/02/13	03/07/13	20,000,000	89.125	17,825,000	Settled
01/02/13	04/05/13	6,000,000	89.125	5,347,500	Settled
01/03/13	03/07/13	17,999,999	89.25	16,065,000	Settled
01/07/13	05/24/13	7,000,000	89.50	6,265,000	Settled
01/14/13	05/24/13	9,410,420	91.50	8,610,534	Settled
02/01/13	07/23/13	20,000,000	91.875	18,375,000	Settled
03/23/13	05/24/13	88,262,536	93.375	84,180,394	Settled
03/28/13	-	168,759,227	96.00	162,008,859	Unsettled
04/01/13	06/25/13	5,500,000	96.00	5,280,000	Settled
04/19/13	06/14/13	122,250,172	96.00	117,360,166	Settled
04/26/13	06/18/13	145,712,408	96.00	139,883,912	Settled
04/26/13	06/18/13	46,186,366	96.00	44,338,912	Settled
Total Purchased		1,013,982,326		855,567,877	
Total Settled		844,323,097		693,559,018	
Total Unsettled		168,759,227			

91. With LightSquared ultimately committing to settling the debt purchases at par, Ergen stands to gain a personal profit of \$150.7 million in gains on the investment plus millions of dollars in interest.

92. Each of the trades in the above chart between April 2012 and July 2013 were

1 executed by Kiser on behalf of Ergen. Kiser — an executive officer of DISH, paid by DISH,  
2 using DISH resources and owing fiduciary duties to DISH — admitted in the Bankruptcy Court  
3 that he never informed the Board about Ergen's personal debt purchases at DISH's expense. In  
4 doing so, Kiser was disloyal to DISH and DISH's public shareholders.

5 93. Ergen improperly used DISH resources to buy LightSquared debt for his personal  
6 profit. For example, DISH's Treasurer, Defendant Kiser, acted on Ergen's direction when he  
7 oversaw and monitored SPSO's LightSquared debt trades. Kiser did so from DISH's offices,  
8 using DISH equipment and while DISH paid Kiser a significant salary to work for DISH's  
9 interests. Ergen testified in the Bankruptcy Court that there was no need for him to compensate  
10 Kiser for his assistance in acquiring more than \$1 billion of LightSquared debt because, by  
11 assisting Ergen, "[Kiser] gets to spend time with me and I think he likes that."

12 **3. The Officer Defendants Consciously Protect Ergen's Personal Interests at**  
13 **the Expense of DISH by Concealing Information from the Board**

14 94. Ergen did not inform the Board about his purchases of LightSquared debt until  
15 after he had placed all of his purchase orders, causing the Bankruptcy Court to comment on  
16 Ergen's "stunning lack of candor with the DISH Board." Indeed, Ergen did not even inform his  
17 wife, Cantey Ergen, a DISH Board member and co-trustee of the family trust that he used to fund  
18 the purchases.

19 95. In May 2012, news reports began speculating that Ergen was behind SPSO's  
20 purchases of LightSquared debt. On May 10, 2012, *The Denver Post* reported that "Charlie  
21 Ergen has snatched up \$350 million worth of debt in LightSquared." That same day, Howard  
22 sent an email to Stanton Dodge (DISH's General Counsel), Ortolf and Goodbarn, asking if the  
23 story in *The Denver Post* was accurate. The record in the Bankruptcy Court reveals that after  
24 receiving Howard's email, Dodge asked Ergen whether he was personally buying LightSquared  
25 debt. Ergen responded: "there might be some truth to the story."

26 96. On May 16, 2012, Dodge responded to Howard's May 10 email by sending an  
27 email to the entire Board, including Ergen, stating:

28 further to gary's email below and since another board member

1           inquired about the recent press reports regarding LightSquared  
2           bonds, i wanted to send a brief note to the full board. the company  
3           did not buy any LightSquared bonds.

4           97.     Dodge's email obviously ignored Howard's question whether *Ergen* was buying  
5           LightSquared debt, and no Board member dared pursue the issue. For his part, there is no  
6           evidence that Dodge, DISH's General Counsel, made any inquiry into Ergen's debt purchases,  
7           much less that he informed the Board whether a corporate opportunity was implicated by Ergen's  
8           debt purchases. Moreover, according to Ergen's testimony in the Bankruptcy Court, Ergen  
9           affirmatively told Dodge about his debt purchases. Ergen initially testified that he relied  
10          exclusively on Kiser to assess whether DISH could buy LightSquared debt. However, when  
11          Judge Chapman expressed shock that Ergen was so cavalier about DISH's opportunity to  
12          participate in the acquisition of LightSquared debt, Ergen changed his tune, testifying that, in  
13          fact, he also had asked Dodge. Specifically, Ergen testified as follows:

14                 The Court: But yet, Mr. Ergen, you testified at some length that when  
15                 you first became interested in this, you inquired of Mr.  
16                 Kiser, who asked Mr. Ketchum, who asked outside  
17                 counsel, and yet *I haven't heard anything indicates you*  
18                 *left no stone unturned to find a way for DISH to*  
19                 *participate in LightSquared in some fashion. Am I*  
20                 *missing something?*

21                 Mr. Ergen: Yes, you are.

22                 The Court: Could you tell me what that is, please?

23                 Mr. Ergen: *Before any trades closed, I had a conversation with*  
24                 *general counsel to DISH. And it is my understanding*  
25                 *that general counsel of DISH, before I closed any trade,*  
26                 *checked with outside counsel himself as to whether there*  
27                 *was any opportunity for DISH.*

28           98.     The Bankruptcy Court found that Ergen's testimony was "inconsistent with all  
other evidence in the record that Ergen checked solely with Mr. Kiser, who checked with Mr.  
Ketchum and with Sullivan & Cromwell before purchasing the [LightSquared] debt." (Post-  
Trial Findings at 103 n.53.) Either Ergen lied in the Bankruptcy Court or Dodge breached his  
duty of loyalty to DISH by withholding critical information about Ergen's personal debt  
purchases from the Board.



1           99. When newspapers began to report on Ergen's personal debt purchases in May  
2   2012, Cullen also asked Ergen about these reports. Ergen likewise confirmed to Cullen that  
3   there "might be some truth to the story." In the Bankruptcy Proceedings, Cullen admitted that  
4   he, Ergen and Kiser discussed LightSquared continuously throughout 2012. During this time,  
5   Cullen repeatedly sent emails to Ergen and Kiser about LightSquared without copying anyone  
6   else at DISH.

7           100. Like Kiser and Dodge, Cullen never informed the Board that Ergen was buying  
8   LightSquared debt. Indeed, he testified in the Bankruptcy Court that when he learned that Ergen  
9   was buying LightSquared debt, (i) he did not ask Ergen why DISH was not buying the debt; (ii)  
10   he did not ask Dodge or any other inhouse counsel whether there was an issue with Ergen  
11   making a personal investment in the debt; and (iii) he did not take any steps to determine  
12   whether Ergen's purchases were a corporate opportunity for DISH. Cullen's conduct was  
13   disloyal to DISH and DISH's public shareholders.

#### 14           4. Ergen is Front-Running DISH's Bid for LightSquared

15           101. Ergen's personal asset manager, Bear Creek, manages Ergen's investments in a  
16   trust account. Ergen and his wife, Defendant Cantey Ergen, are the named beneficiaries of the  
17   trust. The Trust ordinarily contains almost all of Ergen's liquid assets, which are conservatively  
18   managed in municipal taxable securities and commercial paper rated "A" or better.

19           102. In this Action, Ergen testified that before buying LightSquared debt, he had never  
20   before spent \$800 million to buy debt of another company. Ergen further testified that he used  
21   most of his personal money that was not invested in DISH to buy LightSquared debt.

22           Q. You said you have no partners, so it's just how much did you  
23           spend buying LightSquared debt?

24           A. Oh, I spent about -- I think about 800 million.

25           Q. Okay. And it's your money, right?

26           A. It's my money. I spent most of my personal money to do it.

27           103. Bear Creek's managing director testified in the Bankruptcy Court that Bear Creek  
28   had never seen Ergen pull out that much money in a period of 13 months for the benefit of the

1 same beneficiary or beneficiaries.

2 104. Ergen has no history as a distressed debt investor for his personal account.  
3 Indeed, testimony in the Bankruptcy Court established that, before buying LightSquared debt,  
4 Ergen never directed Bear Creek to invest in distressed debt or to invest more than 50% of  
5 Ergen's personal funds in the stock of a single issuer. Indeed, pursuant to Ergen's instructions,  
6 Bear Creek could not invest more than 10% of Ergen's assets in a single issuer.

7 105. Buying distressed debt is a risky proposition for any investor. However, buying  
8 distressed debt is less risky if the purchaser also controls a company that he can use to bid for the  
9 bankrupt entity. Here, Ergen knew that his investment in LightSquared debt was virtually risk-  
10 free because he knew that he could make DISH bid on LightSquared's spectrum. Indeed, the  
11 only plausible inference that can be drawn from Ergen's conduct is that he would not have  
12 invested \$800 million of his own money if he believed that there was a significant risk he would  
13 lose it. As the Bankruptcy Court observed after hearing weeks of testimony:

14 While Mr. Ergen's substantial investment in LP Debt reflects (he  
15 says) his confidence in the intrinsic value of LightSquared's  
16 spectrum assets, it also reflects his certainty, that, in his capacity as  
17 DISH's controlling shareholder and chairman of its board of  
18 directors, *he could cause DISH to do what he wanted to effect the  
acquisition of the assets at a price that would return his  
investment, and possibly make a profit . . .* (Post-Trial Findings  
and Conclusions at 122).

19 **E. Ergen Finally Informs the Board about His LightSquared Debt Purchases in  
Preparation of a Bid for LightSquared**

20 106. On May 2, 2013, the Board held a meeting to discuss Ergen's proposal that DISH  
21 acquire LightSquared's spectrum assets. Ergen proposed to form a special purpose vehicle for  
22 the purpose of acquiring LightSquared spectrum through the bankruptcy process, with a  
23 proposed bid of \$2 billion to \$2.1 billion in cash. Ergen recommended to the Board that DISH  
24 submit an offer "now" and "require prompt acceptance (e.g. by May 15)."

25 107. As "background," Ergen disclosed for the first time to the Board that he had  
26 purchased LightSquared debt with a face value of \$1 billion and preferred shares with a face  
27 value of \$130 million. Ergen did not disclose key facts about his purchases, including the  
28

1 amount that he had spent to acquire LightSquared debt, the dates of his purchases, or the profits  
2 Ergen stood to make as a result of his investment in LightSquared securities if DISH were to  
3 make a successful \$2 billion bid for LightSquared.

4 108. Notably, nobody on the Board questioned Ergen as to how he made those  
5 purchases without first conferring with the Board about whether DISH wanted to buy the  
6 LightSquared debt itself, or whether Ergen's purchases could complicate a later bid by DISH for  
7 LightSquared spectrum.

8 109. During the meeting, Ergen also withheld from the Board the central role that  
9 DISH's treasurer, Defendant Kiser, had played in Ergen's debt purchases. Nor did Ergen  
10 disclose that according to DISH's outside counsel at Sullivan & Cromwell, DISH could have  
11 purchased LightSquared debt through an affiliate, just like Ergen himself had done. To the  
12 contrary, Ergen informed the Board that DISH could not purchase the LightSquared debt. Ergen  
13 did not provide the Board with any legal analysis or reasoning to back up his assertion. As  
14 Goodbarn testified in this Action on October 31, 2013, "I've still not seen anything . . . that  
15 would say that [DISH] could not buy these bonds." (Goodbarn Tr. at 228:4-21).

16 **F. The Board Forms a Special Transaction Committee of Independent Directors to**  
17 **Protect the Interests of DISH**

18 110. When Ergen disclosed his significant purchases of LightSquared debt and asked  
19 the Board to authorize an immediate DISH bid for LightSquared spectrum, the Board recognized  
20 Ergen's significant conflicts of interest. During the May 2, 2013 meeting, the Board did not  
21 authorize DISH to immediately make a \$2 billion bid for LightSquared spectrum, as Ergen  
22 suggested. As Goodbarn testified, the Board understood that if "*we're going to do this . . . it has*  
23 *to be independently vetted*" because "*we had a huge conflict of interest with the controlling*  
24 *shareholder.*"

25 111. Ergen has admitted that his purchases of LightSquared debt created conflicts of  
26 interest with DISH. For example, Ergen testified during his deposition in this matter that:

27 because I owned . . . bank debt in the company personally through  
28 [SPSO] and were DISH to make a bid for the company and if for  
some reason I was to make a profit from that, that would - that

1 would be certainly a perception item and potentially conflict of  
2 interest with me, and we would need the board or some  
3 independent committee or whatever to make sure that that was  
4 fair to shareholders. (Ergen Tr. at 152:10-153:5).

5 112. Ergen left the May 2, 2013 meeting so that the Board could discuss the creation  
6 and composition of a special committee of the Board with respect to a potential transaction  
7 involving LightSquared in which Ergen had a personal interest. The Board understood that  
8 almost all of its members were personally beholden to Ergen and, therefore, that the Board as a  
9 whole could not independently consider Ergen's conflicting interests. With the rest of the Board  
10 incapable of acting independently of Ergen, Goodbarn and Howard were the only two directors  
11 capable of serving on a special committee to consider DISH's bid for LightSquared's assets and  
12 Ergen's personal debt purchases.

13 113. On May 8, 2013, the Board created the Transaction Committee comprising  
14 Howard and Goodbarn. The enabling resolution acknowledged that Ergen had a personal  
15 interest in a LightSquared transaction, delegated to the Transaction Committee "all the powers  
16 and authority of the Board to accomplish the purposes and to carry out the intent of the  
17 resolutions herein," and specifically empowered the Transaction Committee to:

18 (i) *review and evaluate (including any potential conflicts of interest*  
19 *arising out of, or in connection with, the Ergen LightSquared*  
20 *Transaction) the terms and conditions of the Ergen LightSquared*  
21 *Transaction, determine whether it is in the best interests of the*  
22 *Corporation and its stockholders to proceed with the Ergen LightSquared*  
23 *Transaction, engage in discussions and/or negotiations relating to the*  
24 *Ergen LightSquared Transaction, and to reject any proposal from Mr.*  
25 *Ergen relating to the Ergen LightSquared Transaction;*

26 (ii) *negotiate definitive agreements concerning the terms and conditions of*  
27 *the Ergen LightSquared Transaction; and*

28 (iii) *determine whether such terms and conditions (if any) of the Ergen*  
29 *LightSquared Transaction are fair to the Corporation.*

30 114. The May 8, 2013 resolution broadly empowered the Committee to protect DISH's  
31 interests, including but not limited to navigating Ergen's conflicts, from May 8, 2013 through the  
32 end of the LightSquared acquisition process. As Ergen's May 2, 2013 presentation made clear,  
33 this process was expected to include a term sheet between DISH and LightSquared, execution of

1 a purchase agreement for LightSquared spectrum, a motion before the Bankruptcy Court to  
2 approve bid procedures and stalking horse protections, the bankruptcy auction of LightSquared  
3 spectrum, and Bankruptcy Court approval of the sale, and was expected to run through  
4 December 2013 or January 2014.

