

IN THE SUPREME COURT OF THE STATE OF NEVADA

PLUMBERS LOCAL UNION NO. 519
PENSION TRUST FUND; AND CITY OF
STERLING HEIGHTS POLICE AND FIRE
RETIREMENT SYSTEM, DERIVATIVELY
ON BEHALF OF NOMINAL DEFENDANT
DISH NETWORK CORPORATION,

Appellants,

vs.

CHARLES W. ERGEN; JAMES DEFRANCO;
CANTEY M. ERGEN; STEVEN R.
GOODBARN; DAVID K. MOSKOWITZ; TOM
A. ORTOLF; CARL E. VOGEL; GEORGE R.
BROKAW; JOSEPH P. CLAYTON; GARY S.
HOWARD; DISH NETWORK
CORPORATION, A NEVADA
CORPORATION; AND SPECIAL
LITIGATION COMMITTEE OF DISH
NETWORK CORPORATION,

Respondents.

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District Court No.
A-17-763397-B

JOINT APPENDIX

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[JA017063-JA017217]

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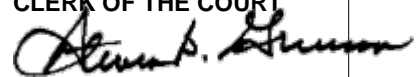
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DISTRICT COURT

CLARK COUNTY, NEVADA

PLUMBERS LOCAL UNION NO. 519
PENSION TRUST FUND and CITY OF
STERLING HEIGHTS POLICE AND FIRE
RETIREMENT SYSTEM, derivatively on
behalf of nominal defendant DISH
NETWORK CORPORATION,

Plaintiffs,

v.

CHARLES W. ERGEN; JAMES
DEFRANCO; CANTEY M. ERGEN;
STEVEN R. GOODBARN; DAVID
MOSKOWITZ; TOM A. ORTOLF; CARL
E. VOGEL; GEORGE R. BROKAW;
JOSEPH P. CLAYTON; and GARY S.
HOWARD,

Defendants,

DISH NETWORK CORPORATION, a
Nevada corporation,

Nominal Defendant

CASE NO.: A-17-763397-B
DEPT. NO.: XI

**REPLY IN SUPPORT OF THE
SPECIAL LITIGATION
COMMITTEE'S MOTION FOR
SUMMARY JUDGMENT
DEFERRING TO ITS
DETERMINATION THAT THE
CLAIMS SHOULD BE DISMISSED**

JA017063

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PRELIMINARY STATEMENT¹

Despite many misstatements and misleading conflation of issues, Plaintiffs' Opposition ("Opposition" or "Opp.") presents no basis to deny the SLC's Motion to Defer ("Motion to Defer" or "Mot."). For the reasons set forth in the Motion to Defer, the Court should defer to the SLC's determination that this action be dismissed, as not in DISH's best interest, and enter final judgment dismissing the claims (the "Claims") asserted in the Complaint.

Plaintiffs accept the relevant standard: "[C]ourts should defer to the business judgment of an SLC . . . where the SLC is independent and conducts a good-faith, thorough investigation." *Matter of DISH Network Derivative Litig.*, 133 Nev. 438, 443, 401 P.3d 1081, 1088 (2017) (hereinafter "*Jacksonville*"). Plaintiffs, however, make no colorable argument that either element of this standard is not satisfied.

Having received fulsome discovery, Plaintiffs scarcely challenge the SLC's independence. The makeweight arguments Plaintiffs do offer on the SLC's independence—relegated to the last few pages of the Opposition—were expressly rejected by the Nevada Supreme Court in *Jacksonville*, consistent with numerous other such holdings. For example, Plaintiffs argue that Charles Lillis lacks independence, but he was found "unquestionably independent" in *Jacksonville*, from the very same directors at issue here. Plaintiffs argue that Anthony Federico lacks independence solely because he is a director on the same board as two of the Director Defendants, but that argument has also been repeatedly rejected, including in *Jacksonville*. Under *Jacksonville*, Lillis's and Federico's independence standing alone establishes the independence of the SLC as a whole because they constitute a majority of the SLC; nonetheless, George Brokaw is also independent, as detailed herein.

Plaintiffs also only glancingly address the other half of the *Jacksonville* standard: the good-faith thoroughness of the SLC's investigation. Plaintiffs do not identify a single material document that the SLC failed to review. Plaintiffs do not identify a single witness that the SLC

¹ Undefined terms follow the definitions ascribed in the SLC's Motion to Defer.

1 failed to interview. Plaintiffs do not identify any issue that the SLC failed seriously to consider.
2 In the few instances in which Plaintiffs claim that the SLC failed to consider an issue, primarily
3 concerning supposed findings by the *Krakauer* court, Plaintiffs are demonstrably wrong: the
4 SLC Report analyzes every such issue at length. Both of *Jacksonville*'s requirements for
5 deference are satisfied.

