

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
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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 Brokaw, 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 L.

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 prejudge the merits of
13 Plaintiff's claims and the outcome of its purported investigation. Orloff had a 35-year long
14 relationship with Ergen through numerous business and social ventures. Moreover, Orloff's
15 children were employed by DISH at the pleasure of Ergen. The SLC and Orloff 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 Brokaw, had selected Carmey 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 Goodham 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 Meskowitz. 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 233:23-234:3).

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).⁵

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 conditional 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

⁵ 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 limited
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) Goodburn; and (iv) Perella Weinberg in-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 Goodburn and Howard that Plaintiff believes
27 were intended to intimidate them into recanting their sworn testimony, the SLC has still not
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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 Stalling 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, assigns,
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

20 216. Following the November 22, 2013 objection of the US Trustee, there should have
21 been no doubt that Ergen and DISH would renegotiate the release in the Ad Hoc Secured Plan.

22 217. Later in the evening of November 22, LBAC (represented by Ergen's personal
23 lawyers at Wilkie Farr) filed a statement in the Bankruptcy Court defending the parallel release
24 in the asset purchase agreement, noting that the agreement contained "standard provisions" that
25 "contemplate[] that LBAC will acquire the Debtors' causes of action and release of claims
26 against LBAC and its affiliates."

27 218. The next business day, November 25, 2013, this Court heard argument on
28

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
17 not something new. *That is standard conduct, standard process*
18 *when you're seeking to have a 363 sale. You want it free and*
19 *clear of all the liens. You don't want to pay \$2.22 billion and*
20 *then get sued later or have disruption of bankruptcy estate issues*
21 *without the release.* (Nov. 25 Tr. at 86-87).

22 220. The Board also dismissed the relevance of the release, stating that it was
23 "potentially worth, I don't know, a couple hundred million maybe if they even get there." (Nov.
24 25 Tr. at 108:12-14).

25 221. During the hearing, the Court made clear that, although it would not grant all
26 injunctive relief, the record to date supported breach of duty of loyalty claims that could not be
27 dismissed, finding: "you've got loyalty issues that you're going to be able to allege and get past a
28 motion to dismiss and probably a motion for summary judgment based on what I've seen." (Nov. 25 Tr. at 148:7-10).

29 222. Following the hearing, this Court enjoined Ergen and anyone working on his
30 behalf (including Willie Farri) from negotiating the release that would extinguish
31 LightSquared's claims against Mr. Ergen in the event of a successful sale of LightSquared's
32 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 Stargen & Taylor, LLP) could contact LightSquared to restructure the release and
8 carve out LightSquared’s claims against Ergen and SPSC. 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 X below.

18 **VI. 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 unpaired 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 Fair 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 *the 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

237. Following Willie Farr's threat (made with the imprimatur of speaking for LBAC and in contravention of this Court's injunction and unambiguous orders), the Bankruptcy Court sustained LightSquared's claims against Ergen and DISH, including the claim that DISH was liable for tortiously interfering the LightSquared credit agreement by assisting Ergen with his personal debt purchases. The Bankruptcy Court scheduled a trial on those claims starting January 9, 2014.

3. LightSquared's Special Committee Cancels the Auction Because It Does Not Want to Give up LightSquared's Claims against Ergen

238. On December 11, 2013, no other potential bidder had emerged. DISH was poised to win the auction and acquire LightSquared's spectrum assets for \$2.22 billion. Ergen attended the auction with representatives of the SLC (Defendant Brokaw) and the Board (Defendant Vogel). Officer Defendants Cullen and Dodge were also present.

239. The SLC and the Board were acutely aware that the most important impediment to LightSquared's special committee allowing the auction to close with DISH as its winner was the concurrent release of LightSquared's pending claims against Ergen. Defendants Brokaw and Vogel were present at the auction the day after their counsel had heard Ergen's lawyers confirm to Judge Chapman that DISH's bid was conditioned on Ergen's personal claims being paid in full.

240. Again, and in bad faith, the SLC and Board would do nothing even potentially adverse to Ergen, much less protect DISH's public shareholders. Counsel for LightSquared's special committee observed that DISH's representatives insisted on conditioning DISH's bid on the committee dropping LightSquared's claims against Ergen:

It was as if there was intentionally a foot kept behind the line and you went to the special committee and said you've got to turn your back on the topic of the lawsuit. You have to turn your back on what your concerns are with this bid or we have the right to pull. In other words, you don't have the option of keeping the bid and digging on the litigation. (Jan. 22, 2014 Tr. at 63:12-18).

241. Faced with this choice -- and after just having its claims against Ergen sustained -- LightSquared's special committee refused to give up the claims against Ergen and canceled the

1 auction. As counsel for LightSquared's special committee explained to Judge Chapman, 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, LDAC,
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 interest
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 SPSOI) 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 SP3O 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 Wilkie 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 Wilkie 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 Ms.
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 Wilkie Farr took the "laboring oar" in representing LBAC throughout the adversary
27 proceedings. Indeed, Wilkie 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 2, 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 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 Raveender 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 8, 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).