5 115. As a check on Ergen's far-reaching power over the Board, the Transaction  
6 Committee enabling resolution made clear that the Committee could be terminated only upon  
7 one of two events: [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] Nothing in the resolution suggested that the Board was  
13 secretly reserving the option to terminate the Committee in order to protect Ergen's personal  
14 interests. Nor would such a reservation be legal.

15 116. The resolution authorized the Transaction Committee to retain independent legal  
16 and financial advisors to enable the Committee to assess Ergen's conflicting interests and protect  
17 the interests of DISH in pursuing a potential acquisition of LightSquared spectrum. The Board  
18 expressly empowered the Transaction Committee to:

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 117. Based on the May 8, 2013 resolution, Goodburn expected the Transaction  
27 Committee to be involved in the transaction process until it was completed. As Goodburn  
28 testified:

1 Q. Was it your understanding at the May 8th board meeting that your  
2 -- that the special committee was going to continue to exist until  
3 either the company would not pursue LightSquared or it completed  
4 a transaction with LightSquared?

5 A. Correct.

6 (Goodburn Tr. at 68:11-16).

7 118. The Transaction Committee's financial advisor, Perella Weinberg, also expected  
8 to be involved in DISH's bid until it was completed. As the Perella Weinberg banker explained:

9 Q. At the time of your, your Perella's engagement, did you expect that  
10 Perella would be involved in the process all the way through the  
11 conclusion of the LightSquared bankruptcy?

12 A. Yes. We, we, we were certainly, we -- put it this way. We  
13 designed the engagement letter and the, and the fee arrangement in  
14 such a way, right, and we were expecting to have a fairly long-  
15 dated assignment and, and delivering a perspective on value, a  
16 formal perspective on value at the time that DISH was ready to  
17 actually complete a transaction. Yes. So I think our expectation is  
18 that it would have gone longer.

19 (Essaid Tr. at 53:11-23).

20 **G. Ergen Undermines the Transaction Committee's Efforts from The Outset.**

21 119. The record in the LightSquared bankruptcy proceedings establishes that the May  
22 8, 2013 resolutions were "quickly and flagrantly disregarded." (Post-Trial Findings of Fact and  
23 Conclusions of Law at 113). As the Bankruptcy Court observed, "[a]s it turned out, such  
24 resolutions were not worth the paper they were written on." (Post-Trial Findings of Fact and  
25 Conclusions of Law at 112).

26 **1. Ergen Makes a Personal \$2 Billion Bid to Set a "Floor" for DISH's Bid  
27 that would Protect Ergen's Personal Interest.**

28 120. Ergen left the May 2, 2013 Board meeting following his presentation so that the  
Board could discuss the creation and composition of a special committee. Moskowitz led that  
discussion and later updated Ergen on the Board's deliberations, including on or about May 7.  
Based on Moskowitz's longstanding relationship with Ergen, Ergen's role as a self-described  
micromanager, and Ergen's function as DISH's Chairman of the Board and controlling

1 shareholder, the suggestion that Ergen was somehow oblivious to the creation of a special  
2 committee to assess a transaction in which Ergen had invested most of his personal wealth  
3 outside DISH is not credible. To the contrary, the only plausible inference is that Ergen was  
4 keenly aware that the Board was forming a special committee to assess his May 2 proposal.

5 121. On May 15, 2013 – one week after the Special Committee was formed and less  
6 than two weeks after telling the Board that DISH should immediately make a bid for  
7 LightSquared – Ergen bid \$2 billion for LightSquared through a new special purpose vehicle,  
8 LBAC.

9 122. Ergen's personal lawyers at Wilkie Farr sent a letter to LightSquared attaching  
10 the principal terms of the proposed sale transaction, including an offer to pay \$2 billion for  
11 LightSquared spectrum assets. Pursuant to the terms of the May 15 letter, LBAC's bid would  
12 expire May 31, 2013.

13 123. Ergen's May 15, 2013 letter to LightSquared made clear that the receipt of \$2  
14 billion in cash could be used to pay off the Company's secured debt, thereby cutting off the  
15 accrual of value-eroding interest. At this time, Ergen himself was the largest holder of  
16 LightSquared debt (holding debt with a face value of \$1 billion) and stood to gain \$150 million  
17 profit plus interest, simply by his debt being paid off at par (which it would be as long as  
18 LightSquared got \$2 billion for its spectrum).

19 124. By submitting a \$2 billion bid for LightSquared spectrum assets, Ergen set a  
20 "floor" for the price of those assets for any subsequent bid – including for any bid by DISH –  
21 and thereby ensured that Ergen would receive par value for his LightSquared debt holdings and  
22 realize more than \$150 million in personal profits plus millions of dollars in "value eroding"  
23 interest. As Ergen admitted in his deposition, once he made the \$2 billion bid, it was effectively  
24 impossible for any other bidder to successfully purchase LightSquared's spectrum assets for less:

25 Q. ... [H]aving made a bid at 2 billion, what was the scenario that  
26 would actually allow you to end up with a deal at less than 2  
billion?

27 A. I don't know of one.  
28

1 125. The two members of the Transaction Committee have confirmed that Ergen's bid  
2 set a "floor" for a potential DISH bid. As Goodman described in his deposition in this case,  
3 Ergen's bid put "a line in the sand":

4 Q. What do you mean when you said that his making the offer made it  
5 difficult socially to make a bid below \$2 billion?

6 A. Because he's put a line in the sand on a bid and we're part of a,  
7 you know, a DISH board and he owns a majority of the company.

8 Q. I'm still not understanding. So why would it be difficult to make a  
9 bid that's below his bid? ...

10 A. Well, if he's stuck with a bid and takes a big loss, let's say he wins.  
11 He's committed to 2 billion, there's no other bidder, and we come  
12 in at a billion 5, that does not make a very happy chairman.

13 126. In an affidavit submitted in this Action, Howard agreed that Ergen's unilateral  
14 action undermined DISH's ability to make a lower bid for LightSquared. As Howard stated,  
15 Ergen's bid had "narrow[ed] the scope and ability of the Special Committee to fully explore  
16 alternative strategies for DISH to pursue with respect to LightSquared, as well as to define and/or  
17 negotiate Mr. Ergen's role with respect to DISH's strategy."

18 127. The Bankruptcy Court agreed that Ergen's bid set a "floor" for an expected bid by  
19 DISH, finding that:

20 Given the control Mr. Ergen exercised over the DISH Board (as  
21 evidenced in particular by his bullying of the Special Committee),  
22 it is clear that Mr. Ergen believed that, after making the LBAC  
23 Bid, he could and would get DISH to step in as purchaser.

24 (Post-Trial Findings of Fact and Conclusions of Law at 122).

## 25 2. The Board Did Not Authorize Ergen's Personal Bid

26 128. Ergen knew that if he were to make a personal bid for LightSquared, he would be  
27 competing with DISH. In his testimony in the Bankruptcy Court, Ergen claimed that he had  
28 informed the Board in his May 2, 2013 presentation that he was considering making a personal  
bid for LightSquared.

I disclosed my intentions of potentially, I believe, on May 15th, of  
making or potentially making an acquisition offer, or making a bid  
for LightSquared, the company, or LightSquared assets, the



1 company, LP; that I believed it might be a corporate opportunity  
2 and that whatever I did would — they could participate for as little  
3 or as much as they wanted to. And so I gave the timing, the amount  
4 I owed, and my intentions and made it a corporate opportunity.

5 129. That was a lie. Ergen's May 2, 2013 presentation did not inform the Board or the  
6 Transaction Committee that he was planning to make a personal bid for LightSquared. Nor did  
7 Ergen ever seek permission from the Board or the Transaction Committee to make a personal  
8 bid. Indeed, the Transaction Committee was stunned to find out that Ergen made a personal bid.  
9 As Howard stated in his sworn affidavit submitted in this Action: [REDACTED]

10 [REDACTED] To the contrary, Ergen's May 2  
11 presentation proposed that DISH make an immediate bid, and did not say that Ergen would make  
12 a bid.

13 130. Moreover, the record in the Bankruptcy Court establishes that Ergen knew that  
14 the Board had not authorized him to make a personal bid. On January 13, 2014, Ergen testified  
15 as follows:

16 Q. The board did not authorize you to make an offer in the month of  
17 May, did it?

18 A. The board did not authorize a DISH bid in the month of May.

19 Q. Right. Nor did it pass a resolution in which it acknowledged and  
20 approved of you making an offer individually, did it?

21 A. I don't believe there was a resolution to that effect.

22 131. This did not stop Ergen from making a \$2 billion personal bid for LightSquared,  
23 thereby setting a "floor" for future bids that would ensure a personal profit of at least \$150  
24 million on the LightSquared debt purchases, and competing directly with DISH.

25 **3. The Transaction Committee is Unaware of Ergen's Personal Bid until**  
26 **They Read about it in the News.**

27 132. On May 29, 2013, Goodbarn emailed to members of the Board a news story  
28 headlined "DISH eyes LightSquared's Spectrum for \$2 bln." Howard was surprised to read that  
story because the DISH Board had not authorized any bid for LightSquared assets, and,  
indicating his own belief that sound governance principles required a board meeting to authorize

1 any Ergen bid, responded [REDACTED]

2 133. The following day, May 21, 2013, [REDACTED]

3 [REDACTED]  
4 [REDACTED] [REDACTED]  
5 [REDACTED] Until  
6 he received that email, Howard -- a longstanding member of DISH's Board -- was unaware that  
7 Ergen had made a bid to purchase LightSquared assets. As Howard explained,

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 134. Goodburn testified in this Action that he was also surprised to find out that Ergen  
14 had made a personal bid for LightSquared spectrum:

15 Q. ... Were you surprised when you found out [Ergen] had made the  
16 offer, though, without previously telling you or the board? ...

17 A. Well, clearly I was surprised ...

18 135. On May 21, 2013, after Howard received Goodburn's email, the Transaction  
19 Committee convened a special meeting to discuss Ergen's potential bid. During that meeting,  
20 the Transaction Committee discussed the need to retain a financial advisor. This was important  
21 to the Committee because it could not properly assess Ergen's bid without the assistance of an  
22 independent financial advisor.

23 136. During the May 21 meeting, the Transaction Committee also discussed Ergen's  
24 obligations as a member of the DISH Board in connection with the potential corporate  
25 opportunity that DISH might have associated with a LightSquared transaction. In this regard, the  
26 Committee discussed its need for documentation detailing Ergen's ownership of LightSquared  
27 debt to assess Ergen's conflict, to determine the potential profit Ergen would make if DISH made  
28 a successful bid for LightSquared, and to assess whether DISH would have been entitled to

1 pursue the corporate opportunity of buying LightSquared debt before permitting Ergen to do so  
2 for his personal account. The Committee recognized that its assessment of Ergen's conflict, and  
3 DISH's related right to share in Ergen's potential profits from a DISH bid, were integral to  
4 determining the fairness to DISH and DISH's public shareholders of any bid for LightSquared  
5 spectrum.

## 6 **II. Ergen Interferes with the Work of the Transaction Committee**

7 137. Ergen deliberately sabotaged the Transaction Committee's efforts to determine  
8 whether, and under what terms, a potential transaction with LightSquared would be fair to DISH  
9 and DISH's public shareholders. As the Bankruptcy Court found, "despite being in existence for  
10 three months, *the Special committee was forced to work under a compressed timetable because*  
11 *of Mr. Ergen's interference with its ability to begin its task.*" (Post-Trial Findings of Fact and  
12 Conclusions of Law at 113).

### 13 **I. Ergen Intentionally Delays the Transaction Committee.**

14 138. The Board understood the Special Committee's need for independent legal  
15 representation. Goodbarn had raised that issue on May 7, 2013 with Defendant Moskowitz,

16 [REDACTED]  
17 [REDACTED] On May 8, 2013, the Board's enabling resolution for the  
18 Transaction Committee gave clear authority for the Committee to retain independent advisors,  
19 including counsel.

20 139. However, even after Ergen made his personal \$2 billion bid for LightSquared on  
21 May 15, 2013 – adding yet another conflict to an already tangled transaction – he refused to  
22 support the retention of outside counsel for the Transaction Committee. On May 22, 2013,  
23 Ergen invited the Committee to speak to Rachel Strickland, Ergen's personal counsel at Wilkie  
24 Farr. Howard replied, agreeing to the meeting asked the special committee counsel to join.  
25 Ergen shot back, telling Howard "You are way ahead of your skis here" and asking "[w]hy  
26 would we have special committee counsel" and [REDACTED]

27 [REDACTED] Ergen claimed that DISH was [REDACTED]  
28

1 [REDACTED]  
2 [REDACTED] As Ergen continued, the call "was set up to keep you [i]nformed but seems you  
3 may be already spending money. If so I don't see the need for the call as I was trying to save  
4 other legal expenses on my dime."

5 140. Ergen's bullying had the intended effect. The Transaction Committee agreed to  
6 enter what Howard described as a "holding pattern." In a May 27, 2013 email, Howard wrote to  
7 Ergen: [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 141. As Goodbarn testified in his deposition in this Action, the Transaction Committee  
11 agreed to enter this "holding pattern" at Ergen's request:

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 142. Goodbarn testified that, based on Ergen's representations and the provisions of  
16 the resolution creating the Transaction Committee, he was willing to delay retaining advisors  
17 because the Special Committee believed that the LightSquared transaction "would end up being  
18 an auction" that would "go on for a long time."

19 **2. Ergen Refuses to Provide Information about his Trades in his**  
20 **LightSquared Debt and Stock to the Transaction Committee**

21 143. On May 30, 2013, Ergen's lawyers at Wilkie Farr sent the Transaction  
22 Committee a letter offering DISH an option to buy all or part of LBAC. DISH's exercise of its  
23 option to buy LBAC would be irrevocable while also committing DISH to pay LBAC's financial  
24 and legal advisors. Meanwhile, LBAC -- controlled by Ergen and his lawyers at Wilkie Farr --  
25 expressly retained the right to withdraw or change the bid for LightSquared's spectrum assets  
26 while keeping the Transaction Committee updated on the status of the negotiations. In other  
27 words, three weeks after the Board created the Transaction Committee to ensure that the terms of  
28 a transaction involving LightSquared's spectrum assets would be fair to DISH and DISH's

1 public shareholders, Ergen was offering DISH a chance to buy into his personal \$2 billion bid,  
2 while he would regain control over the process by keeping control over LBAC.

3 144. The following day, May 31, 2013, Ergen met with the Transaction Committee.  
4 Howard and Goodbarn assured Ergen that they did not intend to incur unnecessary costs and  
5 promised to hold off on retaining financial advisors while speaking with Ergen directly to receive  
6 updates on matters related to a potential bid for LightSquared's spectrum assets. Ergen, in turn,  
7 confirmed that his personal \$2 billion bid would expire that same day.

8 145. The Transaction Committee had no intention of slowing down its efforts to  
9 determine whether DISH could share in Ergen's potential profit on his LightSquared debt  
10 purchases. On June 2, 2013, Howard emailed Ergen confirming that his personal \$2 billion bid  
11 for LightSquared spectrum had expired, and asking [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 146. Ergen understood that the Transaction Committee would not let go of DISH's  
15 claim on the potential profit of his purchases of LightSquared debt and stock. At the same,  
16 Ergen had no intention of giving up any profits from the debt and stock trades. On June 3, 2013,  
17 Ergen replied that he would [REDACTED]

18 [REDACTED] Yet, no such schedule was ever provided to the Transaction Committee.  
19 Moreover, Ergen retracted his earlier assurance to the Transaction Committee that his personal  
20 bid had expired, stating: "the offer is still open and did not expire on May 31st." In other words,  
21 Ergen made clear to the Transaction Committee that his competing \$2 billion bid setting a floor  
22 for a bid by DISH remained firmly in place.