6 Plaintiffs' Opposition rests instead upon one overarching argument that is both
7 irrelevant and wrong: Plaintiffs contend that the SLC's determinations are not entitled to
8 deference because Plaintiffs view the determinations as so obviously wrong that the error alone
9 proves bad faith. Plaintiffs say that the determinations are so obviously wrong primarily
10 because the determinations conflict with or fail to incorporate Plaintiffs' interpretations of the
11 *Krakauer* court's determinations. Plaintiffs also claim that the SLC misinterpreted facts and
12 misapplied law.

13 Plaintiffs' argument is irrelevant with respect to the Motion to Defer because it
14 challenges the substance of the SLC's business judgments, which are beyond judicial review.
15 The argument plainly concerns substance because it depends upon Plaintiffs' notion that the
16 determinations are wrong. Whether the determinations are correct, debatable, or even incorrect,
17 they cannot evidence bad faith. Moreover, the Nevada Supreme Court determined in
18 *Jacksonville* that a special litigation committee's substantive determinations are beyond review
19 on a motion to defer: "The substantive aspects of a decision to terminate a shareholder's
20 derivative action against defendant corporate directors made by a committee of disinterested
21 directors appointed by the corporation's board of directors *are beyond judicial inquiry under the*
22 *business judgment doctrine*[".]"²

23 The Nevada Supreme Court's preclusion bars *all* substantive review. *Jacksonville*
24 makes no provision for this Court to review determinations said to be more obviously wrong
25

26 ² *Jacksonville*, 133 Nev. at 443, 401 P.3d at 1088 (emphasis added).

1 than others, including those that supposedly conflict with judicial findings.³ The Nevada
2 Supreme Court rejected Delaware’s *Zapata* standard, which permits discretionary substantive
3 review of a special litigation committee’s determinations. Plaintiffs necessarily ask this Court
4 to ignore *Jacksonville*’s controlling precedent in favor of explicitly rejected Delaware law
5 concepts.

6 Even if the Court accepted Plaintiffs’ invitation to disregard *Jacksonville*, however,
7 Plaintiffs’ contentions are flawed. The SLC’s determinations do not conflict with or ignore the
8 *Krakauer* court’s determinations. The overarching issue addressed by the *Krakauer* court was
9 the foundational issue of whether *DISH violated the TCPA* (and did so “willfully and
10 knowingly” within the meaning of those terms under the TCPA). The SLC did not address
11 whether DISH violated the TCPA. Instead, the SLC addressed the issue dictated by NRS
12 78.138: whether the *Director Defendants knowingly caused or permitted DISH* to commit the
13 violations identified in *Krakauer* such that they could be held *personally* liable for *DISH’s*
14 violations. Because *Krakauer* and the SLC addressed primarily different issues, there was little
15 potential for conflict between the *Krakauer* court’s determinations and those of the SLC. Nor
16 was there any actual conflict.

17 Moreover, where determinations by the *Krakauer* court were relevant to the SLC’s
18 investigation, the SLC expressly adopted them. For example, the SLC adopted the *Krakauer*
19 court’s determination that DISH had violated the TCPA, including the determination that DISH
20 did so through conduct that was “willful and knowing” within the special meaning of those
21 terms under the TCPA. The SLC determined that the Director Defendants could not be held
22 personally liable for the damages caused by DISH’s TCPA violations, however, because the

23 _____
24 ³ Although, as explained below, the SLC’s determinations did not conflict with any court’s determinations, there
25 are valid reasons why a different committee’s might. For example, a special litigation committee is often privy to
26 information not submitted to the court as evidence for strategic, evidentiary or other reasons. Alternatively, a
27 committee might conclude that a subsequent court would likely reach a different determination as to different
28 defendants whose conduct is subject to different legal standards and who have previously unavailable defenses.
Under *Jacksonville*, the assessment that a subsequent court might reach a different result with respect to different
defendants rests within the sound business judgment of the committee.

1 evidence showed that the Director Defendants did not personally know that DISH was
2 committing the TCPA violations, as required to establish liability under NRS 78.138(7)(b)(1)-
3 (2). The Nevada Supreme Court has since reaffirmed the propriety of the SLC’s focus on the
4 personal knowledge of the Director Defendants, as distinct from that of DISH. *See, e.g., Chur*
5 *v. Eighth Judicial Dist. Court*, 136 Nev. Adv. Op. 7, 458 P.3d 336, 338-39 (2020).

6 Plaintiffs’ entire Opposition is built upon ignoring these critical distinctions. According
7 to Plaintiffs, the *Krakauer* court found the Director Defendants to have acted in bad faith.
8 (Opp. at 32.) This is wrong: the *Krakauer* court found no such thing. The *Krakauer* court was
9 not asked to rule upon, or presented with evidence of, the mental state of any *Director*
10 *Defendant*. None of the Director Defendants was a defendant in *Krakauer*; and only one even
11 testified. Although the *Krakauer* court disagreed with the testifying director’s explanation of
12 DISH’s obligations under the 2009 AVC, the court found no bad faith with respect to that
13 mistake. Moreover, that finding specifically concerned DISH’s contractual obligations under
14 the 2009 AVC; it did not concern the TCPA.