- 1 * Defendant Cullen testified that when he learned that Mr. Ergen was buying the LP
2 Debt: (i) he did not ask Ergen why DISH was not buying the debt, (ii) he did not
3 ask in-house counsel whether there was an issue with Ergen making a personal
4 investment in the debt, and (iii) he did not take any steps to determine whether
5 Ergen's purchases were a corporate opportunity. (Post Trial Findings at ¶ 121).
- 6 * After Ergen informed Defendant Dodge that there might be some truth to news
7 reports about his personal debt purchases, Dodge made no further inquiry and did
8 not inform the Board about the corporate opportunity that was potentially
9 implied by Ergen's debt purchases. (Post Trial Findings at ¶ 114).

10 271. Sixth, the Board consciously did not protect the interests of DISH and DISH's
11 public shareholders against Ergen's conflicting personal interests. Upon learning of Ergen's
12 personal bid, "no member of the boards of directors or management of DISH or EchoStar
13 formally objected to Mr. Ergen[] having made a personal bid for LightSquared's assets." (May
14 8, 2014 Tr. at 30:24-31:1). Indeed, "the apparent attitude of members of the DISH board and
15 senior management that *where Mr. Ergen was concerned, it was better not to ask a lot of*
16 *questions and to let him conduct his business as he saw fit.*" (May 8, 2014 Tr. at 21:20-23).

17 272. The Board allowed Ergen to consciously and repeatedly violate the May 8, 2013
18 resolutions that were put in place to protect DISH and DISH's public shareholders from Ergen's
19 personal interests. The May 8 resolutions vested in the Transaction Committee the power and
20 authority to review and evaluate any potential conflicts of interest arising out of Ergen's personal
21 debt purchases, and to negotiate definitive agreements with the parties concerning the terms and
22 conditions of the potential bid. However, as the Bankruptcy Court found:

23 As it turned out, such resolutions were not worth the paper they
24 were written on. *The evidence reveals that these board*
25 *resolutions were quickly and flagrantly disregarded.* Despite
26 being in existence for three months, the special committee was
27 forced to work under a compressed timetable because of Mr.
28 Ergen's interference with their ability to begin their task. . . .

29 Furthermore, although the role of the special committee included
30 evaluating any potential conflicts of interest, the repeated requests
31 of the committee to Mr. Ergen for information regarding his
32 [LightSquared] trade debts were ignored, and *Mr. Ergen never*
33 *provided the committee with the requested schedule of his trades.*

34 ⁶ Ex. 3 (May 8, 2014 Tr.) at 32:11-17; 34:19 (emphasis added).

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 57:24-38:5).

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 DISH 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.

178. 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:

X. DEMAND ON THE DISH BOARD IS EXCUSED AS FUTILE

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

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

Foster v. Anna, 74 Nev. 143, 155 (1958).

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

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

282. *Finally*, independent of the exacting entire fairness test and the independence inquiry, the Board acted in bad faith when, among other things, it: (1) refused to support the 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 Farr conditioned DISH's bid on receiving payment in full of his personal debt claims.

1 representing instead to this Court that no conflict existed; (7) refused to protect DISH's interests
2 when Winkie Fair 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 dismantling 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 TL 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 Goodham. Except Goodham
2 (who is no defendant here), each of these Director Defendants was and is personally beholden to
3 Ergen.⁷

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 ⁷ Under Nevada law, demand utility 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 Orloff could not fairly and impartially consider a demand to initiate this
20 action. At the pleasure of Ergen, Orloff served as DISH's President and Chief Operating Officer
21 from 1988 until 1991 and, since 2005, as a DISH director. DISH has paid Orloff more than
22 \$730,000 for his service as a director. Ergen also added Orloff 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 Orloff's children. Since
25 pursuing the claims asserted in this Complaint is antithetical to Orloff'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, Orloff, 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, Orloff,
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, Orloff, 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 Orloff
23 himself) who were completely beholden to Ergen. As discussed herein, the personal,
24 professional, and financial ties between Orloff 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, Orloff,
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, Orloff,
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, Orloff, 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 Cantey Ergen. In fact, Brokaw
17 and his wife chose the Ergens to be part of their family by selecting Cantey 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 protect 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 "[O]therafter . . . 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 to 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 §§ V1C – V1E.

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

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

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

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 Farr, 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 nice 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 § VII 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 dishonorably 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 Plan 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 his 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 Kiber.

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 LRAC and
28 SPSO) 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 Willie 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. *Sheen v. NAC 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

15 5. Directing DISH to take all necessary actions to reform and improve its corporate
16 governance and internal procedures to comply with DISH's existing governance obligations and
17 all applicable laws and to protect DISH and DISH's public shareholders from a recurrence of the
18 damaging events described herein;
19

20 6. Awarding Plaintiff the costs and disbursements of this action, including
21 attorneys', accountants', and experts' fees, and costs and expenses, and
22

23 ...

24 ...

25 ...

26 ...

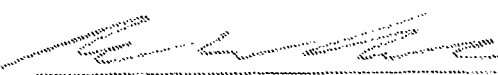
27 ...

28

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

Dated this 25th day of July, 2014.