23 147. By June 5, 2013, the Committee still had not received the information it had  
24 requested. Goodbarn wrote to Ergen: [REDACTED]

25 [REDACTED] Ergen  
26 continued to stonewall.

27 148. On June 17, 2013, the Transaction Committee sent Ergen a letter, again  
28 requesting for information regarding Ergen's trades. The June 17 letter stated:

1 We would appreciate an update describing the LightSquared  
2 Securities held by you, Sound Point or any affiliate, including the  
3 aggregate face amount or par value and purchase price paid for  
4 such LightSquared Securities, the status of any pending  
5 [REDACTED] regarding any LightSquared Securities, and your  
6 [REDACTED] regarding any disposition of the LightSquared  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 149. When Ergen still did not provide the requested information, Howard informed the  
11 full Board on July 6, 2013 that Ergen refused to cooperate with the Transaction Committee. As  
12 Howard noted, [REDACTED]

13 [REDACTED] Making clear that the Board was  
14 beholden to Ergen and would not protect DISH's interests, the Board refused to intervene and  
15 force Ergen to provide the requested information to the Transaction Committee. Ergen never  
16 provided the requested information to the Transaction Committee.

17 150. Notably, Ergen never asserted to the Transaction Committee that DISH's Charter  
18 allowed him to buy LightSquared debt. In light of the Transaction Committee's questions,  
19 pointing to the Charter would have been an obvious answer, if any of Ergen's many advisors  
20 actually believed the Charter protected him. Rather, the Charter was raised *ex post* in this  
21 litigation in a desperate attempt to deceive Plaintiff and the Court. To be sure, Howard stated  
22 that he did not recall ever hearing from Ergen or his counsel that the Transaction Committee's  
23 requests for information were improper or that Ergen had no obligation under DISH's Charter to  
24 bring potential corporate opportunities to the attention of the DISH Board. Ergen testified in this  
25 action as follows:

26 [REDACTED]

27 [REDACTED]  
28 [REDACTED]

1           151. In his deposition in this Action, Ergen claimed that he was reluctant to provide  
2 information about his trading in LightSquared debt—including his analysis of why DISH could  
3 not trade in that same debt—because this would give ammunition to Harbinger in the  
4 proceedings in Bankruptcy Court:

5 [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10           152. This post hoc justification also made no sense. As explained above, lawyers for  
11 DISH and Ergen have unequivocally stated that DISH *could have* bought LightSquared debt  
12 through an affiliate, just like Ergen himself did. Moreover, as Ergen acknowledged in his  
13 deposition testimony, LightSquared's controlling shareholder, Harbinger, was already accusing  
14 Ergen of being a front for DISH at the time that the Transaction Committee was making these  
15 requests for information. Ergen's own actions — taken in secret — had already given Harbinger  
16 ample ammunition. It was appropriate and natural for the Committee to attempt to minimize that  
17 damage by seeking information that would allow it to understand Ergen's transactions and  
18 respond to Harbinger's accusations in order to avoid any collateral harm to DISH.

19           **3. Ergen Interferes with the Transactions Committee's Indemnification**

20           153. The Transaction Committee expected to be properly indemnified. Goodbarn  
21 testified in this Action that "[t]he legal documents of the company have fairly weak protections  
22 for directors in the event that there was a conflict with the controlling shareholder" and, as  
23 Goodbarn further explained, proper indemnification was critical to safeguard the Committee's  
24 independence:

25           Q. Okay. Explain to me why there would be a relationship between  
26 the scope of the indemnity provided and your independence to act  
27 as a special committee.

28           A. Well, as a committee, you want to be able — you — by the

1           committee being DISH independent of Charlie, *we could get into a*  
2           *situation where we are hostile to Charlie who controls DISH. So*  
3           *you want an indemnification so that you could not be pressured,*  
4           you know, because if you have to retain counsel, it's beyond, you  
          know, people's means to do that without being -- you know,  
          covered by the company.

5           (Goodbarn Tr. at 133:8-135:3).

6           154. Without proper indemnification in place, the Transaction Committee would be at  
7           the mercy of Ergen. Ergen could use his control over the DISH Board to withhold  
8           indemnification from Howard and Goodbarn while simultaneously threatening them with a  
9           lawsuit for causing DISH to lose out on a multi-billion dollar corporate opportunity to acquire  
10          LightSquared's spectrum assets if the Transaction Committee did not immediately approve a \$2  
11          billion bid. Thus, it was critically important for the Committee to have a separate agreement  
12          clearly establishing its members' rights with respect to indemnification in the event of a conflict  
13          with Ergen. In addition, it was important that the Board support the members of the Transaction  
14          Committee -- not Ergen -- in the event of a conflict. As Goodbarn explained:

15                       The importance of the indemnification was for the other board  
16                       members to take a position that endorsed the committee. It was for  
                      the other board members to take a position that was independent.

17          155. The issues of indemnification and compensation were first raised during the May  
18          8, 2013 board meeting at which the Special Committee was formed. Although no final  
19          conclusion was reached, the Special Committee members reasonably expected that they would  
20          receive the full indemnification allowed to them by law, as well as a reasonable rate of  
21          compensation for their efforts.

22          156. The Board again discussed indemnification at the June 5, 2013 Board meeting.  
23          And again the Special Committee was led to believe that it would receive proper and adequate  
24          indemnification agreements. At that meeting, the Board also voted to provide the Transaction  
25          Committee members with compensation for their work on the Transaction Committee.

26          157. After the June 5, 2013 meeting (and after Ergen realized that the Transaction  
27          Committee would continue to ask for information about his LightSquared debt purchases), Ergen  
28          weighed in to make sure that the Transaction Committee would not get appropriate



1 indemnification to protect its members in case of a conflict with Ergen. As Goodbarn testified:

2           Subsequent to that date [June 5], the chairman was unhappy with  
3           those two items [indemnification and compensation], and he told  
4           us so, and he told other members of the board. And my issue with  
5           that, and Gary's issue is, if the board can't -- can't differ on two  
6           trivial things and we're supposed to evaluate a 2 billion, I mean,  
7           what kind of a board are we dealing with?

8           158. Ergen's intervention served its purpose. Goodbarn understood the Board's refusal  
9           to provide adequate indemnification to the Transaction Committee as a clear signal that the  
10          Board was beholden to Ergen. Goodbarn testified that he declined to be considered to serve on  
11          the SLC, at the time it was formed, because "we were back to the same compensation and  
12          indemnification issues that we had with the earlier meeting, and no one else was raising any  
13          objections, and I wasn't going to be on a committee that could not be independent. . . . Those are  
14          all independent issues, in my mind." The indemnification rights of the Transaction Committee  
15          remained unresolved until the Committee was unceremoniously disbanded.

#### 16                   **4. Ergen Forces the Transaction Committee to Prioritize Bidding for** 17                   **LightSquared**

18          159. After weeks of delay, requests for a "holding pattern" and assurances that the  
19          Special Committee had "plenty of time," Ergen abruptly reversed course.

20          160. During a July 3, 2013 telephone call with the Transaction Committee and  
21          Moskowitz, Ergen made clear that he wanted the Committee to focus on the financial aspects of  
22          a potential LightSquared transaction -- *not* his conflict of interest and LightSquared debt  
23          purchases. At the beginning of the call, Ergen expressed his displeasure with the Committee. As  
24          Goodbarn testified, Ergen was yelling and "angry that [the Committee] had moved ahead and  
25          retained counsel." Ergen then abruptly began to discuss the value of a potential LightSquared  
26          acquisition, urging the Committee to "move fast" and to reach a preliminary conclusion by July  
27          8, a mere five days later.

28          161. Howard was perplexed by Ergen's shifting approach. He sent an email to  
29          Moskowitz, who was on the call with the Committee, with a subject reading "Wtf" and a body

1 reading "was that about!!!" Goodbarn testified during his deposition in this Action [REDACTED]

2 [REDACTED]

3 162. By the time of that July 3, 2013 call, Ergen had decided that the Transaction  
4 Committee would be disbanded once the committee approved a bid by DISH. During the call,  
5 Ergen claimed that the sudden acceleration of the time frame was caused by the expiration of the  
6 exclusivity period in the LightSquared bankruptcy proceeding on July 15 (i.e., the period during  
7 which only LightSquared could propose a reorganization plan, and after which, competing plans  
8 -- such as a bid by LBAC -- could be introduced). This was a pretext. The expiration date was  
9 known to everyone since the formation of the Transaction Committee on May 8, 2013, and  
10 Ergen had never before raised expiration of exclusivity as a deadline for the Transaction  
11 Committee. The only plausible inference is that Ergen intended to rush the Transaction  
12 Committee into approving a DISH bid so that he could disband the committee and avoid for  
13 good its requests for information about his personal LightSquared debt purchases.

14 163. On July 8, 2013, Ergen sent the Board a draft asset purchase agreement (the  
15 "APA") for a purchase of LightSquared's assets by LBAC. The APA was drafted primarily by  
16 Ergen's counsel at Willie Farr. Neither the Transaction Committee nor its counsel nor any of its  
17 financial advisors had asked for the draft APA to be prepared.

18 164. That same day, the Transaction Committee participated in a telephone conference  
19 with other members of the Board. Howard and Goodbarn again explained the necessity of  
20 appropriate indemnification to the rest of the Board. Howard became frustrated with the Board's  
21 refusal to support the Transaction Committee. Following the call, [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED]

24 165. After a number of meetings with its advisors, the Transaction Committee sent the  
25 Board a letter on July 15, 2013 to provide an update on its analysis of the LightSquared  
26 transaction. The Committee informed the Board [REDACTED]

27 [REDACTED]

28 [REDACTED] The Transaction

1 Committee informed the Board that it would condition any recommendation of a formal bid on a  
2 process that continued to involve the Committee:

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 [REDACTED]  
13 [REDACTED]

14 166. Three days later, during a July 18, 2013 Board meeting, the Transaction  
15 Committee learned for the first time that Ergen (through LBAC) was negotiating a proposed joint  
16 Chapter 11 plan with an ad hoc group of secured lenders (the "Ad Hoc Secured Group") in  
17 LightSquared's bankruptcy case. Neither the Committee nor its counsel nor its financial advisors  
18 were informed of these discussions or invited to participate in negotiations with the Ad Hoc  
19 Secured Group prior to this date.

20 167. That same day, in order to further pressure the Transaction Committee, Ergen's  
21 attorneys at Willkie Farr informed the Committee that Ergen would increase his personal bid for  
22 LightSquared spectrum to \$2.2 billion, thereby further raising the floor for a DISH bid.  
23 Moreover, Ergen's attorneys threatened the Special Committee that, if the Special Committee did  
24 not act quickly, DISH would miss out on the opportunity to acquire LightSquared spectrum, and  
25 Ergen would share up to 40% of LBAC with EchoStar in a joint bid.

26 168. The Transaction Committee was apoplectic. Following the meeting, Howard  
27 emailed Goodbarn to express his frustration: "*We are supposed to jump at [a] blind offer, with*  
28 *millions of profit to chairman... And they can't quite get it together on indemnification or*

1     *fees?? This is lunacy!"*

2     **I. The Committee's Highly Conditional Recommendation**

3     169. On Sunday morning, July 21, 2013, the Transaction Committee met for five hours  
4     to discuss the proposed LightSquared Transaction. Perella Weinberg provided its preliminary  
5     assessment that the value of acquiring LightSquared spectrum to DISH would be between \$4.4  
6     billion and \$13.3 billion, with a midpoint of *\$8.85 billion*. The range included the standalone  
7     value of LightSquared spectrum and an estimate of the magnitude of ways in which  
8     LightSquared's spectrum would enhance the value of DISH's preexisting spectrum.

9     170. Based on Perella Weinberg's assessment, the Transaction Committee resolved to  
10    recommend to the Board that DISH submit a bid of \$2.22 billion for the LightSquared spectrum  
11    assets. However, the Transaction Committee understood that this bid would not resolve Ergen's  
12    conflicts with DISH arising out of his personal purchases of LightSquared debt, including  
13    Ergen's conflict in making those purchases without approval from the DISH Board and his  
14    personal interest in keeping the profits that would result from a successful DISH bid for himself.  
15    The Transaction Committee also understood that Ergen had a significant interest in protecting his  
16    unprecedented personal investment, even if doing so would come at DISH's expense.

17    171. After extensive deliberation, the Transaction Committee recommended to the  
18    Board that DISH bid for LightSquared subject to the following conditions:

- 19           \* That the Committee and its legal and financial advisors would *remain involved in*  
20           *all negotiations* regarding the proposed transaction going forward, so that the  
21           Committee would be able to, among other things, *monitor and manage potential*  
22           *conflicts of interest* as they arise, and react quickly (in the event that any of the  
23           material terms (including price) of the transaction changes ...
- 24           \* That the Committee would review and approve the terms of the acquisition by the  
25           Corporation of Mr. Ergen's interests in the L-Band Acquisition Vehicle ...; and
- 26           \* That the Committee had requested in writing from Mr. Ergen information  
27           regarding Mr. Ergen's acquisition of debt and/or other securities issued by  
28           LightSquared, but *had not yet received the information necessary for the*  
            *Committee to make an evaluation of potential conflicts of interest raised by that*  
            *acquisition.*

172. The Transaction Committee emphasized that it "did not waive, but rather

1 expressly reserved, the right to obtain all of the requested information, as well as the right to  
2 evaluate potential corporate opportunity issues in connection with the acquisition of such debt  
3 and other securities."

4 173. In sum, the Transaction Committee fully understood the potential value of  
5 LightSquared spectrum to DISH. Yet, it also understood that an advantageous bid for that  
6 spectrum would not resolve Ergen's conflicts or excise his personal profiteering by buying  
7 LightSquared debt in breach of his fiduciary duties. It was therefore critically important for  
8 DISH and DISH's public shareholders that the Transaction Committee remain involved in  
9 negotiating the terms of the potential acquisition while continuing to investigate Ergen's  
10 conflicts arising out of his purchases of LightSquared debt. Thus, by recommending that DISH  
11 make a bid, the Transaction Committee emphatically did not opine on the fairness of the overall  
12 transaction to DISH and DISH's public shareholders.

13 174. As Goodham explained:

14 Q. And was the judgment of the special committee at the time it made  
15 that recommendation that the transaction recommended to the  
16 board was fair to the DISH shareholders?

17 A. *No, because we had not completed the process. We only reached*  
18 *a conclusion on the valuation. We did not reach a conclusion*  
19 *regarding the conflict of interest, and that's really integral to that*  
20 *decision. That has not been -- that decision has not been reached. .*  
21 *. . . Because we have not reviewed the other side of the transaction.*  
22 *So we have five recommendations that were not complete at that*  
23 *point. Our recommendation was conditioned on those five*  
24 *conditions, we never have followed up on them.*

25 Could we have gone into an alternate world where Charlie did not  
26 own LightSquared securities and acquired this asset for less  
27 money, that's unanswered.