15 Plaintiffs claim the *Krakauer* court also found that some DISH personnel did not have
16 an “objectively reasonable belief” that DISH was complying with the TCPA. Plaintiffs further
17 claim that the Fourth Circuit affirmed this finding. (Opp. at 12-14.) But neither claim is true—
18 or relevant. Neither the *Krakauer* court nor the Fourth Circuit addressed the “objective
19 reasonableness” of anyone’s belief surrounding TCPA compliance, let alone the Director
20 Defendants’ beliefs.⁴ And, objective reasonableness or even gross negligence is not the
21 standard; bad faith requires conscious misconduct that was *known* to violate positive law. *Chur*,
22 136 Nev. Adv. Op. 7, 458 P.3d at 342.

23 Plaintiffs also conflate the TCPA with the 2009 AVC. They imply that the Director
24 Defendants’ knowledge of compliance with the TCPA is interchangeable with their knowledge

25 ⁴ To impose personal liability on a director of a Nevada corporation, a “claimant must establish that the director or
26 officer had knowledge that the alleged conduct was wrongful in order to show a ‘knowing violation of law’ or
27 ‘intentional misconduct’ pursuant to NRS 78.138(7)(b).” *Chur*, 136 Nev. Adv. Op. 7, 458 P.3d at 342.

1 of compliance with the 2009 AVC. Plaintiffs then contend that the *Krakauer* court found that
2 the Director Defendants knew that DISH was violating the 2009 AVC. (Opp. at 10, 20.)
3 Neither assertion is true. The Director Defendants’ knowledge of compliance with the TCPA
4 and 2009 AVC are not interchangeable. To recover from the Director Defendants for DISH’s
5 violation of the TCPA, the SLC would have to prove that the Director Defendants knowingly
6 caused or permitted DISH to violate the TCPA. Knowledge that DISH was violating a contract,
7 such as the 2009 AVC, would be beside the point.⁵ *PWP Xerion Hldgs. III LLC v. Red Leaf*
8 *Res., Inc.*, 2019 WL 5424778, at *15 (Del. Ch. Oct. 23, 2019) (“A board can readily comply
9 with its fiduciary duties while making a decision that breaches a contract”). More
10 importantly, as previously explained, the *Krakauer* court did not find that any Director
11 Defendant knew or believed that DISH was violating even the 2009 AVC.

12 Overall, Plaintiffs’ Opposition simply relies, time and again, on asserting that the SLC
13 prejudged the outcome of its investigation. It is an ironic accusation. Plaintiffs filed this case
14 on the assumption that DISH could hold its directors liable for the misdeeds found in the
15 Underlying Actions given the most inflammatory sound bites from the opinions, which
16 Plaintiffs misrepresent.⁶ Plaintiffs insisted that scant investigation was necessary to confirm
17 this assumption.⁷ *Plaintiffs*, not the SLC, sought prejudgment of the matter.

18 Instead, the SLC carefully investigated the issues, reviewed the evidence in detail, and
19 appropriately considered the law relevant to the SLC’s ultimate determination. Based on that
20 thorough, good-faith investigation, the SLC concluded that DISH would not benefit from
21

22 ⁵ Contrary to Plaintiffs’ contention, it does not matter that the *Krakauer* court’s findings related to the 2009 AVC
23 contributed to the decision to treble damages. The damages were awarded for violations of the TCPA. DISH has
24 been assessed no damages for violations of 2009 AVC; no party to the 2009 AVC has even alleged that DISH
25 violated its DNC-related provisions.

26 ⁶ (Consol. Compl. ¶¶ 46-58.)

27 ⁷ (See Plaintiffs’ Opposition to Motion to Stay Pending Investigation of Special Litigation Committee of Dish
28 Network Corporation at 1 (May 8, 2018) (arguing that the SLC’s investigation be limited to 45 days because
“interviewing each of Dish’s eight directors under oath, and transcribing their depositions, should not take more
than three weeks”).)

1 bringing claims against its directors because the evidence failed to meet the requirements of
2 NRS 78.138(7) with respect to any Director Defendant. Now, Plaintiffs oppose dismissal of
3 this case, not truly based on the independence of the SLC or the thoroughness of its
4 investigation, or even based upon one of the many pieces of evidence amassed through the
5 SLC's investigation. Rather, Plaintiffs insist that DISH must litigate the claims against the
6 Director Defendants based on the same misrepresented sound bites from the *Krakauer* opinion.
7 Because the SLC was independent and conducted a good-faith, thorough investigation, the
8 SLC's careful determinations are final, and the Court should defer to the SLC's business
9 judgment by granting the Motion to Defer.

10 **ARGUMENT**

11 **I. *Jacksonville* Sets the Standard for Deference to the SLC.**

12 Plaintiffs agree that the Court should defer to the SLC, if the SLC (1) was "independent"
13 and (2) conducted a "good faith thorough investigation." (Opp. at 16); *Jacksonville*, 133 Nev.
14 at 443, 401 P.3d at 1088 ("[C]ourts should defer to the business judgment of an SLC . . . where
15 the SLC is independent and conducts a good-faith, thorough investigation.").