HOLLEY, DRIGGS, WALCH,
PUZEY & THOMPSON



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Lead Counsel for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

IN RE DISH NETWORK CORPORATION
DERIVATIVE LITIGATION

Case No. A-14-686773-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 201320

EXHIBIT 1

EXHIBIT 1

BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP

ATTORNEYS AT LAW

NEW YORK • CALIFORNIA • LOUISIANA • ILLINOIS

212.512.6000
212.512.6010
mlb@blbgllp.com

September 23, 2013

BY EMAIL

Special Litigation Committee of Dish Network Corporation
c/o Messrs. George R. Brokaw 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. Brokaw 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.

1263 AVENUE OF THE AMERICAS • NEW YORK • NY 10019-6028
TELEPHONE: 212 512 1400 • www.blbgllp.com • FACSIMILE: 212-512-1444



George R. Brokaw and Tom A. Ortolf

September 23, 2012

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As per the Court's instructions, and despite Mr. Ortolf'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.¹ 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.² 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

¹ The Board's purported September 18, 2011 vote to create the SLC does not change the analysis for determining whether demand was futile when this action was brought. *See Faght v. Genmar, Inc.*, 452 F.3d 276, 284-85 (3d Cir. 2005) (district court improperly considered special litigation report on a motion to dismiss).

² 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 877328, at *12 (Del. Ch. Mar. 11, 2010) (the special litigation committee has the burden of establishing its own independence "by a precatory that must be like Cwear'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 LightSquared'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. Ortolf's role in the Board's prior breaches of duty, we note for present purposes that Mr. Ortolf 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 own 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 Complaint¹

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.

¹ 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

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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 serving 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 disqualifed 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 entities 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

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on its own, it is likely that Ergen was equally precluded.⁴ In contrast, if Ergen was able to buy LightSquared debt despite the restrictions on 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 Ferella 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

⁴ 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.

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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 *DRSD* 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.

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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 \$7.2 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 incurring 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

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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.⁵

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

⁵ Although NRS § 78.070(3) allows Nevada corporations to renounce any interest or expectation 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.

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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 Goodham 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. Brokaw and Tom A. Onoff

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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.

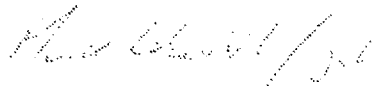
3. Implementation of comprehensive corporate governance improvements

- 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 Peroration 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 Leboyvitch

Encl. (2)

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 25TH day of July, 2011 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:

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Robert R. Warr III, Esq.
REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123

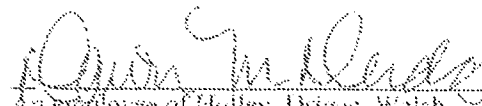
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McDONALD·CARANO·WILSON^{LLP}

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

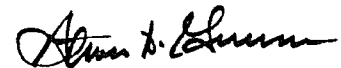
Dear Sir or Madam:

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.





CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

IN RE DISH NETWORK DERIVATIVE
LITIGATION

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

Consolidated with A688882

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING IN
PART PLAINTIFF'S MOTION TO
RETAX**

///

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

1 PLEASE TAKE NOTICE that the attached Order Granting in Part and Denying in Part
2 Plaintiff's Motion to Retax was entered on the 8th day of January 2016.

3 DATED this 12th day of January 2016
4

5 /s/ Robert J. Cassity

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18 *of Dish Network Corporation*
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28

HOLLAND & HART LLP
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Las Vegas, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January 2016, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO RETAX** 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
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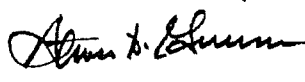
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01/08/2016 03:36:04 PM


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ORDER

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*Attorneys for the Special Litigation Committee
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

Date: November 24, 2015
Time: 8:30 a.m.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO RETAX**

This matter came before the Court on November 24, 2015 at 8:30 a.m. on Plaintiff Jacksonville Police and Fire Pension Fund's ("Plaintiff") Motion to Retax (the "Motion"). J. Stephen Peek of Holland & Hart LLP, and C. Barr Flinn and Emily V. Burton of Young,

1 Conaway, Stargatt, & Taylor, LLP appeared on behalf of the Special Litigation Committee of
2 DISH Network Corporation ("SLC"). Jeffrey S. Rugg and Maximilien Fetaz of Brownstein
3 Hyatt Farber Shreck appeared on behalf of Defendants James DeFranco, David K. Moskowitz,
4 and Carl E. Vogel. Tariq Mundiya of Willkie Farr LLP appeared on behalf of Defendants
5 Charles Ergen and Cantey Ergen. Brian W. Boschee of the law firm of Holley Driggs Walch
6 Puzey & Thompson, and Mark Lebovitch and Adam Hollander of Bernstein Litowitz Berger &
7 Grossmann LLP appeared on behalf of the Plaintiff.

8 The Court, having reviewed the Plaintiff's Motion, the Opposition, and the Reply, and
9 having heard the oral arguments of counsel, and good cause appearing, makes the following
10 findings:

11 1. The costs of the electronic discovery vendors utilized by the SLC in this case
12 were a reasonable and necessary expense incurred in connection with the action as a method by
13 which to acquire and process the information that was required to be produced in response to the
14 Plaintiff's NRCP 56(f) discovery requests, and they are recoverable under NRS 18.005(17). *See*
15 *also* NRCP 34(d).