28 Could we -- should we go after any profits that Charlie has in those  
bonds and say those belong to DISH, we specifically reserve that.

Those -- those are still open issues that really have never been  
vetted. . . . but to say that that, you know -- that was all fair to  
DISH shareholders, that -- that full vetting by the committee has  
not been done. . . . there is no conclusion there on that.

(Goodham Tr. at 236:14-240:2).

1           **J. The Bad Faith Termination of the Transaction Committee**

2           175. Upon receiving the Committee's *conditional* recommendation, the Board  
3 dismissed the Committee's legal and financial advisors, Cadwalader, Wickersham & Taft LLP  
4 ("Cadwalader") and Perella Weinberg, from the Sunday night Board meeting. With the  
5 Committee separated from its independent legal advisors, and executing on what was clearly a  
6 premeditated strategy, Moskowitz proposed that the Board disband the Committee.<sup>1</sup> As  
7 Goodbarn testified:

8           Q. Okay. And what about the termination? Who said what?

9           A. [Moskowitz] said, "Now that Charlie has been made whole, there's  
10 no more reason for the committee and" — something to the effect  
11 you know, we should move to end the committee.

12          Q. Okay. But that took you by surprise?

13          A. Yes.

14          Q. Okay. Did you agree with that?

15          A. No.

16 (Goodbarn Tr. at 219-3:12).

17          176. Moskowitz's proposal was contrary to the May 8, 2013 resolution creating the  
18 Transaction Committee, in which the Board had bound itself not to terminate the Transaction  
19 Committee unless either the LightSquared transaction was abandoned or the Transaction  
20 Committee itself proposed its disbandment. As Moskowitz and the other Board members know  
21 very well, neither condition was met. Yet, the other Board members — Defendants Clayton,  
22 DeFranco, Orloff, and Vogel — supported Moskowitz and voted in favor of ignoring the May 8,  
23 2013 resolution and to disband the Transaction Committee in order to ensure that Ergen's debt  
24 purchases would not be investigated by independent directors looking out for DISH's interests,  
25 even though this would leave DISH unprotected from Ergen's personal interests during the

26 \_\_\_\_\_  
27 <sup>1</sup> The SLC represented in a November 20, 2013 report in this Court that Defendant Vogel  
28 proposed that the Transaction Committee be terminated. However, the SLC's purported  
"findings" merely parrot Ergen's and the Director Defendants' self-serving statements and  
cannot refute sworn testimony.

1 negotiation of definitive contracts and the bidding process for LightSquared spectrum.

2 177. The shocked members of the Transaction Committee, exhausted with the process  
3 and still lacking firm indemnification rights, abstained from voting on Moskowitz's proposal to  
4 disband the Committee. As shown by the express conditions on approving DISH's bid that the  
5 Transaction Committee had discussed with the Board only minutes earlier, Howard and  
6 Goodbar believed that the Transaction Committee should remain in place to (i) investigate  
7 Ergen's personal LightSquared debt purchases; and (ii) protect DISH shareholders from Ergen's  
8 incentive to protect his personal \$1 billion of LightSquared debt at the possible expense of DISH  
9 in its pursuit of LightSquared's spectrum. Complaining of the abuse that Ergen and the other  
10 Board members had put on the Transaction Committee, Goodbar emailed DISH Associate  
11 General Counsel Brendan Ehrhart to ask: "Now that we have the fairness opinion can you guys  
12 stop holding up the board fees."

13 178. The Board's actions in terminating the Transaction Committee are unprecedented.  
14 As Former SEC Chairman Harvey Pitt explained in a November 8, 2013 report that was  
15 submitted in this Action:

16 Based on my forty-five years of professional involvement with  
17 transactions of this nature, public companies do not evidence *the*  
18 *egregious indifference* Mr. Ergen and his Board demonstrated by  
19 disbanding a [special committee] that was functioning properly,  
20 whose work was not completed, whose members insisted on  
21 continuing with their mission, and the need for which was  
22 manifest. . . .

23 In my experience, it is *unprecedented* for a public company to  
24 achieve the dissolution of a [special committee] in the manner that  
25 DISH employed. . . .

26 This disregard for the rights of public company shareholders with  
27 respect to a related-party transaction is all the more egregious  
28 because it was effected *without any legitimate rationale*, and in  
derogation of the specific conditions the Board initially imposed  
regarding the [Transaction Committee]'s termination. . . .

The abrupt and inexplicable termination of the [Transaction  
Committee] is stark evidence that the interests of DISH's public  
shareholders cannot be protected or furthered under the current  
structure.

1           **K. Ergen Negotiates Agreements Benefitting Himself at the Expense of DISH**

2           179. On July 22, 2013, Ergen and DISH entered into a purchase and sale agreement  
3 pursuant to which Ergen sold his interest in LBAC to DISH. It was not in DISH's interests to  
4 acquire LBAC. LBAC had no assets, no outstanding bid for LightSquared assets, and no special  
5 position or role in the LightSquared bankruptcy that DISH needed to protect. LBAC did,  
6 however, have liabilities, including payment obligations to Ergen's legal advisers at Willkie Farr.  
7 Yet, without the Transaction Committee present to protect DISH's interests and without any  
8 Board oversight, Ergen caused DISH to buy LBAC and assume all of its liabilities, including  
9 legal expenses owed to Ergen's Willkie Farr, which represented (and continues to represent)  
10 LBAC as well as Ergen personally.

11           180. Upon information and belief, DISH has been paying legal and expert fees of its  
12 own lawyers at Sullivan & Cromwell *and* Ergen's personal lawyers at Willkie Farr who  
13 nominally continued to represent LBAC. Those fees were largely incurred because of Ergen's  
14 purchases of LightSquared debt, giving rise to adversary claims in the Bankruptcy Proceedings  
15 by LightSquared and its controlling shareholder, Harbinger, that DISH, LBAC and Ergen had not  
16 acted in good faith. It is inconceivable that the Transaction Committee would have allowed  
17 Ergen to cause DISH to pay for defending claims that were the direct result of Ergen's debt  
18 purchases without ensuring that DISH would also receive the benefit of those purchases.  
19 Because of the Board's bad faith termination of the Transaction Committee, the reverse is true:  
20 DISH pays for all legal costs related to the bid, including Sullivan & Cromwell and Ergen's  
21 personal consigliere of Willkie Farr, yet DISH will not receive the benefit of debt purchases that  
22 Ergen made while front-running a DISH bid that gave rise to extensive, scorched-earth litigation.

23           181. On July 23, 2013, Ergen caused LBAC to enter into a Plan Support Agreement  
24 (the "PSA") with the Ad Hoc Secured Group, providing that LBAC would submit a \$2.2 billion  
25 "stalking horse" bid for LightSquared spectrum assets. Unencumbered by the Transaction  
26 Committee and its independent counsel, Ergen inserted in the PSA and the proposed stalking  
27 horse agreement a release that would make it impossible for LightSquared to bring a lawsuit  
28 against Ergen in connection with his personal debt purchases if LightSquared accepted LBAC's



1 \$2.2 billion bid for its assets. This atypical, broad release benefited only Ergen, to the extreme  
2 detriment of DISH.

3 **L. DISH Misrepresents the Transaction Committee's Recommendation and Howard**  
4 **Resigns.**

5 182. On July 23, 2013, DISH publicly reported that the Board approved DISH entering  
6 into the PSA with the Ad Hoc Secured Group "based on the recommendation of a special  
7 committee of the Board." Specifically, DISH's July 23, 2013 Form 8-K states:

8 On July 23, 2013, L-Band Acquisition, LLC ("L-Band"), a wholly-  
9 owned subsidiary of DISH Network Corporation ("DISH"),  
10 formed to make a bid to acquire assets of LightSquared LP, entered  
11 into a Plan Support Agreement (the "PSA") with certain senior  
12 secured lenders to LightSquared LP. DISH is a party to the PSA  
13 solely with respect to certain guaranty obligations. *DISH's Board  
14 of Directors (the "Board") approved entering into the PSA based,  
15 among other things, on the recommendation of a special  
16 committee of the Board (the "Special Committee") and a fairness  
17 opinion that was prepared by a financial advisory firm at the  
18 request of the Special Committee. . . .*

19 The LightSquared LP Plan contemplates a sale of substantially all  
20 of the assets of the LightSquared LP Entities to L-Band for a  
21 purchase price of \$2.22 billion in cash, plus the assumption of  
22 certain liabilities, pursuant to the terms and conditions of a  
23 proposed asset purchase agreement (the "Proposed APA").

24 183. DISH did not disclose that the Transaction Committee's recommendation was  
25 highly conditional, much less that the Board had in bad faith disbanded the Committee in  
26 derogation of the May 8 resolution. During an August 6, 2013 earnings call with analysts, Ergen  
27 conceded that he was in an "awkward position" in the deal and referred to the Transaction  
28 Committee's approval to deflect criticism. Ergen did not disclose the Transaction Committee's  
conditions that were directly implicated by — and were meant to address — Ergen's "awkward  
position."

29 184. On July 24, 2013, the Transaction Committee sent a letter reminding the Board  
30 that it never opined that the proposed \$2.2 billion bid for LightSquared assets was fair to DISH  
31 or DISH's public shareholders because the Committee's "recommendation was expressly made  
32 subject to, and premised upon" the conditions discussed above. As the Committee noted in its  
33 July 24, 2013 letter:

1 When the [Transaction Committee] made its recommendation and  
2 these conditions were specified, the [Transaction Committee] did  
3 not know that the Board was planning to terminate the  
4 [Transaction Committee]. The agenda for the Board meeting did  
5 not include termination as a discussion item and there was never  
6 any prior notice or discussion with respect to such termination with  
7 the members of the [Transaction Committee] or their counsel.

8 The [Transaction Committee] did not recommend or endorse the  
9 termination of the [Transaction Committee], and as is clear from  
10 the conditions that accompanied the [Transaction Committee's]  
11 recommendation, *we believe there are continuing issues that  
12 related to the fairness of a transaction and potential conflicts of  
13 interest with the Chairman* that we believe should be subject to  
14 independent scrutiny and evaluation...

15 185. During his October 31, 2013 deposition, Goodbarn confirmed that he still had the  
16 same concerns, stating that there "remain issues related to the fairness of a transaction and  
17 potential conflicts of interest beyond the [Transaction Committee's] initial recommendation of  
18 whether to present a bid."

19 186. On July 23, 2013, Howard resigned from the Board effective July 31. On July 27,  
20 the *Wall Street Journal* reported that Ergen stood to make hundreds of millions of dollars in  
21 profits on his LightSquared debt trades, and that Ergen implied that the Committee had signed  
22 off on those purchases. The article stated:

23 DISH's special board committee spent months evaluating a  
24 possible bid to ensure the offer would be an arm's length  
25 transaction given Mr. Ergen's positions in LightSquared debt . . .

26 DISH's special committee reviewed the company's decision to  
27 submit a reorganization plan for LightSquared alongside other  
28 lenders that centered on DISH's bid for LightSquared, and DISH's  
full board then approved it.

187. Goodbarn forwarded the article to the Board and demanded that DISH issue a  
public correction. Goodbarn wrote:

The article as you can see specifically mentions the Special  
Committee and implies we approved [Ergen's] potential profits  
[from his purchases of LightSquared debt]. . . .

Let me remind everyone that at our meeting last Sunday night the  
Committee's recommendation to the Board specifically reserved  
rights with regard to the Chairman's trades in LightSquared. . . .We

1 *have not weighed in on the chairman's transactions in any way*  
2 *as we have yet to receive information from him. I have not*  
3 *directly seen anything that says we could not have purchased*  
4 *these for DISH. Our actions at that meeting were designed to*  
5 *avoid the potential loss of a corporate opportunity and focused on*  
6 *the value of Lightsquared [sic] to DISH. . . .*

7  
8 Since the Committee was unexpectedly terminated at the last  
9 meeting we have no ability to act as a committee but *these remain*  
10 *related party transactions and if anyone expects them to be*  
11 *approved as things stand they are mistaken.*

#### 12 V. THE PRELIMINARY INJUNCTION PROCEEDINGS

##### 13 A. Harbinger Sues DISH Based on Ergen's Debt Purchases.

14 188. The question whether DISH acts independently of Ergen was a central issue in the  
15 LightSquared bankruptcy ever since DISH launched its stalking horse bid on July 23, 2013. That  
16 day, the Bankruptcy Court inquired into the relationship between Ergen's debt purchases and  
17 DISH's bid. In other words the Bankruptcy Court was inquiring into the very issue that the  
18 Transaction Committee was charged with investigating to protect the interests of DISH. In  
19 response, Willkie Farr, acting as counsel for Ergen and LBAC highlighted the key role that  
20 DISH's independent directors supposedly had in DISH's decision-making in connection with the  
21 bid.

22  
23 LBAC is an acquisition vehicle that is owned 100 percent by DISH  
24 Network, a public company. SP80 is owned and controlled 100  
25 percent by Mr. Ergen personally. . . . *to say that the decision*  
26 *making [at DISH], the motivations, can all be blended between a*  
27 *public company with a board of directors, including independent*  
28 *board of directors, and Mr. Ergen, who is making an investment*  
*legally, through SP Special Opportunities with his own money, is a*  
*very different proposition.*

189. Willkie Farr did not tell the Bankruptcy Court that, only 48 hours earlier, the only  
two independent directors on DISH's Board had been informed that the Transaction Committee  
would be disbanded even though the Transaction Committee had expressly conditioned its  
approval for a bid on the Committee's continuing involvement in the bidding process. Nor did  
Willkie Farr disclose that the "decision making" at DISH was firmly under the control of Ergen.

190. As Howard confirmed in his sworn affidavit in this Action, the Committee's legal

1 advisors [REDACTED]

2 [REDACTED]  
3 Furthermore, Howard made clear that neither the Transaction Committee nor its counsel was  
4 involved in negotiating the asset purchase agreement for LightSquared spectrum assets or the  
5 Plan Support Agreement with the Ad Hoc Secured Group. Howard noted in this regard that the  
6 Transaction Committee did not recommend that DISH enter into the PSA.

7 191. In response to Wilkie Farr's representations, Judge Chapman pointed out that  
8 Wilkie Farr's representation of both Ergen/SPSO and LBAC was deeply problematic, stating:

9 *You are wearing two hats. And while I appreciate the distinction*  
10 *that you made, and I appreciate, from a corporate governance and*  
11 *every other standpoint, the distinction that you made and the great*  
12 *care that you have to take when you're talking about a public*  
13 *company, the fact of the matter is that you are wearing two hats,*  
14 *and that, notwithstanding your very substantial capabilities,*  
15 *creates a level of complication, if you will.*

16 192. On August 6, 2013, Harbinger sued Ergen and DISH for more than \$4 billion in  
17 damages based on fraud and civil conspiracy in connection with Ergen's debt purchases.  
18 Harbinger asserted that Ergen's debt purchases violated the credit agreement and were done for  
19 the benefit of DISH. Specifically, Harbinger's complaint alleged that Ergen improperly  
20 purchased LightSquared debt through SPSO as a strategic investor, with the goal of infiltrating  
21 the Ad Hoc Secured Group and then using his control over DISH to obtain LightSquared's  
22 spectrum assets.