16 After its investigation, the SLC moved for summary judgment deferring to the SLC's
17 determination based upon this standard. Thereafter, Plaintiffs requested and obtained
18 voluminous discovery, and the parties jointly requested, and the Court scheduled, an evidentiary
19 hearing to assess the independence of the SLC and the good-faith thoroughness of its
20 investigation. The SLC believes that there is no genuine issue of material fact concerning its
21 independence or the good-faith thoroughness of its investigation and that the Court could have
22 granted summary judgment deferring to the SLC. Now that discovery has been taken, however,
23 the SLC believes that the Court should make factual findings on those points at the evidentiary
24 hearing scheduled to address those issues.

1 Plaintiffs instead seek to turn settled law and the *Jacksonville* decisions on their heads
2 by arguing that, if the Court concludes that there is a genuine issue as to the SLC's
3 independence or the good-faith thoroughness of the SLC's investigation, the Court should rule
4 in Plaintiffs' favor and immediately declare the SLC process at an end. (Opp. at 16-17.)
5 Plaintiffs say that merely by proffering any conflicting evidence on either point, they should be
6 permitted to proceed with their Claims apparently regardless of what this Court concludes the
7 preponderance of the evidence at the evidentiary hearing shows, even if the evidence proves that
8 the SLC was independent and conducted a good-faith, thorough investigation meeting the
9 *Jacksonville* standard. (See, e.g., Opp. at 6, 22, 40-41.) Plaintiffs' erroneous argument should
10 be immaterial here, because Plaintiffs establish no genuine issue as to the SLC's independence
11 or the good-faith thoroughness of its investigation.

12 But, in all events, *Jacksonville* rejected Plaintiffs' position. The Nevada Supreme Court
13 held that, if a genuine issue is identified, a plaintiff may not override a special litigation
14 committee's determination unless and until the Court resolves the independence or good-faith
15 thoroughness issues on their merits in plaintiffs' favor based upon the evidentiary record: "a
16 shareholder must not be permitted to proceed with [the] derivative litigation[,] . . . unless and
17 until the district court determines at an evidentiary hearing that the [special litigation
18 committee] lacked independence or failed to conduct a thorough investigation in good faith."
19 *Jacksonville*, 133 Nev. at 443, 401 P.3d at 1088. Upon confirming that standard, *Jacksonville*
20 reviewed the trial court's conclusions for abuse of discretion, the standard of review applied to
21 factual findings. *Jacksonville*, 133 Nev. at 444-45, 401 P.3d at 1088-89 (finding no abuse of
22 discretion). Thus, even if this Court were to find a genuine issue of material fact, the Court
23 should weigh the evidence and resolve that issue through factual findings. In doing so, the
24 Court should find that the SLC was independent and conducted a good-faith, thorough
25 investigation and enter judgment deferring to the SLC's determination.

II. The SLC and Its Investigation Merit Deference Under the *Jacksonville* Standard.

In its Motion to Defer, the SLC established that it was independent and conducted a good-faith, thorough investigation. Plaintiffs' Opposition scarcely addresses these issues, relying primarily upon an irrelevant substantive challenge to the SLC's determinations.

A. *The SLC Is Independent.*

Plaintiffs do not dispute that a special litigation committee satisfies the independence aspect of the *Jacksonville* standard if the majority of its members is independent. (*Compare* Mot. at 4, 17, 19-20, 25, *with* Opp. at 41-45.) Under this standard, the Court assesses “whether the [SLC] that would be addressing the demand can impartially consider its merits without being influenced by improper considerations,’ such that it could ‘properly exercise[] its independent and disinterested business judgment[.]’” *Jacksonville*, 133 Nev. at 446, 401 P.3d at 1089 (all but first alteration in the original) (quoting *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 639, 137 P.3d 1171, 1183 (2006), *abrogated on other grounds by Chur*, 136 Nev. Adv. Op. 7, 458 P.3d 336). “[T]he independence standard that applies to directors in the demand-futility context is equally applicable” here. *Jacksonville*, 133 Nev. at 446, 401 P.3d at 1089. In the Motion to Defer, the SLC established that all three SLC Members are independent. Plaintiffs' makeweight arguments to the contrary are meritless.

With respect to Lillis and Federico, Plaintiffs offer only half-hearted arguments that are routinely and uniformly rejected in other cases. Lillis and Federico are clearly independent. Their independence alone establishes the independence of the SLC, because they constitute a majority of its members. Moreover, Brokaw also is independent. Plaintiffs overstate the significance of Brokaw's relationship with the Ergens, while ignoring the Ergens' own lack of conflicting interest, as DISH's largest stockholders, with respect to conduct from which they received no unique, personal benefit. All three members of the SLC are independent.