16 2. As Nevada counsel for the SLC, Mr. Peek's travel expenses for attending the
17 depositions were reasonable and necessary, and are recoverable under NRS 18.005(15).
18 However, the travel expenses of co-counsel incurred in attending the depositions were not. None
19 of the travel expenses for attending hearings are recoverable under NRS 18.005.

20 3. The costs related to photocopies were reasonable and necessary, are recoverable
21 under NRS 18.005(12), and are better documented than those discussed in *Cadle Co. v. Woods &*
22 *Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

23 4. The costs of "real time" court reporting services, same-day rough transcripts, and
24 expedited transcripts are not recoverable under NRS 18.005(2), nor are they recoverable under
25 NRS 18.005(17) as a reasonable and necessary expense incurred in connection with the action.
26 The remaining costs related to court reporting and videographer services were reasonable and
27 necessary and are recoverable under NRS 18.005(2) and NRS 18.005(17), respectively.

28 5. The costs related to long distance telephone calls were adequately supported and

1 are reasonable and necessary, and are recoverable under NRS 18.005(13).

2 6. The postage costs were sufficiently documented and are reasonable and
3 necessary, and are recoverable under NRS 18.005(14).

4 Having made the foregoing findings, and good cause appearing,

5 IT IS HEREBY ORDERED that Plaintiff's Motion is GRANTED in part and DENIED in
6 part as follows:

7 1. The Motion is GRANTED in part with respect to travel expenses for the SLC's
8 out-of-state counsel, and all expenses related to travel for hearings, which are retaxed in the
9 amount of \$20,025.73.

10 2. The Motion is GRANTED as to the costs related to "real time" services, which
11 are retaxed in the amount of \$2,407.50 and with respect to next-day expedited transcripts and
12 same-day rough copies of transcripts in the amount of \$7,222.50. The Motion is DENIED with
13 respect to costs related to court reporter's fees, deposition transcripts, and videographer's fees,
14 leaving \$9,316.15 in recoverable court reporter's fees.

15 3. The Motion is DENIED as to expenses related to travel by Mr. Peek for
16 depositions, which are recoverable in the amount of \$3,653.96.

17 4. The Motion is DENIED with respect to the electronic discovery costs, which are
18 recoverable in the full amount of \$151,178.32.

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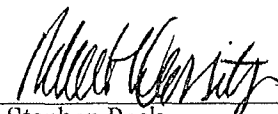
HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

1 5. The Motion is DENIED with respect to the costs related to photocopies, long
2 distance telephone calls, and postage, which are recoverable in the amount of \$21,952.17.

3 DATED this 5th day of ^{Jan}~~December~~, 2016.

4
5 
DISTRICT COURT JUDGE

6 Respectfully submitted by:

7 
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*)
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25 *Attorneys for the Special Litigation Committee*
26 *of DISH Network Corporation*
27
28

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

In the Matter of DISH Network Derivative
Litigation.

No. 69729

DOCKETING STATEMENT CIVIL APPEALS

Electronically Filed
Feb 26 2016 10:47 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

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 27 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 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 checked="" type="checkbox"/> Other disposition (specify): <u>Deny mot. to retax</u> |

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:

Docket No. 69012:

In re DISH Network Derivative Litigation

Jacksonville Police and Fire Pension Fund v. George R. Brokaw, et al.

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 DISH directors and officers for breach of the duty of loyalty. DISH's Board formed a Special Litigation Committee and moved to defer to its determination to dismiss the action. Plaintiff presented material disputed facts regarding the SLC's independence, thoroughness, and good faith, so as to preclude deference to the SLC's recommendation. The District Court nevertheless granted the SLC's motion on July 16, 2015 and entered its findings of fact and conclusions of law on September 18, 2015, and Judgment entered on October 20, 2015. On October 19, 2015, the SLC filed a Memorandum of costs, claiming taxable costs under NRS 18.005. Plaintiff filed a Motion to Retax, arguing that neither NRS 18.005 nor Nevada Supreme Court precedent of *Bergmann v. Boyce*, 109 Nev. 670 (1993), and *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348 (1998), allow taxation of certain claimed expenses, including over \$150,000 in electronic discovery costs. After briefing, the Court granted in part and denied in part the Motion to Retax, and awarded the SLC \$186,100.60 in costs, plus interest.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Did the District Court err in finding that electronic discovery costs are taxable under NRS 18.005, since the statute does not list such costs as properly taxable and controlling precedent states that NRS 18.005 is to be strictly construed?
2. Did the District Court err in finding that the SLC's submitted support for expenses in its Memorandum of Costs, including over \$150,000 in electronic discovery costs, established that the SLC's costs were reasonable and necessary?

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 determined whether electronic discovery costs may properly be taxed under NRS 18.005 where the statute does not include such costs, precedent instructs courts to construe the statute narrowly, and this Court has in the past left it to the Nevada Legislature to amend NRS 18.005 to add additional categories of taxable costs. Allowing parties to expand what items are taxable under NRS 18.005 threatens a chilling effect on meritorious litigation out of fear that litigation costs borne by each party in the normal course will later be unfairly shifted.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(10), as a case originating in business court.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. 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

16. Date of entry of written judgment or order appealed from January 8, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served January 12, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. 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

19. Date notice of appeal filed February 2, 2016

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:

20. 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

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
Plaintiff appeals from a special order entered after final judgment.