23 193. On August 22, 2013, LightSquared filed a notice of intent to intervene in the  
24 Harbinger adversary proceeding with respect to claims based on Ergen's debt purchases. In  
25 addition, LightSquared submitted a proposed plan of reorganization contemplating an open  
26 bidding process that would be led by LightSquared itself, rather than the secured lenders  
27 (including Ergen).

28 194. On August 30, 2013, Harbinger filed its own reorganization plan seeking to  
reorganize LightSquared without selling LightSquared's spectrum. Based on Ergen's debt  
purchases and DISH's inability to act independently of Ergen, Harbinger asserted that "Dish, the  
Presumptive Stalking Horse Purchaser, Is Not A Good Faith Purchaser."

1           **B. Plaintiff Seeks to Protect DISH's Interests in the Bankruptcy Proceedings.**

2           195. Alarmed by the termination of the Transaction Committee and the mounting  
3 litigation against DISH, Plaintiff brought this Action to ensure that a transaction involving an  
4 acquisition of LightSquared spectrum assets would be fair to DISH and DISH's public  
5 shareholders. When it became clear that Ergen's debt purchases and personal interests were  
6 jeopardizing DISH's ability to acquire LightSquared spectrum, Plaintiff filed a motion to  
7 expedite discovery, an amended complaint, and a motion for a preliminary injunction.

8           196. In Plaintiff's August 13, 2013 brief in support of its motion to expedite, Plaintiff  
9 wrote that it "seeks injunctive relief because Ergen's continued involvement in DISH's efforts to  
10 acquire LightSquared's assets presents an irresolvable conflict of interest, a continuing breach of  
11 duty, and irreparable harm to DISH and its public shareholders. Expedited discovery and an  
12 injunction hearing is required . . . so that Plaintiff can ask this Court to enjoin Ergen and his  
13 loyalists on [the Board] from interfering with or impairing Dish's efforts to acquire  
14 LightSquared."

15           197. The Director Defendants responded with a number of representations to this Court  
16 that were false or baseless at best. For example, the Director Defendants stated in their August  
17 28, 2013 brief that expedited discovery should be denied because: (i) "DISH was, at all relevant  
18 times, not an eligible purchaser" of LightSquared debt; (ii) "DISH's Articles of Incorporation . . .  
19 expressly provide a broad waiver of any obligation for Mr. Ergen to bring the alleged 'corporate  
20 opportunity' to [the Board]"; and (iii) Plaintiff's claim that Ergen "compelled DISH to bid on the  
21 LightSquared assets" was "rank speculation." As the Director Defendants and their counsel  
22 knew, none of this was true.

23           **C. The Board Forms a Flawed Special Litigation Committee to Stop this Action**

24           198. The Court scheduled argument on Plaintiff's motion to expedite for September  
25 19, 2013. The Director Defendants made a desperate attempt to delay this Action and avoid  
26 discovery into their misconduct. The evening before the hearing, on September 18, 2013, the  
27 Board's counsel informed Plaintiff that the Board had met earlier that evening and voted to  
28

1 create a special litigation committee to investigate the claims in Plaintiff's complaint. The Board  
2 did not disclose who constituted the SLC, or the committee's specific charge.

3 199. At the September 19, 2013 argument, in response to questioning by the Court,  
4 defense counsel revealed that the SLC would include Defendant Brukaw, who did not even  
5 formally join the Board until October 7, 2013, and Ergen's longtime business partner, Defendant  
6 Ortolli, who had just voted to terminate the Transaction Committee. Moreover, there was not  
7 even a resolution setting forth the SLC's designated authority, nor could counsel for the Board  
8 speak to the timing of the SLC's investigation.

9 200. The Court instructed Plaintiff to make a demand on the special litigation  
10 committee, noting that making the demand would not concede the SLC's independence. On  
11 September 23, 2013, Plaintiff sent the SLC a formal 10-page demand that summarized the  
12 complaint, requested information about the SLC's members, authority, funding and counsel, and  
13 demanded that the SLC: (i) reconstitute the Transaction Committee to act on behalf of DISH in  
14 the Bankruptcy Proceedings; and (ii) pursue money damages from Ergen and the Ergen-  
15 controlled directors for their disloyal acts in connection with Ergen's personal debt purchases.  
16 Plaintiff further encouraged the SLC to open a genuine and open dialogue with Plaintiff's  
17 counsel. A true and correct copy of the demand is attached as Exhibit 1.

18 201. When a corporate board forms a special litigation committee in order to  
19 investigate claims raised by a derivative plaintiff, it is typical for the committee's counsel to have  
20 a meeting or telephone call with plaintiff's counsel to discuss plaintiff's claims and concerns.  
21 On September 30, 2013, Plaintiff's counsel and counsel to the SLC spoke on the phone. During  
22 that discussion, counsel for the SLC was only interested in discussing the purported  
23 independence of the SLC's members without asking a single question about Plaintiff's claims  
24 and concerns — making clear to Plaintiff's counsel that the SLC was not interested in  
25 investigating the merits of Plaintiff's claims, but was instead preparing a whitewash submission  
26 opposing discovery and injunction, and purporting to absolve Ergen and the Board.

27 202. Three days later, on October 3, 2013, the SLC responded to the demand stating  
28 that "the SLC does not believe that the requested action would serve the best interests of DISH."

1 Although it had not yet conducted any investigation, the SLC had clearly prejudged the merits of  
2 Plaintiff's claims.

3 203. On October 3, 2013, the SLC also submitted a status report. The SLC's report  
4 falsely assured this Court that: (i) Ergen had no "material personal interest that might induce him  
5 to make decisions for DISH that are not in DISH's best interest;" (ii) "Ergen's participation [in  
6 the Bankruptcy Proceedings] does not threaten to impair DISH's efforts to acquire  
7 LightSquared," and (iii) the SLC "does not believe that the requested relief, if granted, would  
8 serve the best interest of DISH." Despite having already reached its conclusions, the SLC  
9 further represented to this Court that it would conduct an extensive investigation that would take  
10 "approximately four months," including a review of documents that it expected to complete "by  
11 early November" and "interviews of relevant persons during November and early December."

12 204. The SLC's flawed composition guaranteed that it would prejudice the merits of  
13 Plaintiff's claims and the outcome of its purported investigation. Ortolf had a 35-year long  
14 relationship with Ergen through numerous business and social ventures. Moreover, Ortolf's  
15 children were employed by DISH at the pleasure of Ergen. The SLC and Ortolf inexplicably  
16 withheld this information from the Court in the SLC's October 3, 2013 status report. The other  
17 SLC member, non-instated Board member Brokav, had selected Carney Ergen -- Ergen's wife  
18 and a Defendant here -- as the godmother of his child. Even absent these extremely close  
19 personal ties to Ergen, the SLC would not have been independent. As Goodbarn explained, he  
20 refused to become a member of the SLC because it would not be independent from Ergen and  
21 the Ergen-controlled Board:

22 Q. You did, in fact, remove yourself from consideration?

23 A. Yes.

24 Q. Why?

25 A. Because, number one, the discussion was being led by David  
26 Moskowitz. Number two, we were back to the same compensation  
27 and indemnification issues that we had with the earlier meeting,  
28 and no one else was raising any objections, and I wasn't going to  
be on a committee that could not be independent.

1 (Goodburn Tr. at 233:11-21).

2 205. Indeed, Goodburn made clear that, after the departure of Howard, no one but  
3 Goodburn himself was independent from Ergen:

4 Q. So it was -- it was your view that nobody else could act in an  
5 independent way of Charlie, correct?

6 A. That is correct.

7 (Goodburn Tr. at 233:25-234:3).

8 206. Following the October 3, 2013 status report, the SLC continued without exception  
9 to take positions adverse to the interests of the Company and its public shareholders. Thus, on  
10 November 20, 2013, the SLC informed the Court that "[i]f the transaction [with LightSquared] is  
11 consummated on the basis of its current terms, the transaction will be fair." This conclusion  
12 undermined the contrary conclusion of the Transaction Committee that the purported fairness of  
13 a LightSquared transaction to DISH could not be assessed without considering Ergen's personal  
14 purchases of LightSquared debt. By stating this conclusion, the SLC also undermined its ability  
15 to pursue claims against Ergen in connection with his debt purchases, if the SLC had an intention  
16 to do so (which it did not).

17 207. On November 20, 2013, the SLC further argued that this Court should not issue  
18 an injunction because the Bankruptcy Court would not "concern itself with any alleged  
19 interference by Mr. Ergen or the Challenged Directors in the processes of the [Transaction  
20 Committee]." Again, the SLC took a position that was false. As the SLC knew, LightSquared  
21 had just filed its complaint alleging that Ergen controlled every aspect of DISH's bid for  
22 LightSquared spectrum, thereby putting the Transaction Committee and its role in conditionally  
23 approving the bid squarely at issue.

24 208. On November 25, 2013, the SLC's counsel again made numerous representations  
25 and claims that simultaneously revealed the SLC's slanted interpretation of the record and  
26 harmed the SLC's ability to pursue claims against Ergen and the Board. Indeed, the SLC  
27 proclaimed that none of the Defendants had breached their fiduciary duties:

28 There's not a breach of fiduciary duty if the transaction was fair:



1 there's not a breach of fiduciary duty if the value was fair; there's  
2 not a breach of fiduciary duty if you have an independent valuation  
3 that you accept; there's not a breach of fiduciary duty to terminate  
4 the special transaction committee, because its job was done, and if  
5 we need to reconvene them at another time to evaluate the  
6 opportunity, we will do so.

7 That doesn't -- the fairness -- none of those affect the fairness of the  
8 LightSquared spectrum by LBAC. Everything else that they talk  
9 about is speculation. They want to focus on the termination of the  
10 special transaction committee and the importance of the special  
11 transaction committee to the process. Well, they had done their  
12 job. They had reached the value. There was nothing left for them  
13 to do unless it later came up as to whether or not there was an  
14 opportunity that existed.

15 (Nov. 25, 2013 Tr. at 98:20-99:10).<sup>5</sup>

16 209. Indeed, based on the position that the SLC took on behalf of Defendants,  
17 Plaintiff's counsel raised with the Court that "defendants incorporated the SLC brief before it  
18 was even out." The Court responded by asking "You think maybe they're working together? . . .  
19 I recognized that, too. I don't know that you need to go much further."

20 210. Even after the Court enjoined Ergen's or his counsel's involvement in negotiating  
21 the release attached to the LBAC bid for LightSquared spectrum, the SLC continued to oppose  
22 any effort by Plaintiff to protect DISH's interests in obtaining LightSquared spectrum that the  
23 SLC itself insisted was "a potentially transformative shift in DISH's business that could make  
24 DISH a Fortune 100 company."

25 211. Incredibly, when Ergen informed the Bankruptcy Court that DISH's bid for  
26 LightSquared spectrum was expressly conditions on Ergen receiving payment in full on his  
27 LightSquared debt purchases, the SLC's counsel (which was instructed to attend the bankruptcy  
28 proceedings), did not raise any objection. Nor did the SLC inform this Court of Ergen's  
completely inappropriate condition on DISH's bid. When Plaintiff expressed concern that  
Ergen's condition on DISH's bid could cause DISH to lose the opportunity to buy the valuable  
LightSquared spectrum, the SLC dismissed those concerns, representing to this Court that "*the  
release of the disallowance claim is not likely to have any material impact.*" Indeed, the SLC

<sup>5</sup> Given the SLC's "findings," Plaintiff was stunned to hear the SLC's counsel's recent request for additional time to investigate Plaintiff's claims.

1 even accused Plaintiff to be "playing really more into the hands of those who are opposing the  
2 opportunity of the company to buy valuable spectrum. And every step that they take along the  
3 way breaches their fiduciary duty, if you will, Your Honor, that they have to the other  
4 shareholders."

5 212. In sum, the flawed SLC has never wavered from its support for Ergen, never  
6 engaged with Plaintiff in an open dialogue, and never pursued money damages from Ergen and  
7 the Ergen-controlled directors for their disloyal acts in connection with Ergen's personal debt  
8 purchases.

9 **D. The Court Allows Discovery**

10 213. On October 14, 2013, the Court determined that, "given the relief sought in  
11 [Plaintiff's Motion for Preliminary Injunction], good cause exists for permitting the United  
12 expedited discovery sought by Plaintiff. Specifically, the Court ordered DISH to produce (i)  
13 documents relating to the work of the Special Transaction Committee; (ii) internal or outside  
14 financial analysis performed relating to the acquisition of LightSquared, its assets, or its debt  
15 instruments; (iii) documents relating to Howard's resignation from the Board; and (iv), Board-  
16 level documents relating to Ergen's acquisition of LightSquared debt, his bid for LightSquared's  
17 assets, DISH's rights vis-à-vis Ergen pertaining to his actions, and DISH's pursuit of  
18 LightSquared's assets. The Court further ordered that Plaintiff could depose (i) Ergen; (ii)  
19 Howard; (iii) Goodbarn; and (iv) Perella Weinberg in its capacity as financial advisor to the  
20 Special Transaction Committee.

21 214. The evidentiary record adduced through discovery, confirming and supporting  
22 Plaintiff's claims, laid bare the myriad ways in which Ergen and the Board breached their duties  
23 of loyalty to DISH and DISH's public shareholders, including by prematurely terminating the  
24 Transaction Committee. Although this record was completed by mid-November, 2013 and  
25 presented to the Court in papers filed on November 8, 19, and 20, 2013 and during a hearing on  
26 November 25, 2013, other than "interviews" of Goodbarn and Howard that Plaintiff believes  
27 were intended to intimidate them into recanting their sworn testimony, the SLC has still not  
28

1 genuinely investigated any claims against Ergen and the Ergen-controlled Board.

2 **E. The Court Enjoins Ergen from Interfering with the Renegotiation of a Release of**  
3 **LightSquared's Claims against Him**

4 215. On November 22, 2013, the US Trustee filed an omnibus objection to the releases  
5 in the various bankruptcy plans. The US Trustee made clear that in the absence of "unique"  
6 circumstances, bankruptcy releases could not cover non-debtor third parties, such as Ergen and  
7 SPSO. Thus, with respect to the Ad Hoc Secured Group's plan supporting DISH's stalking  
8 horse bid, the US Trustee objected to a definition of "released parties" that included non-debtor  
9 third parties, such as members of the Ad Hoc Secured Group (including SPSO) and their  
10 directors (such as Ergen). Specifically, the US Trustee objected to the following definition of  
11 Released Parties in the Ad Hoc Secured Group Plan:

12 (a) the LP Debtors, (b) *the Ad Hoc LP Secured Group* and each  
13 member thereof, (c) the Plan Sponsors, (d) the Stalking Horse Bid  
14 Parties, (e) the Purchaser, (f) each LightSquared LP Lender, (g) the  
15 Prepetition LP Facility Agent, (h) the present and former *directors*,  
16 officers, managers, equity holders, agents, successors, assignees,  
17 attorneys, accountants, consultants, investment bankers,  
18 bankruptcy and restructuring advisors, financial advisors of the  
19 parties listed in (a) through (g), in each case in their capacity as  
20 such, (i) *each of the respective affiliates of the parties listed in (a)*  
21 *through (h)*, in their capacity as such, and (j) any Person claimed  
22 to be liable derivatively through any of the foregoing; provided,  
23 however, that neither the Purchaser nor the LP Debtors shall be  
24 deemed to be a Released Party as against one another with respect  
25 to each such party's right to enforce the Asset Purchase Agreement  
26 against the other party.