1 I. *Lillis Is Independent.*

2 Plaintiffs have no good argument that Lillis lacks independence. Lillis is an experienced
3 businessperson, with no ties to any Director Defendant beyond his service on the board of
4 DISH.⁸ (See Mot. at 20-21, Mot. Ex. I (Lillis Decl.)) This Court found in *Jacksonville* that
5 Lillis was independent from the same board members at issue here, and the Supreme Court
6 affirmed this finding. *Jacksonville*, 133 Nev. at 448, 401 P.3d at 1091 (“[W]e conclude that the
7 district court did not abuse its discretion in concluding that Lillis was independent.”). Indeed,
8 Lillis’s unquestionable independence, standing alone, established the *Jacksonville* special
9 litigation committee’s independence. *Jacksonville*, 133 Nev. at 448, 401 P.3d at 1091-92
10 (finding the SLC independent “based on Lillis’s independence and the SLC’s voting structure . .
11 . . .”); *In re DISH Network Corp.*, 2015 WL 13643897, at *14-*17 (Nev. Dist. Ct. Sept. 18, 2015)
12 (same). Lillis is clearly independent.

13 Plaintiffs argue that Lillis is somehow interested in the Claims because he was on the
14 board when DISH moved to dismiss Plaintiffs’ Complaint for failure to plead demand futility as
15 required by NRCP 23.1. (Opp. at 41-43.) Plaintiffs’ argument has been routinely and
16 uniformly rejected, including in *Jacksonville*. See, e.g., *Sarnacki v. Golden*, 4 F. Supp. 3d 317,
17 324 (D. Mass. 2014) (“The two motions referenced by Plaintiff did not, in fact, address the
18 merits of the suit. Instead, they sought dismissal based on procedural and pleading deficiencies.
19 The motions cannot be construed as prejudgment of the merits.”); *Strougo ex rel. The Brazil*
20 *Fund, Inc. v. Padegs*, 27 F. Supp. 2d 442, 449 (S.D.N.Y. 1998) (“[S]ince a ‘motion to dismiss is
21 designed to test the legal sufficiency of the complaint . . . [and not] the evidence at issue,’ it
22 cannot be concluded that Da Costa prejudged the evidence in this case.”). In *Jacksonville*, the
23 special committee itself, which included Lillis, moved to dismiss based upon NRCP 23.1,
24 before concluding its investigation, yet the committee and Lillis were found independent.

25
26 ⁸ Mr. Lillis, who is 78 years of age, will retire from the DISH board at the conclusion of his current term on May 1,
2020.

1 *Compare* The Special Litigation Committee’s Motion To Dismiss For Failure To Plead Demand
2 Futility, *Jacksonville Police and Fire Pension Fund vs. Ergen*, Case No. A-13-686775-B (Nev.
3 Dist. Ct. Jan. 12, 2015), *with Jacksonville*, 133 Nev. at 448-49, 401 P.3d at 1091-92.

4 Plaintiffs also wrongly assert that Lillis “prejudged” the Claims because he testified that,
5 during the SLC’s investigation, he may have been informed of DISH’s appeals of the decisions
6 in the Underlying Actions. (Opp. at 42 (citing Opp. Ex. 10, Deposition Transcript of C. Lillis,
7 at 96:11-100:17).) Plaintiffs imply that awareness of DISH’s appellate positions caused Lillis to
8 adopt them. (Opp. at 42.) But that obviously did not happen: the SLC and Lillis accepted as
9 true for purposes of this investigation all legal and factual determinations made in the
10 Underlying Actions, despite DISH disputing those findings on appeal. (See SLC Report at 66
11 n.167 (“DISH has appealed those findings; DISH’s appeals remain ongoing. Nonetheless, the
12 SLC has proceeded as though the rulings made in the Underlying Actions will stand and were
13 well reasoned based upon the evidence presented and legal standards applied.”); Opp. Ex. 10,
14 Deposition Transcript of C. Lillis, at 103:21-104:1 (“[A]ll along we had, on the SLC, had not
15 questioned the findings of the court.”).) There was no prejudgment based upon the appeals.
16 The SLC concluded that these separate Claims, under Nevada law, lack merit for reasons
17 unrelated to DISH’s appellate arguments in the Underlying Actions. (See SLC Report at 66
18 n.167 (“The SLC’s determinations do not depend upon the outcome of DISH’s appeals in the
19 Underlying DNC Actions.”).)