22. 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 and 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.

23. 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 officer; and unjust enrichment against Ergen.

24. 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

25. If you answered "No" to question 24, 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

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. 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

Jeff Silvestri
Name of counsel of record

Feb 26, 2016
Date

/s/ Jeff Silvestri
Signature of counsel of record

Nevada, Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 26th day of February, 2016, 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.)

Bruce Braun
Brian Frawley
Tariq Mundiya
James Dugan
C. Flinn
Robert Brady
David McBride
Holly Sollod
Jeroen Van Kwawegen
Robert Warns

Dated this 26th day of February, 2016

/s/ CaraMia Gerard
Signature

3. List of Additional Counsel:

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Adam D. Hollander (*admitted pro hac vice*)
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14 Telephone: 212/554-1400

Attorneys for Plaintiff

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

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

20 Plaintiff,

21 v.

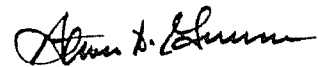
22 CHARLES W. ERGEN; JOSEPH P.
23 CLAYTON; JAMES DEFRANCO; CANTEY
M. ERGEN; STEVEN R. GOODBARN; DAVID
24 K. MOSKOWITZ; TOM A. ORTOLF; CARL
E. VOGEL; DOES I-X, inclusive and ROE
25 ENTITIES I-X, inclusive,

26 Defendants.

27 DISH NETWORK CORPORATION, a Nevada
corporation,

28 Nominal Defendant.

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10/08/2013 12:02:28 PM



CLERK OF THE COURT


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**

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

5 Dated this 8th day of October, 2013.

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

8 

9 BRIAN W. BOSCH, ESQ.
10 Nevada Bar No. 7612
11 WILLIAM N. MILLER, ESQ.
12 Nevada Bar No. 11658
13 400 South Fourth Street, Third Floor
14 Las Vegas, Nevada 89101

15 MARK LEOVITCH, ESQ.
16 New York Bar No. 3037272
17 JEROEN VAN KWAWEGEN, ESQ.
18 New York Bar No. 4228698
19 JEREMY FRIEDMAN, ESQ.
20 New York Bar No. 4622569
21 **BERNSTEIN LITOWITZ BERGER**
22 **& GROSSMANN LLP**
23 1285 Avenue of the Americas
24 New York, New York 10019

25 *Attorneys for Plaintiff*
26
27
28

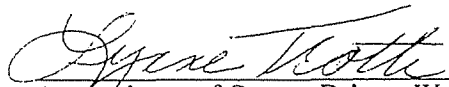
1 CERTIFICATE OF MAILING

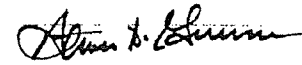
2 I HEREBY CERTIFY that, on the 21st day of October, 2013 and pursuant to NRCP
3 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE**
4 **OF ENTRY OF STIPULATION AND ORDER FOR DISMISSAL WITHOUT**
5 **PREJUDICE FOR DEFENDANT STEVEN R. GOODBARN**, postage prepaid 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
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13 *Attorneys for Defendant DISH NETWORK*
14 *CORPORATION and Director Defendants*

15 Mark E. Ferrario, Esq.
16 Jack Burns, Esq.
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3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
17 *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

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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

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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

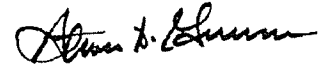
19 Dated this 10 day of October, 2013.

20 
21 DISTRICT COURT JUDGE *h2*

22 Respectfully submitted by:

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

25 W. —
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CLERK OF THE COURT

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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, Stuart 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

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

3 3. In a normal public corporation, when a Chairman or CEO flagrantly takes
4 corporate opportunities or pursues self-interested actions that harm the interests of the company's
5 public shareholders, there is a board of directors -- or at least a subset of directors -- that is willing
6 and able to take a stand to protect the company and its public shareholders. Nevada law
7 "requires the board and its directors to maintain, in good faith, the corporation's and its
8 shareholders' best interests *over anyone else's interest*." *Shorn v. S.H.C. Holding Corp.*, 122 Nev.
9 621, 632 (2006).¹

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

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

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

27
28 ¹ 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 Goodbaru ("Goodbaru") 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 this 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 Goodbaru 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 Ortol'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 \$7.685 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.² 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 ² 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 stalling
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, Brookaw (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 SEC 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 Wilkie 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 \$7.065 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 Canteey 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 Canteey 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 18. 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 Goodhorn 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. Ortolf ("Ortolf") 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, Ortolf has served as a member of the board of directors of EchoStar since
18 October 2007. Ortolf is also a member of the SLC. Ortolf owes his significant compensation
19 from DISH and EchoStar -- including over \$885,000 in director fees between 2011 and 2013
20 alone -- to his personal relationship with Ergen. In addition, Ortolf'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). Ortolf 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, 2012
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 my 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,

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

C. Relevant Third Parties

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

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

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

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

A. What -- okay. In the context of what I just said, what do you mean? We only reached a conclusion on the valuation. We did 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.

(Goodham fr. at 236:14-237:11).