27 216. Following the November 22, 2013 objection of the US Trustee, there should have  
28 been no doubt that Ergen and DISH would renegotiate the release in the Ad Hoc Secured Plan.

29 217. Later in the evening of November 22, LBAC (represented by Ergen's personal  
30 lawyers at Wilkie Farr) filed a statement in the Bankruptcy Court defending the parallel release  
31 in the asset purchase agreement, noting that the agreement contained "standard provisions" that  
32 "contemplate[] that LBAC will acquire the Debtors' causes of action and release of claims  
33 against LBAC and its affiliates."

34 218. The next business day, November 25, 2013, this Court heard argument on

1 Plaintiff's motion for an injunction. The Board Defendants and the SLC completely and  
2 unequivocally dismissed the possibility that Ergen could have a conflicting personal interest,  
3 instead arguing that independent market research from Citigroup showed that "DISH stock could  
4 go up 17 points -- up to 17 points if it completes this transaction because of the way the board has  
5 positioned the company to use the spectrum." (Nov. 25 Tr. at 122:5-9).

6 219. When Plaintiff explained that the release of LightSquared's claims against Ergen  
7 could nevertheless create a conflict of interest between Ergen (who wanted the release) and  
8 DISH (which wanted the spectrum), the SLC and Board Defendants strenuously disagreed. The  
9 SLC concluded (without having investigated the matter) that the provision was merely a standard  
10 release of affirmative claims that did not create any conflict of interest:

11 First of all let's look at the release provision in the asset purchase  
12 agreement . . . It's common in what's called 363 sales to have  
13 those types of provisions in an asset purchase agreement because  
14 both sides don't want to deal with claims afterwards. You want to  
15 be able to acquire the asset free and clear of all the liens. That's  
16 what 363 says. So that's why you have release provisions. That's  
not something new. *That is standard conduct, standard process  
when you're seeking to have a 363 sale. You want it free and  
clear of all the liens. You don't want to pay \$2.22 billion and  
then get sued later or have disruption of bankruptcy estate issues  
without the release.* (Nov. 25 Tr. at 86-87).

17 220. The Board also dismissed the relevance of the release, stating that it was  
18 "potentially worth, I don't know, a couple hundred million maybe if they even get there." (Nov.  
19 25 Tr. at 108:12-14).

20 221. During the hearing, the Court made clear that, although it would not grant all  
21 injunctive relief, the record to date supported breach of duty of loyalty claims that could not be  
22 dismissed, finding: "you've got loyalty issues that you're going to be able to allege and get past a  
23 motion to dismiss and probably a motion for summary judgment based on what I've seen."  
24 (Nov. 25 Tr. at 148:7-10).

25 222. Following the hearing, this Court enjoined Ergen and anyone working on his  
26 behalf (including Wilkie Farr) from negotiating the release that would extinguish  
27 LightSquared's claims against Mr. Ergen in the event of a successful sale of LightSquared's  
28 assets to DISH. Specifically, this Court enjoined "Charles Ergen or anyone acting on his behalf

1 ... from participation, including any review, comment or negotiations, related to the release  
2 contained in the Ad Hoc LP Secured Group Plan pending before the Bankruptcy Court for any  
3 conduct which was outside or beyond the scope of his activities related to DISH and LBAC."

4 223. By narrowly tailoring the injunction to apply only to Ergen and his  
5 representatives, the Court ensured that DISH's representatives (including Mr. Rugg and the  
6 lawyers at Sullivan & Cromwell) and the SLC (including Mr. Peek and the lawyers at Young  
7 Conaway Stargatt & Taylor, LLP) could contact LightSquared to restructure the release and  
8 carve out LightSquared's claims against Ergen and SPSO. Yet, after clamoring for months that  
9 it was essential for DISH to acquire LightSquared's spectrum and that Plaintiff should not be  
10 permitted to interfere with this critical corporate opportunity, neither the SLC nor counsel for  
11 DISH contacted the Ad Hoc Secured Group or LightSquared to restructure the release.

12 224. The only plausible inference from the SLC's and Board's refusal to take such  
13 obvious action is that Ergen did not want DISH or the SLC to restructure the release. Ergen  
14 could impose his will on the SLC because it was not independent. The members of the SLC and  
15 the other Director Defendants are beholden to Ergen, depend on him for their indemnification  
16 (including against claims raised by Ergen himself), and have continuously favored his personal  
17 interests over the interests of DISH. See §§ X.C and XI below.

18 **VL ERGEN TORPEDOES DISH'S WINNING BID WHEN LIGHTSQUARED PURSUES**  
19 **CLAIMS AGAINST HIM**

20 **A. Dish Is Poised to Win the Auction and Acquire LightSquared's Spectrum**

21 225. On September 10, 2013, LightSquared announced that it was forming a special  
22 committee of independent directors to lead the bidding and auction process for its spectrum  
23 assets, so that "there is no question that LightSquared's sale process is not aimed at elevating the  
24 interests of one stakeholder group over the interests of another." Exhibiting no shame or irony,  
25 after initially objecting to potential members of the LightSquared special committee who, as a  
26 result, were not included on the committee, Ergen eventually agreed that the LightSquared  
27 special committee and its experienced counsel at the law firm of Kirkland & Ellis were qualified  
28 and independent. The LightSquared special committee was formally approved by the

1 Bankruptcy Court and charged with maximizing the value of LightSquared, including by  
2 potentially selling LightSquared's spectrum.

3 226. Shortly thereafter, on September 30, 2013, the Bankruptcy Court approved  
4 DISH's \$2.22 billion bid as the stalking horse bid for an auction of LightSquared's spectrum, to  
5 be held in December 2013.

6 227. On October 29, 2013, the Bankruptcy Court dismissed Harbinger's lawsuit  
7 without prejudice and without reaching the merits of Harbinger's claims. Judge Chapman  
8 concluded that Harbinger was not a party to the LightSquared credit agreement and, therefore,  
9 had no standing to challenge Ergen's debt purchases. The Bankruptcy Court gave LightSquared  
10 – which was a party to the credit agreement – until November 15, 2013 to seek relief based on  
11 the same claims. The Bankruptcy Court cautioned LightSquared's special committee to  
12 determine "in the exercise of its business judgment and its fiduciary duty" whether it was in the  
13 best interest of the LightSquared estate to sue DISH over Ergen's debt purchases during the  
14 bidding process.

15 228. When the Bankruptcy Court dismissed Harbinger's lawsuit on October 29, 2013,  
16 the sales process was headed for an auction in early December where DISH's bid would serve as  
17 the stalking horse. Because DISH's \$2.22 billion bid was not contingent on obtaining FCC  
18 approval for the use of LightSquared's downlink spectrum giving interference problems with the  
19 adjacent GPS band (which DISH did not need to make its own spectrum more valuable because  
20 it would also be acquiring LightSquared's unimpaired uplink spectrum), the only impediment to  
21 DISH being successful in acquiring LightSquared's spectrum at the auction was any litigation  
22 claim by LightSquared.

#### 23 **B. Ergen Puts DISH's Bid at Risk to Protect His Personal Interests**

##### 24 **1. Ergen Threatens to Pull DISH's Bid if LightSquared Pursues Claims** 25 **Based on His Personal Debt Purchases.**

26 229. As LightSquared's special committee was contemplating whether to bring an  
27 action challenging Ergen's debt purchases, Ergen made it known through the Ad Hoc Secured  
28 Group that DISH may not be "locked-up" or otherwise committed to its \$2.22 billion stalking

1 horse bid, and that DISH was "free to walk at any time" because of "unresolved issues" in the  
2 purchase agreement that was approved by the Bankruptcy Court.

3 230. Ergen's threat was not successful. On November 15, 2013, LightSquared's  
4 special committee dismissed Ergen's threat as baseless in light of Bankruptcy Court orders  
5 approving LBAC as the stalking horse bidder. That day, LightSquared's special committee  
6 authorized LightSquared to pursue claims against Ergen and DISH based on allegations that  
7 Ergen's debt purchases violated the LightSquared credit agreement and that DISH was liable for  
8 tortious interference by assisting Ergen.

9 231. LightSquared's special committee did not authorize LightSquared to assert claims  
10 against DISH's 100% owned acquisition vehicle LBAC, a clear sign that the committee intended  
11 to continue with the auction for LightSquared's spectrum assets in early December.

12 **2. Ergen Conditions DISH's Bid on Receiving Full Payment of His Personal**  
13 **Purchases of LightSquared Debt.**

14 232. On November 25, 2013 -- the same day that the Defendants represented to this  
15 Court that the release was merely "standard process" in a sale pursuant to Section 363 of the  
16 Bankruptcy Code -- Ergen's lawyers at Willie Farr informed the Bankruptcy Court that DISH's  
17 bid for LightSquared spectrum assets was not only conditioned upon LightSquared's release of  
18 claims against Ergen, but also upon Ergen *being paid in full* on his personal claims for \$1 billion  
19 of LightSquared debt. As the Bankruptcy Court explained during a public hearing on December  
20 10, "it was clarified to me [one or two hearings ago] that, in fact, what the release means is not  
21 just a release of affirmative claims . . . but *it requires that the debt claim be allowed in full*,"  
22 (Dec. 10, 2013 Tr. at 49:1-6). In other words, Ergen's personal lawyers were threatening to  
23 terminate DISH's efforts to acquire LightSquared's spectrum as a punishment to LightSquared  
24 challenging even one dollar of Ergen's claims on his LightSquared debt investments. Counsel  
25 from Sullivan & Cromwell -- representing the Board -- was present when Willie Farr made that  
26 representation, yet said nothing to object or correct the record. Nobody affiliated with DISH  
27 crosses Ergen.

28 233. Without any objection from the Board or the SLC, Ergen continued to use DISH's

1 bid to protect his personal investment in LightSquared debt. As Judge Chapman noted on  
2 December 10, 2013 (two weeks after Ergen asserted that his personal claims needed to be paid in  
3 full or DISH would terminate its bid):

4  
5 The question is, why is a bid of DISH, which is a separate entity  
6 from SPSO -- say, the defendants -- why does the bid of DISH care  
7 about whether or not SPSO gets its claims in full? DISH has  
8 determined that it wants to pay 2.2 billion dollars for the spectrum.  
It shouldn't care what happens to that 2.2 billion dollars after it  
gets into the debtors' hands, whether or not -- whoever's claims are  
allowed. (Dec. 10 Tr. at 140:14-23).

9 234. The Bankruptcy Court expressed deep concern about DISH's suddenly disclosed  
10 condition that its bid was conditioned on Ergen receiving full payment on his personal debt  
11 claims. However, with counsel for DISH's Board present, Wilkie Farr confirmed the November  
12 25 representation that DISH was conditioning its bid to acquire LightSquared's spectrum on  
13 Ergen's debt claims being allowed in full:

14 The Court: The facts on the ground are that *this bid, as I*  
15 *understand it, requires that the claim be allowed in*  
16 *full.* That's what -- I mean, if that's not the case,  
somebody ought to tell me. I keep asking the same  
question over and over again. . .

17 Ms. Strickland: You are correct.  
18 (Dec. 10 Tr. at 139:25-140:12).

19 235. Counsel representing DISH's Board was again present and again did not dispute  
20 that DISH's bid was conditioned on Ergen being paid on all his debt claims.

21 236. As of the November 25 and December 10 hearings, DISH was the only bidder for  
22 LightSquared spectrum and had a court-approved stalking horse bid to purchase those assets for  
23 \$2.22 billion at the auction that was scheduled for the next day. However, no one representing  
24 the SLC or the Board contacted the Ad Hoc Secured Group or LightSquared's special committee  
25 to carve out LightSquared's claims against Ergen and SPSO from the release so that DISH could  
26 acquire the strategically important spectrum assets with an estimated value to DISH of \$7.085  
27 billion.  
28



1           237. Following Willkie Farr's threat (made with the imprimatur of speaking for LBAC  
2 and in contravention of this Court's injunction and unambiguous orders), the Bankruptcy Court  
3 sustained LightSquared's claims against Ergen and DISH, including the claim that DISH was  
4 liable for tortiously interfering the LightSquared credit agreement by assisting Ergen with his  
5 personal debt purchases. The Bankruptcy Court scheduled a trial on these claims starting  
6 January 9, 2014.

7                   **3. LightSquared's Special Committee Cancels the Auction Because It Does**  
8                   **Not Want to Give up LightSquared's Claims against Ergen**

9           238. On December 11, 2013, no other potential bidder had emerged. DISH was poised  
10 to win the auction and acquire LightSquared's spectrum assets for \$2.22 billion. Ergen attended  
11 the auction with representatives of the SLC (Defendant Brokaw) and the Board (Defendant  
12 Vogel). Officer Defendants Cullen and Dodge were also present.

13           239. The SLC and the Board were acutely aware that the most important impediment  
14 to LightSquared's special committee allowing the auction to close with DISH as its winner was  
15 the concurrent release of LightSquared's pending claims against Ergen. Defendants Brokaw and  
16 Vogel were present at the auction the day after their counsel had heard Ergen's lawyers confirm  
17 to Judge Chapman that DISH's bid was conditioned on Ergen's personal claims being paid in  
18 full.

19           240. Again, and in bad faith, the SLC and Board would do nothing even potentially  
20 adverse to Ergen, much less protect DISH's public shareholders. Counsel for LightSquared's  
21 special committee observed that DISH's representatives insisted on conditioning DISH's bid on  
22 the committee dropping LightSquared's claims against Ergen:

23                   It was as if there was intentionally a foot kept behind the line and  
24                   you went to the special committee and said *you've got to turn your*  
25                   *back on the topic of the lawsuit. You have to turn your back on*  
26                   *what your concerns are with this bid or we have the right to pull.*  
27                   *In other words, you don't have the option of keeping the bid and*  
28                   *digging on the litigation.* (Jan. 22, 2014 Tr. at 63:12-18).

26           241. Faced with this choice -- and after just having its claims against Ergen sustained --  
27 LightSquared's special committee refused to give up the claims against Ergen and canceled the  
28

1 auction. As counsel for LightSquared's special committee explained to Judge Chagman, the  
2 threatened release of LightSquared claims against Ergen and SPSO was a "very big factor" in the  
3 cancellation of the auction. Had the SLC or the Board simply honored their fiduciary duties to  
4 DISH and its public shareholders and carved out LightSquared's claims against Ergen and SPSO  
5 from the release (even at the auction itself), DISH would have acquired the increasingly valuable  
6 LightSquared spectrum for \$2.22 billion on December 11, 2013.

7 242 But the SLC and the Board would not and will not cross Ergen. By consciously  
8 elevating Ergen's personal interests in LightSquared debt purchases over DISH's interests in  
9 acquiring LightSquared spectrum, the SLC and the other Director Defendants breached their  
10 duties of loyalty to DISH and DISH's public shareholders.