20 Plaintiffs attempt to support their prejudgment argument with a fabrication: Plaintiffs
21 write that “the SLC Report states that the *SLC believes* that ‘the decisions in *Krakauer* and *U.S.*
22 *v. DISH* . . . are wrong” (Opp. at 42 (emphasis added).) This is not true. At the cited
23 page, the SLC Report states, “The *Director Defendants* continue to believe that the decisions
24 are wrong” (SLC Report at 314.) The SLC never adopted the Director Defendants’ views
25 as the SLC’s own. The SLC addressed the topic because it was relevant to the SLC’s inquiry
26 into whether the Director Defendants acted with the subjective bad faith necessary to impose

1 argument also has been repeatedly rejected in other cases, including *Jacksonville*. *See, e.g.,*
2 *Jacksonville*, 133 Nev. 440, 447, 401 P.3d at 1086, 1090 (finding special committee
3 independent where all three members served on the board of a company “controlled by Ergen”);
4 *In re Cornerstone Therapeutics Inc., S’holders Litig.*, 115 A.3d 1173, 1183 (Del. 2015) (“[T]he
5 mere fact that a director serves on the board of a corporation with a controlling stockholder does
6 not automatically make that director not independent.”).⁹ It is also irrelevant because, as
7 DISH’s largest stockholder, Ergen is independent for the reasons set forth below. Federico is
8 independent.

9 3. *Brokaw Is Independent.*

10 Brokaw too is an experienced businessperson capable of exercising his business
11 judgment on DISH’s behalf. (*See* Mot. at 10; Mot. Ex. K, Brokaw Decl. ¶¶ 8-10.) Although
12 Plaintiffs insist that Brokaw lacks independence from the Ergens based upon the broad strokes
13 of his relationship with the Ergens, upon closer examination Brokaw is in fact independent.¹⁰

14 Brokaw’s relationship with the Ergens is irrelevant in this case. Plaintiffs’ claim that
15 Brokaw lacks independence from the Ergens is of no moment because the Ergens themselves
16 have no unique personal interests with respect to the Claims. Independence is measured only
17 vis-à-vis persons with personal interests in the matters under investigation that diverge from
18 those of the corporation and its stockholders generally. *See, e.g., Jacksonville*, 401 P.3d at 1090

19
20 ⁹ A controlling stockholder’s power to remove and replace a director undermines a director’s independence only if
21 the director’s board compensation is material to the director. *See Ryan v. Gursahaney*, 2015 WL 1915911, at *8
22 (Del. Ch. Apr. 28, 2015), *aff’d*, 128 A.3d 991 (Del. 2015) (finding directors to be independent where their
compensation did not unduly influence the directors’ decision making because the compensation was not alleged to
be extraordinary or excessive). That is not the case for Federico; Plaintiffs do not contend otherwise. (Opp. 44-45;
Mot. Ex. J., Federico Decl. ¶ 11.)

23 ¹⁰ Plaintiffs’ main support for this proposition is a quotation from *Jacksonville* noting “Brokaw’s personal and
24 professional ties with Ergen represent the types of improper influences that *could* inhibit the proper exercise of
independent business judgement.” (Opp. at 44 (emphasis added) (quoting *Jacksonville*, 401 P. 3d. at 1091).) Here,
25 Brokaw testified at his deposition that his social relationship with the Ergens has been minimal for years now.
(Opp. Ex. 15, Deposition Transcript of G. Brokaw, at 36:3-7.) Brokaw sees the Ergens only in connection with
26 DISH board meetings. (Opp. Ex. 15, Deposition Transcript of G. Brokaw, at 36:10-38:14.) He stays in their
garage apartment as a cost saving measure for DISH, because he is the only director without a local home, rather
than for any personal reason. (Opp. Ex. 15, Deposition Transcript of G. Brokaw, at 38:15-39:14.)

1 (a director is interested if he would ““be materially affected either to [his] benefit or detriment,
2 by a decision of the board, *in a manner not shared by the corporation and the stockholders.*””)
3 (emphasis added) (quoting *In re AMERCO Deriv. Litig.*, 127 Nev. 196, 219, 252 P.3d 681, 698
4 (2011)). Plaintiffs do not dispute this. In this case, the Ergens’ personal interests were aligned
5 with those of DISH. As the owners of more than half of DISH’s equity value, the Ergens
6 indirectly suffered more than half of the damages in the Underlying Actions. (*See* Mot. at 24.)
7 The Ergens thus would benefit indirectly from any recovery that DISH was able to achieve in
8 this action. And, there is no allegation that either Ergen directly profited from DISH’s TCPA
9 violations or from the *Krakauer* judgment. Neither is even identified as the primary alleged
10 wrongdoer.

11 There similarly is no merit to Plaintiffs’ contention that the Ergens are personally
12 interested because Plaintiffs named them defendants: a director does not become interested
13 simply by being named a defendant. *See, e.g., In re Citigroup Inc. S’holder Derivative Litig.*,
14 964 A.2d 106, 136 n.96 (Del. Ch. 2009) (named director defendants were disinterested with
15 respect to claims where the complaint “[was] devoid of any allegation that would lead to the
16 conclusion that . . . [the decision] constituted bad faith conduct by the director defendants”); *see*
17 *also In re Ebix, Inc. Stockholder Litig.*, 2014 WL 3696655, at *20 (Del. Ch. July 24, 2014)
18 (“Mere membership on the committee that recommended the [course of action], without more,
19 is not a particularized allegation showing [the directors’] interest or lack of independence”). In
20 *Jacksonville*, Lillis was named a defendant, but he was found “clearly independent.” *See In re*
21 *DISH Network Corp. Derivative Litigation*, 2015 WL 13643897, at *15 (Nev. Dist. Ct. Sept. 18,
22 2015) *aff’d by Jacksonville*, 133 Nev. at 448, 401 P.3d at 1091. A named director would lack
23 independence only if the director faced a substantial risk of material liability on the Claims.
24 Neither the allegations of the Complaint nor the SLC’s investigation suggested that the Ergens
25 caused DISH to adopt the challenged telemarketing practices with knowledge of their illegality
26 as necessary to permit liability under NRS 78.138(7)(b)(2). Thus, Brokaw too is independent.