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

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. Falcione
11 ("Falcione").

12 IV. SUBSTANTIVE ALLEGATIONS

13 A. Ergen Completely Controls DISH

14 43. In 1980, Charles Ergen founded a company called EchoStar, now known as
15 EchoStar Communications Corporation, with his wife, Defendant Cantej 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 53.1% 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 Yottabytes 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, Chase. Moreover, Ergen's wife, Defendant Cautey 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 innuendated 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 turning 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.

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

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

C. LightSquared's Spectrum Presents a Valuable and Unique Opportunity for DISH

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

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

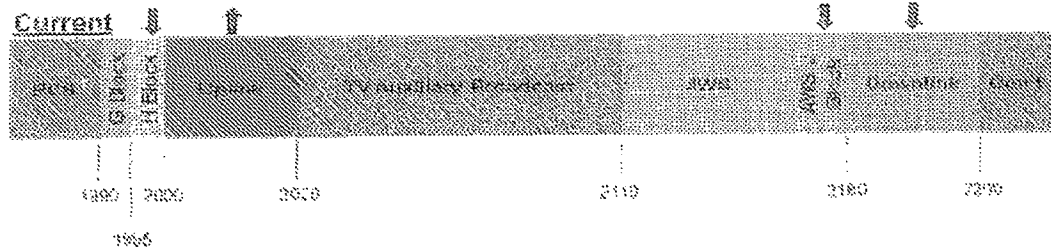
spectrum at 1525-1559 MHz because it would interfere with their GPS services in the adjacent spectrum. LightSquared's separate uplink spectrum at 1626.5-1660.5 MHz was not objectionable, but was nevertheless unusable unless it was paired up with downlink spectrum.

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

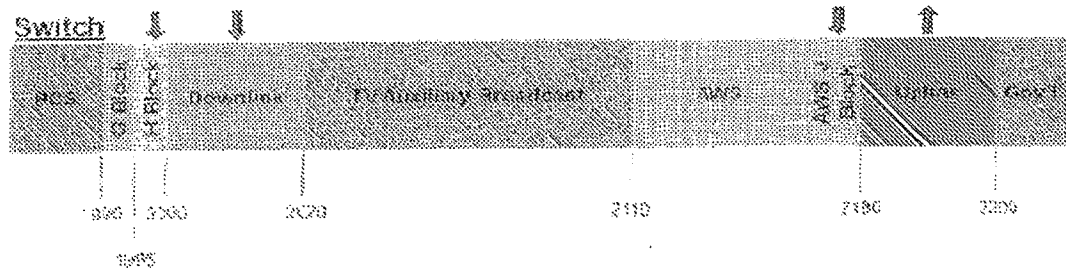
62. The FCC's decision to revoke its earlier conditional authorization impaired a significant part of LightSquared's downlink spectrum. Scrambling to salvage its assets, LightSquared proposed to the FCC on April 25, 2012 to include LightSquared's L-Band Spectrum in the FCC's ongoing regulatory review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

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

DISH's current spectrum holdings – 40 MHz at 2000-2020 MHz (uplink) and 2180-2260 MHz (downlink) – are adjacent to the downlink PCS B Block. The juxtaposition of uplink next to downlink creates a risk of harmful interference and the FCC's 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 B Block, as shown here:

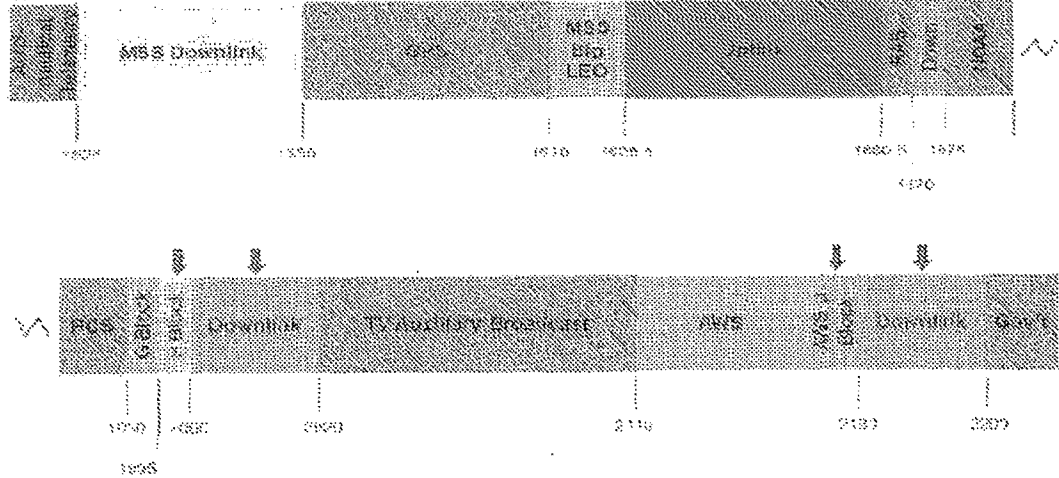


If DISH wants to recapture that five megahertz block for its own use, one potential option is to request a reversal of the uplink and the downlink operations, as shown here:



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 unpaired 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 NOD)? 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).²

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

² Tim Farrar, "Up, down, spin around?" *TMB Associates MSS blog* (May 10, 2012),
<http://timfussociates.com/blog/2012/05/10/up-down-spin-around/>.