11 **C. The SLC and the Board Misinform this Court that DISH's Bid is Not Conditioned**  
12 **on Ergen Receiving Payment on his Personal Claims**

13 243. On December 19, 2013, this Court heard Plaintiff's request to clarify the terms of  
14 the Court's injunction. Plaintiff raised a concern that Ergen's personal lawyers at Wilkie Farr  
15 had threatened the Bankruptcy Court that DISH's wholly-owned special purpose vehicle, LBAC,  
16 would withdraw the \$2.2 billion stalking horse bid for LightSquared spectrum if Ergen did not  
17 receive payment in full on his personal claims for \$1 billion of LightSquared debt.

18 244. The SLC, the Board and Ergen each represented that Ergen and DISH had a  
19 compelling interest in the opportunity to acquire LightSquared's spectrum assets and flatly  
20 denied that DISH had ever threatened to pull its bid if Ergen was not paid in full. For example,  
21 counsel for the SLC represented to this Court:

22 I'm troubled that the Court has concerns and the presentation that  
23 was made by Mr. Boschee about the fact that DISH said that it  
24 would pull its bid if the release is changed. *That never -- that*  
25 *didn't happen. . . .*

26 Well the Judge saying that that release has what, the release has the  
27 effect of doing that. But nobody from DISH said that. So that's --  
28 I want to make that clear.

29 245. Rather than expressing concern that the conduct of Ergen's lawyers at Wilkie  
30 Farr in connection with the Bankruptcy Proceedings could harm DISH, the SLC's counsel went

1 so far as to accuse Plaintiff "to be playing really more into the hands of those who are opposing  
2 the opportunity of the company to buy valuable spectrum." As described herein, the SLC lacked  
3 independence, and it was not going to start crossing Ergen (or his lawyers) now.

4 246. Counsel for the Board also denied that DISH ever threatened to pull its bid unless  
5 Ergen not received full payment on his personal debt claims: "*Nobody's ever made a threat to*  
6 *withdraw the bid.*" (Dec. 19 Tr. at 17:3-4.).

7 247. Counsel for Ergen repeated the representations of the SLC and the Board,  
8 claiming that:

9 this is really just someone defending their client in an adversary  
10 proceeding . . . And wasn't we're imposing a condition, we're  
going to withdraw the bid. You know, it had nothing to do with  
that.

11 (Dec. 19 Tr. at 20:13-14, 22:18-20).

12 248. Counsel's representations to this Court were false. While counsel was telling this  
13 Court that LBAC's bid for LightSquared spectrum was unaffected by Ergen's personal interests  
14 and on track to succeed, Defense counsel were laying the groundwork for LBAC to, in fact,  
15 withdraw its bid for LightSquared spectrum unless Ergen received full payment on his personal  
16 investment in LightSquared debt. Indeed, the threat to withdraw LBAC's bid caused Judge  
17 Chapman to schedule a two-phase trial, starting with the "adversary proceedings" to determine  
18 whether Ergen's personal claims (through his wholly-owned entity SPSCO) would be  
19 subordinated or disallowed before a second "plan confirmation" phase to determine which  
20 bankruptcy plan, if any, would be confirmed. As Judge Chapman explained on January 22,  
21 2014:

22 it was clearly conveyed to me that we had to resolve the adversary  
23 in order to be able to tee up confirmation of the plan and the bid  
24 *because we had to deal with the release.* So in a case where no  
one can agree on anything everybody seemed to agree that we had  
to deal with the SPSCO litigation first.

25 **D. The SLC and the Board Ignore this Court's Admonitions and Allow Ergen's**  
26 **Counsel to Represent LBAC in the Bankruptcy Proceedings**

27 249. During the December 19, 2013 hearing, this Court made clear its overriding goal  
28

1 of making sure that DISH would be able to buy LightSquared's spectrum assets. As the Court  
2 observed: "I think my goal and the bankruptcy judge's goal may be in tune. My goal is to let  
3 DISH, if it has an ability to, to buy that spectrum asset because it is the benefit of the company.  
4 Her goal is to maximize the return of the bankruptcy estate."

5 250. The Court further understood that Ergen's personal interest in the release of  
6 LightSquared's claims at issue in the adversary proceedings conflicted with DISH's interest in  
7 purchasing the LightSquared spectrum assets through LBAC. After learning that Willkie Farr  
8 had continued to represent LBAC in the Bankruptcy Court following the this Court's injunction,  
9 making representations about the scope of the release, the Court made clear on December 19 that  
10 Ergen and his personal counsel at Willkie Farr should not be managing LBAC's conduct in the  
11 adversary proceedings:

12 The Court: you've got to figure out a way for the lawyers for the  
13 company to be the people who are the ones taking the laboring  
14 oar and the majority responsibility. You cannot allow Mr.  
15 Strickland and Mr. Dugan to be the ones who are taking the  
16 laboring oar, because a large part of this adversary proceeding  
relates to the company's incestuous relationship with Mr.  
Ergen ...

17 Mr. Rugg: I understand that, and I believe that's what's going to happen.  
18 I will make sure that that message is delivered, that that is  
19 what's going to happen going forward, and I believe it's  
actually already happening on the bankruptcy side of the case  
... (Dec. 19, 2014 Tr.) at 30:10-16; 21-25

20 251. The SLC also understood the importance of the Court's clear instructions. As the  
21 SLC's counsel stated before the Court: "I understand what you are doing is you're sending a  
22 message to me and to Mr. — well, the three of us on this side of the V is that, gentlemen, you  
23 know, be careful and instruct these lawyers in New York to be careful about the way they're  
24 making their presentations." (Dec. 19, 2014 Tr. at 28:18-22).

25 252. Ignoring the Court's clear warnings and counsel's solemn promises to this Court,  
26 Willkie Farr took the "laboring oar" in representing LBAC throughout the adversary  
27 proceedings. Indeed, Willkie Farr — *not* counsel for DISH or the SLC — appeared for LBAC  
28 throughout the adversary proceedings from December 30, 2013 through March 31, 2014, as

shown by the following table:

Bankruptcy Hearing Date	Appearance for L-Band Acquisition ("LBAC")	Appearance for DISH
December 30, 2013	Willkie Farr	n/a
January 9, 2014	Willkie Farr	Sullivan & Cromwell
January 10, 2014	Willkie Farr	Sullivan & Cromwell
January 13, 2014	Willkie Farr	Sullivan & Cromwell
January 15, 2014	Willkie Farr	Sullivan & Cromwell
January 16, 2014	Willkie Farr	Sullivan & Cromwell
January 17, 2014	Willkie Farr	Sullivan & Cromwell
January 22, 2014	Willkie Farr	Sullivan & Cromwell
January 31, 2014	Willkie Farr	Sullivan & Cromwell
February 11, 2014	Willkie Farr	Sullivan & Cromwell
February 24, 2014	Willkie Farr	n/a
March 17, 2014	Willkie Farr	Sullivan & Cromwell
March 19, 2014	Willkie Farr	n/a
March 20, 2014	Willkie Farr	n/a
March 24, 2014	Willkie Farr	n/a
March 25, 2014	Willkie Farr	n/a
March 26, 2014	Willkie Farr	n/a
March 27, 2014	Willkie Farr	n/a
March 28, 2014	Willkie Farr	n/a
March 31, 2014	Willkie Farr	n/a

#### E. Ergen Pulls DISH's Winning Bid

253. On January 7, 2014 – two days before commencement of the trial in the adversary proceeding against Ergen – LBAC gave notice of termination of the PSA to the Ad Hoc Secured Group, effective January 10, 2014. When the Ad Hoc Secured Group informed the Bankruptcy Court that it would sue LBAC for specific performance of the PSA, Willkie Farr filed a declaratory judgment action requesting a finding that LBAC “could not be compelled to proceed with funding and consummation of the LBAC bid.” Willkie Farr also filed the reply brief in further support of a declaration that LBAC had properly terminated the PSA.

254. The SLC and the Board knew in advance that Ergen was planning to terminate the PSA. Despite their representations in this Court on December 19, 2013 that LightSquared’s spectrum was an extremely valuable opportunity for DISH, the SLC and the Board did nothing to prevent Ergen from pulling DISH’s bid.

255. The notice of termination of the PSA did not terminate LBAC’s bid for

1 LightSquared's spectrum. DISH could have continued to pursue LBAC's bid independently  
2 with support from the Ad Hoc Secured Group, which opposed the termination. Thus, the SLC  
3 and the Board had ample opportunity to make sure that DISH acquired LightSquared's spectrum  
4 assets. They deliberately did not do so, as that would have required crossing Ergen.

5 256. On January 22, 2014, the Bankruptcy Court heard argument on LBAC's  
6 termination of the PSA. At the outset, Judge Chapman noted that termination of the PSA did not  
7 terminate LBAC's bid and that, as far as the Court could tell, LBAC was still offering to pay  
8 \$2.22 billion for LightSquared's spectrum assets. As the Bankruptcy Court observed: "I don't  
9 think it is appropriate for me to be in the position to effectuate or effect the withdrawal or the  
10 termination of the bid. That's something the bidder has to do under the operative agreements."  
11 In response, *Ergen's lawyers at Wilkie Farr withdrew DISH's bid*, stating: "[t]he stalking horse  
12 bidder hereby withdraws its bid." Counsel for the Board was present at the hearing, yet said  
13 nothing.

14 257. Ergen asserted that LBAC's bid was withdrawn because of a "technical issue"  
15 with the LightSquared spectrum. This, too, was false. DISH's engineers were informed by  
16 multiple telecommunications firms, including Huawei (the largest telecommunications  
17 equipment manufacturer in the world) and Avago Technologies, that the purported "technical  
18 issue" was not an impediment to the use of LightSquared's uplink spectrum.

19 258. Extensive testimony in the Bankruptcy Court confirmed that the purported  
20 "technical issue" was merely a pretext. Judge Chapman concluded that John Ragweiler of  
21 Sublime Wireless -- a professional engineering firm that provides communications services for  
22 operators and equipment providers such as Sprint, Samsung and AT&T -- provided "credible and  
23 compelling testimony that *the 'technical issue' is unlikely to exist at all and that, even if it did*  
24 *exist, technology is available today that can eliminate the problem, rendering it a non-issue.*"  
25 (Confirmation Op. at 33).

26 259. Ergen's testimony in the Bankruptcy Court further undermined the purported  
27 importance of the "technical issue." As Judge Chapman determined:

28 [Ergen's] testimony with respect to actions taken by DISH with

1 respect to the "technical issue" supports the conclusion that once it  
2 was allegedly "identified" by DISH, there was no meaningful  
3 effort made to identify a solution that would preserve the billions  
4 of dollars in value that DISH would realize via consummation of  
5 the DISH/LBAC bid. This defies common sense. Mr. Ergen's  
6 testimony on this point was not credible. (Confirmation Op. at 21).

#### 7 VII. CURRENT STATE OF THE BANKRUPTCY PROCEEDINGS

8 260. On May 8, 2014, the Bankruptcy Court issued oral rulings from the bench  
9 regarding confirmation of LightSquared's proposed bankruptcy plan and resolving the pending  
10 adversary proceeding to be superseded by later, written rulings. At the conclusion of the May 8,  
11 2014 session, the Bankruptcy Court told the parties that, if they were unable to reach agreement,  
12 United States Bankruptcy Judge Robert D. Drain would serve as a mediator, working with the  
13 parties in an attempt to resolve the Bankruptcy Proceedings.

14 261. When the parties did not resolve the Bankruptcy Proceedings in a timely manner,  
15 Judge Drain stepped in as a mediator. On June 27, 2014, Judge Drain issued a Mediator's  
16 Memorandum indicating that, due to Defendant Ergen's intransigence, the parties were unable to  
17 resolve the Bankruptcy Proceedings. Specifically, Judge Drain, a sitting federal Bankruptcy  
18 Judge, stated that:

19 *SPSO/Charles Ergen have not participated in the mediation in  
20 good faith and have wasted the parties' and the mediator's time  
21 and resources. I understand the seriousness of this assertion; it is  
22 unique in my experience as a mediator in a field where the parties  
23 are known to assert their positions aggressively and sharp elbows  
24 in negotiations, although not welcome, are tolerated*

25 262. After Judge Drain issued his June 27, 2014 report, the parties continued to meet  
26 with Judge Drain in further attempts to resolve the pending Bankruptcy Proceedings. On July  
27 14, 2014, Judge Drain filed an additional report indicating that Ergen and SPSO had reached an  
28 agreement with the other parties on a plan for LightSquared. Notably, the agreed-upon plan,  
with an effective date of February 15, 2013, guarantees that Ergen will be paid in full on his  
personal debt purchases, resulting in \$150 million in profit plus a significant amount of interest.  
In addition, under the terms of the plan, SPSO will invest an additional \$300 million in  
LightSquared, which appears to be another personal investment for Ergen that was not presented  
to DISH. The "technical issue" that purportedly caused DISH to terminate its bid is apparently

1 not so significant as to prevent Ergen from investing an additional \$300 million in LightSquared.  
2 Thus, the only loser in the entire process was DISH, while Ergen has come out handsomely.

3 263. A confirmation hearing is scheduled for August 25, 2014.

#### 4 VIII. BANKRUPTCY COURT FINDINGS

5 264. The Bankruptcy Court conclusively decided numerous issues that were actively  
6 litigated during the adversary proceeding and the plan confirmation hearing against Ergen and  
7 the other DISH Director Defendants.

8 265. *First*, based on extensive briefing and after hearing weeks of live testimony, the  
9 Bankruptcy Court conclusively established that LightSquared's spectrum is worth billions of  
10 dollars to DISH. A July 8, 2013 presentation by Mr. Ergen to the Board noted that the total  
11 value of LightSquared's assets to DISH is approximately \$7.085 billion. This value included: (i)  
12 the increase in value of DISH's existing spectrum that would flow from DISH's acquisition of  
13 LightSquared spectrum, which would permit unusable and impaired uplink AWS-4 spectrum to  
14 be converted to downlink; and (ii) the stand-alone value of LightSquared's spectrum itself (in  
15 particular the 20 MHz of unimpaired downlink spectrum). Indeed, the mere acquisition of  
16 LightSquared's spectrum would increase the value of DISH's pre-existing spectrum by  
17 approximately \$2.308 billion (causing Judge Chapman to remark that the spectrum represented a  
18 "freebie" for DISH in light of its \$2.22 billion bid).

19 266. *Second*, Ergen used DISH resources and his position as DISH's Chairman to  
20 purchase LightSquared debt for his personal profit. Ergen focuses on the strategic direction of  
21 DISH and has broad authority to lead strategic acquisitions of spectrum assets for the Company.  
22 (Post Trial Findings at §§ 96- 98). Ergen used DISH's Treasurer, Defendant Kiser, to arrange  
23 Ergen's personal trades in LightSquared debt by, among other things, compiling information  
24 about LightSquared's spectrum and capital structure, directing Ketchum and Sound Point to  
25 create SPSO, placing the orders for the amount and pricing of the debt, and arranging to provide  
26 the funds to close the deals. (Post Trial Findings at §§ 7, 44.).

27 267. *Third*, Ergen used his control over DISH's Board to protect his personal  
28 investment in LightSquared debt. As the Bankruptcy Court found, "[f]rom his stunning lack of



1 candor with the DISH Board and management to the stonewalling and disbanding of the special  
2 committee, the message is loud and clear. *No one crosses or even questions the actions of the*  
3 *chairman.* Charles Ergen is, in every sense, the controlling shareholder of DISH and wields that  
4 control as he sees fit.” (May 6, 2014 Tr. at 51:24-52:4).