1 Plaintiffs quibble with the SLC’s conclusion that the Ergens did not face a substantial
2 risk of material liability, arguing that the SLC’s reference to the conclusions of its own
3 investigation involves “circular reasoning.” Plaintiffs, however, do not argue that the facts
4 alleged in their Complaint (or any of the material in the SLC’s interview summaries or any of
5 the underlying documents Plaintiffs obtained during discovery) show that the Ergens personally
6 knew that DISH was violating the law and thus might face a substantial risk of material liability
7 under NRS 78.138(7)(b)(2).

8 ***B. The SLC Conducted a Good-Faith, Thorough Investigation.***

9 *1. This Requirement Concerns Procedural Thoroughness,*
10 *Not Substance.*

11 The second prong of the *Jacksonville* standard—that the special litigation committee
12 conducted a “good faith, thorough investigation”—concerns the process of the special litigation
13 committee’s investigation. It involves procedural matters, such as whether the investigation
14 addressed the relevant issues and whether the relevant information was collected, reviewed and
15 considered. In the words of the Nevada Supreme Court, this element concerns “the
16 appropriateness and sufficiency of the investigative procedures chosen and pursued by the
17 committee.” *Jacksonville*, 133 Nev. at 443, 401 P.3d at 1088 (quoting *Auerbach*, 393 N.E.2d at
18 996). As Plaintiffs concede, a special litigation committee satisfies the second prong where, as
19 here, it “investigate[s] all theories of recovery” and “explore[s] all relevant facts and sources of
20 information that bear on the central allegations in the complaint.” (Opp. at 17 (quoting *London*
21 *v. Tyrrell*, 2010 Del. Ch. LEXIS 54, at *54 (Del. Ch. Mar. 11, 2010)).)

22 “In accordance with the business judgment rule, courts can ‘inquir[e] into the procedural
23 indicia of whether the directors resorted in good faith to an informed decisionmaking process.’”
24 *Jacksonville*, 133 Nev. at 449-50, 401 P.3d at 1092 (alteration in original) (quoting *Wynn*
25 *Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev. 344, 399 P.3d 334, 343 (2017)). Thus, for
26 this analysis, “[c]ourts look to indicia of the SLC’s investigatory thoroughness, such as what

documents were reviewed and which witnesses interviewed.” *Jacksonville*, 133 Nev. at 449-50, 401 P.3d at 1092 (citations omitted) (quoting *Sarnacki*, 778 F.3d at 224).

As with any director action protected by the business judgment doctrine, the process employed by the Special Litigation Committee must not be so deficient as to constitute bad faith:

[P]roof[] . . . that the investigation has been so restricted in scope, so shallow in execution, or otherwise so *pro forma* or halfhearted as to constitute a pretext or sham, consistent with the principles underlying the application of the business judgment doctrine, would raise questions of good faith or conceivably fraud which would never be shielded by that doctrine.

Jacksonville, 133 Nev. at 449-50, 401 P.3d at 1092 (quoting *Auerbach*, 393 N.E.2d at 1003); see also *London v. Tyrrell*, 2010 Del. Ch. LEXIS 54, at *54 (Del. Ch. Mar. 11, 2010) (“If the SLC fails to investigate facts or sources of information that cut at the heart of plaintiffs’ complaint this will usually give rise to a material question about the . . . good faith of the SLC’s investigation.”).

This analysis does not permit inquiry into the substance of the committee’s determinations, into the merit of its analyses, or its conclusions. “The inquiry into whether the SLC made its determination in good faith and on an informed basis ‘focuses on the process used by the SLC, rather than the substantive outcome of the process.’” *Jacksonville*, 133 Nev. at 449-50, 401 P.3d at 1092. A “court ‘may not under the guise of consideration of such [procedural] factors trespass in the domain of business judgment.’” *Id.* at 1088 (quoting *Auerbach*, 393 N.E.2d at 1002).¹¹ “[T]he substantive aspects of a decision to terminate a