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

79. Multiple valuations presented in the Bankruptcy Court have confirmed that the LightSquared spectrum is extremely valuable to DISH. A July 8, 2013 presentation to DISH's Board by Ergen described the value of LightSquared's assets to DISH as between \$5.174 billion and \$8.996 billion, with a midpoint of *\$7.085 billion*. Ergen's presentation to the Board included an estimate of: (a) the standalone value of LightSquared's spectrum assets; (b) the increase in value of DISH's existing spectrum that would flow from DISH's acquisition of LightSquared spectrum, which would permit unusable and impaired uplink (DISH) spectrum to be converted to downlink; and (c) Ergen's range of values for 20 megahertz of LightSquared's downlink spectrum. In this regard, Ergen informed the Board that the standalone value of LightSquared spectrum assets was between \$3.291 billion and \$5.213 billion, with a midpoint of *\$4.277 billion* and that simply by acquiring LightSquared's spectrum, the value of DISH's *preexisting* spectrum would increase by \$1.833 billion to *\$3.783 billion*, with a midpoint of *\$2.368 billion*.

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

72. The Transaction Committee's financial advisor, Perella Weinberg Partners L.P. ("Perella Weinberg"), also concluded that the LightSquared spectrum is extremely valuable to DISH. Specifically, Perella Weinberg informed the Transaction Committee that the value of acquiring LightSquared spectrum to DISH would be between \$4.4 billion and \$13.5 billion, with a midpoint of *\$8.85 billion*. This range included the standalone value of LightSquared spectrum 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 Piecyk 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 **D. 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 Keichum

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
16 of the credit agreement, right? ...

16 Mr. Giuffra: 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, SPSO contracted to purchase
28 LightSquared debt with a total face value of over \$1 billion, of which it actually closed trades for
\$244,323,097.93 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
05/05/12	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	02/06/12	3,000,000	83.75	2,512,500	Settled
11/13/12	01/08/13	7,997,057	81.75	6,557,594	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	16,068,000	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	07/25/13	20,000,000	91.275	18,375,000	Settled
03/29/13	05/24/13	88,262,536	93.375	84,189,394	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	46,186,566	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), Ottoloff and Goodbair, 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

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

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

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

Mr. Egan: Yes, you are.

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

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

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. Keichum 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 Canteey 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 the
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. Doubtly, 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
independent committee or whatever to make sure that that was
3 fair to shareholders.* (Ergen Tr. at 152:10-153:5).

4 112. Ergen left the May 2, 2013 meeting so that the Board could discuss the creation
5 and composition of a special committee of the Board with respect to a potential transaction
6 involving LightSquared in which Ergen had a personal interest. The Board understood that
7 almost all of its members were personally beholden to Ergen and, therefore, that the Board as a
8 whole could not independently consider Ergen's conflicting interests. With the rest of the Board
9 incapable of acting independently of Ergen, Goodburn and Howard were the only two directors
10 capable of serving on a special committee to consider DISH's bid for LightSquared's assets and
11 Ergen's personal debt purchases.

12 113. On May 8, 2013, the Board created the Transaction Committee comprising
13 Howard and Goodburn. The enabling resolution acknowledged that Ergen had a personal
14 interest in a LightSquared transaction, delegated to the Transaction Committee "all the powers
15 and authority of the Board to accomplish the purposes and to carry out the intent of the
16 resolutions herein," and specifically empowered the Transaction Committee to:

17 (i) *review and evaluate (including any potential conflicts of interest
18 arising out of, or in connection with, the Ergen LightSquared
Transaction) the terms and conditions of the Ergen LightSquared
19 Transaction, determine whether it is in the best interests of the
Corporation and its stockholders to proceed with the Ergen LightSquared
20 Transaction, engage in discussions and/or negotiations relating to the
Ergen LightSquared Transaction, and to reject any proposal from Mr.
Ergen relating to the Ergen LightSquared Transaction;*

21 (ii) *negotiate definitive agreements concerning the terms and conditions of*
22 *the Ergen LightSquared Transaction; and*

23 (iii) *determine whether such terms and conditions (if any) of the Ergen*
24 *LightSquared Transaction are fair to the Corporation.*

25 114. The May 8, 2013 resolution broadly empowered the Committee to protect DISH's
26 interests, including but not limited to navigating Ergen's conflicts, from May 8, 2013 through the
27 end of the LightSquared acquisition process. As Ergen's May 2, 2013 presentation made clear,
28 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, Goodbarn expected the Transaction
27 Committee to be involved in the transaction process until it was completed. As Goodbarn
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 57:11-23).

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 **I. 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 13, 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.

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 Goodburn 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 it,
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 at 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
I owed, and my intentions and made it a corporate opportunity.

4 129. That was a lie. Ergen's May 2, 2013 presentation did not inform the Board or the
5 Transaction Committee that he was planning to make a personal bid for LightSquared. Nor did
6 Ergen ever seek permission from the Board or the Transaction Committee to make a personal
7 bid. Indeed, the Transaction Committee was stunned to find out that Ergen made a personal bid.
8 As Howard stated in his sworn affidavit submitted in this Action: [REDACTED]

9 [REDACTED] To the contrary, Ergen's May 2
10 presentation proposed that DISH make an immediate bid, and did not say that Ergen would make
11 a bid.