5 268. By making a personal \$2 billion bid for LightSquared spectrum, Ergen “staked  
6 out the territory with a bid that would ensure that he, as a substantial holder of [LightSquared]  
7 debt, would be paid in full, and no one was interested in making him unhappy by altering that.”  
8 The Bankruptcy Court found in this regard that “[g]iven the control Mr. Ergen exercised over the  
9 DISH board, as evidenced, in particular, by his bullying of the special committee, it is clear that  
10 Mr. Ergen believed that after making the LBAC bid he could and would get DISH to step in as  
11 purchaser.” (May 8, 2014 Tr. at 43:12-16).

12 269. *Fourth*, DISH’s outside counsel at Sullivan & Cromwell believed that DISH  
13 could purchase LightSquared debt through an affiliate, just like Ergen. As the Bankruptcy Court  
14 stated, “[w]hen asked by the Court if an affiliate of DISH could have purchased [LightSquared]  
15 debt without running afoul of the credit agreement, counsel for DISH agreed ‘based on the words  
16 of the contract.’” Moreover, if DISH had acquired LightSquared debt through an affiliate, such  
17 as SPSO, DISH’s claim would not have been disallowed under the Bankruptcy Code because the  
18 LightSquared credit agreement did not expressly provide that any breach of the contract, such as  
19 an assignment in violation of the agreement, would render the assignment void or invalid. (Post  
20 Trial Findings at 134).

21 270. *Fifth*, Ergen, Kiser, Cullen and Dodge deliberately did not inform the Board that  
22 Ergen was purchasing LightSquared debt until after Ergen had placed his final trade. As the  
23 Bankruptcy Court found:

- 24 \* Ergen never informed the Board about his personal debt purchases until Ergen’s  
25 May 2, 2013 presentation identifying the possibility of buying LightSquared. (Post Trial Findings at ¶ 111).
- 26 \* Despite his significant and prolonged assistance of Ergen, Defendant Kiser never  
27 informed the Board about Ergen’s debt purchases. (Post Trial Findings at ¶¶ 100-  
28 118).

- Defendant Cullen testified that when he learned that Mr. Ergen was buying the LP Debt: (i) he did not ask Ergen why DISH was not buying the debt, (ii) he did not ask in-house counsel whether there was an issue with Ergen making a personal investment in the debt, and (iii) he did not take any steps to determine whether Ergen's purchases were a corporate opportunity. (Post Trial Findings at ¶ 121).
- After Ergen informed Defendant Dodge that there might be some truth to news reports about his personal debt purchases, Dodge made no further inquiry and did not inform the Board about the corporate opportunity that was potentially implicated by Ergen's debt purchases. (Post Trial Findings at ¶ 114).

271. *Sloth*, the Board consciously did not protect the interests of DISH and DISH's public shareholders against Ergen's conflicting personal interests. Upon learning of Ergen's personal bid, "no member of the boards of directors or management of DISH or EchoStar formally objected to Mr. Ergen[] having made a personal bid for LightSquared's assets." (May 8, 2014 Tr. at 30:24-31:1). Indeed, "the apparent attitude of members of the DISH board and senior management that *where Mr. Ergen was concerned, it was better not to ask a lot of questions and to let him conduct his business as he saw fit.*" (May 8, 2014 Tr. at 21:20-23).

272. The Board allowed Ergen to consciously and repeatedly violate the May 8, 2013 resolutions that were put in place to protect DISH and DISH's public shareholders from Ergen's personal interests. The May 8 resolutions vested in the Transaction Committee the power and authority to review and evaluate any potential conflicts of interest arising out of Ergen's personal debt purchases, and to negotiate definitive agreements with the parties concerning the terms and conditions of the potential bid. However, as the Bankruptcy Court found:

As it turned out, such resolutions were not worth the paper they were written on. *The evidence reveals that these board resolutions were quickly and flagrantly disregarded.* Despite being in existence for three months, the special committee was forced to work under a compressed timetable because of Mr. Ergen's interference with their ability to begin their task. . . .

Furthermore, although the role of the special committee included evaluating any potential conflicts of interest, the repeated requests of the committee to Mr. Ergen for information regarding his [LightSquared] trade debts were ignored, and *Mr. Ergen never provided the committee with the requested schedule of his trades.*

<sup>6</sup> Ex. 3 (May 8, 2014 Tr.) at 32:11-17; 34:19 (emphasis added).

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF DISH NETWORK  
DERIVATIVE LITIGATION.

JACKSONVILLE POLICE AND FIRE  
PENSION FUND, Appellant,

v.

GEORGE R. BROKAW, et al., Respondents.

No. 69012

DOCKETING STATEMENT  
CIVIL APPEALS

Electronically Filed  
Nov 10 2015 08:37 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Judicial District Department XI  
County Clark County Judge Elizabeth Gonzalez  
District Ct. Case No. A686775

**2. Attorney filing this docketing statement:**

Attorney Jeff Silvestri Telephone 702-873-4100  
Firm McDonald Carano Wilson LLP  
Address 2300 W. Sahara Avenue, Suite 1200  
Las Vegas, NV 89102

Client(s) Jacksonville Police and Fire Pension Fund

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney J. Stephen Peek Telephone 702-669-4600  
Firm Holland & Hart LLP  
Address 9555 Hillwood Drive, 2nd Floor  
Las Vegas, NV 89134

Client(s) George R. Brokaw, Charles M. Lillis, and Tom A. Ortolf (the DISH Network SLC)

Attorney Joshua H. Reisman, Esq. Telephone 702-727-6258  
Firm Reisman Sorokac  
Address 8965 South Eastern Avenue, Suite 382  
Las Vegas, NV 89123

Client(s) Charles W. Ergen and Cantey M. Ergen

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:                                       |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                    |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>Defer to judgment of SLC</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification              |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                          |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

This shareholder derivative action was brought against DISH's controlling shareholder Charles Ergen for breach of the duty of loyalty and unjust enrichment; and against certain of DISH's directors and officers for breach of the duty of loyalty. Plaintiff alleged that by abusing his position as DISH's controlling stockholder, Ergen is set to reap approximately \$800 million in personal profits from an investment in the debt of bankrupt spectrum company LightSquared. Plaintiff also alleged that DISH lost the opportunity to purchase assets worth billions of dollars that DISH could have acquired at a lower price but for Ergen's interference to protect his personal investment in LightSquared. In response to Plaintiff's suit, the DISH Board formed a Special Litigation Committee and filed a motion to defer to its determination to dismiss the action. Plaintiff presented triable evidence that the SLC and its recommendation did not meet the standards for independence, thoroughness and good faith to merit judicial deference. The District Court granted the SLC's motion on July 16, 2015. The SLC entered its findings of fact and conclusions of law on September 18, 2015, and Judgment entered on October 20, 2015. All other motions were denied as moot.

**9. Issues on appeal.** State specifically all issues in this appeal (attach separate sheets as necessary):

1. Did the District Court fail to properly apply the governing legal standards concerning a Special Litigation Committee ("SLC") when ruling on the SLC's motion for the District Court to defer to the SLC's conclusion that Plaintiff's claims should be dismissed?
2. Did the District Court err in making certain contested factual determinations given the motion's procedural posture?
3. Did the District Court improperly disregard material evidence relevant to the questions before the District Court concerning the SLC's independence and the thoroughness and good faith of its investigation?

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This Court has not yet ruled on the standard for the court to abdicate its jurisdiction over a facially meritorious shareholder suit in favor of the SLC's desire to dismiss. Whether and when the court will defer to an SLC will affect who incorporates in Nevada, who invests in Nevada companies, and what protections those investors receive.

**13. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

Was it a bench or jury trial? N/A

**14. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?  
N/A

## TIMELINESS OF NOTICE OF APPEAL

**15. Date of entry of written judgment or order appealed from** Sep 18, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

**16. Date written notice of entry of judgment or order was served** Oct 2, 2015

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail



**18. Date notice of appeal filed** Oct 12, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order: Plaintiff appeals from a final judgment entered in the trial court below, which was the court in which the proceeding commenced.

**21. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff Jacksonville Police and Fire Pension Fund; Nominal Defendant DISH Network Corporation; Defendants Charles W. Ergen, Cantey M. Ergen, George R. Brokaw, Charles M. Lillis, Tom A. Ortolf, James DeFranco, David K. Moskowitz, Carl E. Vogel, Thomas A. Cullen, Kyle J. Kiser, R. Stanton Dodge, Steven R. Goodbarn

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other:

Plaintiff Jacksonville Police & Fire Pension Fund and Defendant Steven R. Goodbarn submitted a stipulation and order dismissing Goodbarn from the case on October 1, 2013, providing also that Goodbarn is subject to discovery as if he were a party to the action. The District Court entered that order on October 10, 2013

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff Jacksonville Police and Fire Pension Fund's derivative claims:

Two claims for breach of loyalty against Ergen; breach of loyalty against the Board; breach of loyalty against DISH officers; and unjust enrichment against Ergen

**23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☒ Yes

☐ No

**24. If you answered "No" to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order


## VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jacksonville Police & Fire Pension Fund  
Name of appellant

11/9/15  
Date

Jeff Silvestri  
Name of counsel of record

  
Signature of counsel of record

Clarks  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 9th day of November, 2015, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

See attached.

Dated this 9th day of November, 2015

  
Signature



**3. List of Additional Counsel:**

Amanda C. Yen  
Debbie Leonard  
McDonald Carano Wilson LLP  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, NV 89102

Brian W. Boschee  
William N. Miller  
Holley, Driggs, Walch, Fine, Wray, Puzey  
& Thompson  
400 South Fourth Street, Third Floor  
Las Vegas, NV 89101

Mark Lebovitch (*admitted pro hac vice*)  
Jeroen Van Kwawegen (*admitted pro hac vice*)  
Adam D. Hollander (*admitted pro hac vice*)  
Alla Zayenchik (*pro hac vice application to be submitted*)  
Bernstein Litowitz Berger & Grossmann LLP  
1285 Avenue of the Americas, 38<sup>th</sup> Floor  
New York, NY 10019

*Attorneys for Appellants Jacksonville Police and Fire Pension Fund*

Robert J. Cassity  
Holland & Hart LLP  
9555 Hillwood Drive, 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

Holly Stein Sollod (*admitted pro hac vice*)  
Holland & Hart LLP  
555 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80202

David C. McBride (*admitted pro hac vice*)  
Robert S. Brady (*admitted pro hac vice*)  
C. Barr Flinn (*admitted pro hac vice*)  
Young, Conway, Stargatt & Taylor, LLP  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801

*Attorneys for George R. Brokaw, Charles M. Lillis, and Tom A. Ortolf (the Special Litigation Committee of DISH Network Corporation)*

Robert R. Warns III  
Reisman Sorokac  
8965 South Eastern Avenue, Suite 382  
Las Vegas, NV 89123

James C. Dugan (*admitted pro hac vice*)  
Tariq Mundiya (*admitted pro hac vice*)  
Willkie, Farr & Gallagher, LLP  
787 Seventh Avenue  
New York, NY 10019

*Attorneys for Charles W. Ergen and Cantey M. Ergen*

Kirk B. Lenhard  
Jeffrey S. Rugg  
Brownstein Hyatt Faber Schrek  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

Brian T. Frawley (*admitted pro hac vice*)  
Sullivan & Cromwell, LLP  
125 Broad Street  
New York, NY 10004-2498

*Attorneys for James DeFranco, David K. Moskowitz, Carl E. Vogel and (in their capacity as Director Defendants) George R. Brokaw, Charles M. Lillis, and Tom A. Ortolf*

James J. Pisanelli  
Debra L. Spinelli  
Pisanelli Bice PLLC  
400 South 7<sup>th</sup> Street, Suite 300  
Las Vegas, NV 89101

Bruce R. Braun (*admitted pro hac vice*)  
Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603

*Attorneys for Thomas A. Cullen, Kyle J. Kiser, and R. Stanton Dodge*





JEFF SILVESTRI, ESQ. (NBN 5997)  
Email: [jsilvestri@mcdonaldcarano.com](mailto:jsilvestri@mcdonaldcarano.com)  
AMANDA C. YEN, ESQ. (NBN 9726)  
Email: [ayen@mcdonaldcarano.com](mailto:ayen@mcdonaldcarano.com)  
DEBBIE LEONARD, ESQ. (NBN 8620)  
Email: [dleonard@mcdonaldcarano.com](mailto:dleonard@mcdonaldcarano.com)  
McDONALD CARANO WILSON LLP  
2300 W. Sahara Avenue, Suite 1200  
Las Vegas, NV 89102  
Telephone: 702.873.4100  
Facsimile: 702.873.9966

BRIAN W. BOSCHKEE, ESQ. (NBN 7612)  
E-mail: [bboschkee@nevadafirm.com](mailto:bboschkee@nevadafirm.com)  
WILLIAM N. MILLER, ESQ. (NBN 11658)  
E-mail: [wmiller@nevadafirm.com](mailto:wmiller@nevadafirm.com)  
HOLLEY, DRIGGS, WALCH,  
FINE, WRAY, PUZEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: 702.791.0308

MARK LEOVITCH (*admitted pro hac vice*)  
Email: [markL@blbgllaw.com](mailto:markL@blbgllaw.com)  
JEROEN VAN KWA WEGEN (*admitted pro hac vice*)  
Email: [jeroen@blbgllaw.com](mailto:jeroen@blbgllaw.com)  
ADAM D. HOLLANDER (*admitted pro hac vice*)  
Email: [adam.hollander@blbgllaw.com](mailto:adam.hollander@blbgllaw.com)  
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP  
1285 Avenue of the Americas, 38<sup>th</sup> Floor  
New York, NY 10019  
Telephone: 212.554.1400  
*Attorneys for Jacksonville Police and Fire Pension Fund*

IN THE SUPREME COURT OF  
THE STATE OF NEVADA

IN THE MATTER OF DISH NETWORK  
DERIVATIVE LITIGATION.

Supreme Court No. 69012  
District Court Case No. A-13-686775-B

JACKSONVILLE POLICE AND FIRE  
PENSION FUND,

Appellant,

vs.

GEORGE R. BROKAW; CHARLES M.  
LILLIS; TOM A. ORTOLF; CHARLES W.  
ERGEN; CANTEY M. ERGEN; JAMES  
DEFRANCO; DAVID K. MOSKOWITZ;  
CARL E. VOGEL; THOMAS A. CULLEN;  
KYLE J. KISER; AND R. STANTON DODGE,

Respondents.

CERTIFICATE OF SERVICE OF  
DOCKETING STATEMENT

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP and that on the 9th day of November, 2015, I caused a true and correct copy of the foregoing **DOCKETING STATEMENT** via US Mail, postage prepaid, as no notice was electronically mailed to those listed below, upon the following:

Mary Warren  
Emily Burton  
Zachary Madonia  
Bruce Braun  
Brian Frawley  
Tariq Mundiya  
James Dugan  
C. Flinn  
Robert Brady  
David McBride  
Mark Lebovitch  
Holly Sollod  
Alla Zayenchik  
Adam Hollander  
Jeroen Van Kwawegen  
Ara Shirinian  
Robert Warns



An employee of McDonald Carano Wilson LLP