12 130. Moreover, the record in the Bankruptcy Court establishes that Ergen knew that
13 the Board had not authorized him to make a personal bid. On January 13, 2014, Ergen testified
14 as follows:

15 Q. The board did not authorize you to make an offer in the month of
16 May, did it?

17 A. The board did not authorize a DISH bid in the month of May.

18 Q. Right. Nor did it pass a resolution in which it acknowledged and
19 approved of you making an offer individually, did it?

20 A. I don't believe there was a resolution to that effect.

21 131. This did not stop Ergen from making a \$2 billion personal bid for LightSquared,
22 thereby setting a "floor" for future bids that would ensure a personal profit of at least \$150
23 million on the LightSquared debt purchases, and competing directly with DISH.

24 **3. The Transaction Committee is Unaware of Ergen's Personal Bid until
They Read about it in the News.**

25 132. On May 20, 2013, Goodbarn emailed to members of the Board a news story
26 headlined "DISH eyes LightSquared's Spectrum for \$2 bln." Howard was surprised to read that
27 story because the DISH Board had not authorized any bid for LightSquared assets, and,
28 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]
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 H. 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 1. Ergen Intentionally Delays the Transaction Committee.

14 138. The Board understood the Special Committee's need for independent legal
15 representation. Goodbar 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 Willkie
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]

26 [REDACTED] Ergen
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. Goodburn
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 Goodburn 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*
5 *know, people's means to do that without being -- you know,*
6 *covered by the company.*

7 (Goodbarn Tr. at 133:8-135:3).

8 154. Without proper indemnification in place, the Transaction Committee would be at
9 the mercy of Ergen. Ergen could use his control over the DISH Board to withhold
10 indemnification from Howard and Goodbarn while simultaneously threatening them with a
11 lawsuit for causing DISH to forego on a multi-billion dollar corporate opportunity to acquire
12 LightSquared's spectrum assets if the Transaction Committee did not immediately approve a \$2
13 billion bid. Thus, it was critically important for the Committee to have a separate agreement
14 clearly establishing its members' rights with respect to indemnification in the event of a conflict
15 with Ergen. In addition, it was important that the Board support the members of the Transaction
16 Committee -- not Ergen -- in the event of a conflict. As Goodbarn explained:

17 The importance of the indemnification was for the other board
18 members to take a position that endorsed the committee. It was for
19 the other board members to take a position that was independent.

20 155. The issues of indemnification and compensation were first raised during the May
21 8, 2013 board meeting at which the Special Committee was formed. Although no final
22 conclusion was reached, the Special Committee members reasonably expected that they would
23 receive the full indemnification allowed to them by law, as well as a reasonable rate of
24 compensation for their efforts.

25 156. The Board again discussed indemnification at the June 5, 2013 Board meeting.
26 And again the Special Committee was led to believe that it would receive proper and adequate
27 indemnification agreements. At that meeting, the Board also voted to provide the Transaction
28 Committee members with compensation for their work on the Transaction Committee.

 157. After the June 5, 2013 meeting (and after Ergen realized that the Transaction
Committee would continue to ask for information about his LightSquared debt purchases), Ergen
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. . . . These 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
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 his 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]

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 Goodbar 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
- 20 * That the Committee and its legal and financial advisors would *remain involved in*
21 *all negotiations* regarding the proposed transaction going forward, so that the
22 Committee would be able to, among other things, *monitor and manage potential*
23 *conflicts of interest* as they arise, and react quickly (in the event that any of the
24 material terms (including price) of the transaction changes ...
 - 25 * That the Committee would review and approve the terms of the acquisition by the
26 Corporation of Mr. Ergen's interests in the L-Band Acquisition Vehicle ...; and
 - 27 * That the Committee had requested in writing from Mr. Ergen information
28 regarding Mr. Ergen's acquisition of debt and/or other securities issued by
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.¹ 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 knew
21 very well, neither condition was met. Yet, the other Board members -- Defendants Clayton,
22 DeFranco, Ottol, 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 ¹ The SLC represented in a November 20, 2013 report in this Court that Defendant Vogel
27 proposed that the Transaction Committee be terminated. However, the SLC's purported
28 "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 Goodbarn 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, Goodbarn 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 to 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 YetL, 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 \$2.25 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 stated 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, Goodham 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. Goodham forwarded the article to the Board and demanded that DISH issue a
public correction. Goodham 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. Harbluger 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, Wilkie 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 LBAC is an acquisition vehicle that is owned 100 percent by DISH
23 Network, a public company. SPSC is owned and controlled 100
24 percent by Mr. Ergen personally. . . . to say that the decision
25 making [at DISH], the motivations, can all be blended between a
26 public company with a board of directors, including independent
27 board of directors, and Mr. Ergen, who is making an investment
28 legally, through SP Special Opportunities with his own money, is a
very different proposition.

189. Wilkie 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
Wilkie 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 Willkie Farr's representations, Judge Chapman pointed out that
8 Willkie 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."