¹¹ In *Jacksonville*, the Nevada Supreme Court intentionally foreclosed judicial review of a special litigation committee’s substantive determinations by adopting the New York majority *Auerbach* standard of review rather than the Delaware minority *Zapata* standard. *Jacksonville*, 133 Nev. at 443, 401 P.3d at 1087-88. The *Zapata* standard of review of a special committee’s work differs from *Auerbach* only in that *Zapata* also includes a third, optional, prong under which the court may assess the reasonableness of the special committee’s judgment. If a plaintiff could demonstrate that a special litigation committee’s investigation was not procedurally thorough for purposes of a *Jacksonville/Auerbach* analysis by showing that the committee’s judgment was wrong or even unreasonable, *Jacksonville/Auerbach* would be functionally equivalent to *Zapata*, which the Nevada Supreme Court rejected. There is no room within the *Jacksonville* framework for this Court to review the reasonableness of

1 shareholders' derivative action against defendant corporate directors made by a committee of
2 disinterested directors appointed by the corporation's board of directors are beyond judicial
3 inquiry under the business judgment doctrine." *Id.*¹²

4 A court must defer to a special litigation committee's business judgment even if it
5 believes that the committee's business judgment is wrong: "Nevada's business judgment rule
6 'prevents courts from substitut[ing] [their] own notions of what is or is not sound business
7 judgment . . .'" *Jacksonville*, 133 Nev. at 443, 401 P.3d at 1087 (alterations in original,
8 citations omitted). That deference is the essence of the business judgment rule.

9 2. *The SLC Investigated Thoroughly.*

10 The SLC conducted a good-faith, thorough investigation. (Mot. at 30-36.) During the
11 investigation, counsel to the SLC reviewed over forty-four thousand documents. (SLC Report
12 at 30.) Each SLC member personally reviewed over fifteen hundred documents. (*Id.* at 30.)
13 These documents included the *Krakauer* and *U.S. v. DISH* opinions awarding damages against
14 DISH and hundreds of trial exhibits from the Underlying Actions. The documents reviewed
15 included DISH's internal communications related to DNC compliance and the 2009 AVC.
16 (*See, e.g.*, SLC Report at 212, 225-26, 306, 326.) The SLC also interviewed twenty-two
17 individuals, including each Director Defendant,¹³ DISH's inside counsel, DISH's outside
18 counsel in the Underlying Actions, and DISH's independent auditor. (SLC Report at 32, 41-47;
19 Mot. at 11-13.) Plaintiffs do not identify any documents, witnesses or issues that the SLC failed

20 a special litigation committee's determination.

21 ¹² Plaintiffs' suggestions that a substantive review would be proper here are not supported by the cases Plaintiffs
22 cite. (*See Opp.* at 17-22.) First, Plaintiffs cite primarily the same governing authorities as the SLC: *Boland v.*
23 *Boland*, 31 A.3d 529, at 568 (Md. 2011) ("Courts must defer to the SLC's substantive conclusions . . .") and
24 *Jacksonville*, 401 P.3d at 1092 ("The inquiry . . . focuses on the process used by the SLC, rather than the
25 substantive outcome of the process." (internal citation omitted). Further, the cases that Plaintiffs claim suggest that
26 a substantive review of the SLC's conclusions would be proper are inapposite to the present situation. Plaintiffs
27 cite *London v. Tyrrell*, 2010 Del. Ch. LEXIS 54 (Del. Ch. Mar. 11, 2010), a Delaware case applying the *Zapata*
28 standard and *Biondi v. Scrushy*, 820 A.2d 1148 (Del. Ch. Jan. 16, 2003), where the Delaware court did not address
thoroughness but merely referenced it as part of its opinion that discussed only independence of an SLC.

¹³ The SLC did not interview Joseph Clayton, who was at one time a Director Defendant, but who was dismissed
from this action following his death. (SLC Report at 33.)

1 to consider. Plaintiffs do not challenge any of the procedural indicia of the good-faith
2 thoroughness of the SLC's investigation.

3 At the outset of the SLC's investigation, Plaintiffs repeatedly argued that "[t]his case
4 turns on how eight Dish directors responded to their legal obligations to conduct Dish's
5 business in accordance with the TCPA after the Company's entry into a compliance agreement
6 with forty-six state attorneys general in 2009." (Opp. to Mot. to Stay (May 8, 2018) at 1.)
7 Plaintiffs insisted that the SLC's investigation should consist of nothing more than
8 "interviewing each of Dish's eight directors under oath, and transcribing their depositions[.]"
9 (Opp. to Mot. to Stay at 1; *see also id.* at 7 ("[N]early all the information that the SLC could
10 possibly require is readily available. As a result, confirming that Dish's directors did nothing
11 despite their known legal duty to operate the Company's telemarketing business in accordance
12 with the TCPA should not take more than a few days.")) The SLC went miles further than
13 what Plaintiffs argued would be a sufficient investigation; the SLC interviewed these witnesses
14 and a dozen more; it reviewed reams of court records and internal DISH documents; and the
15 SLC Report discussed each of these topics. (SLC Report at 15 (describing scope of
16 investigation); SLC Report at 173-75 (discussing Director Defendants' role in retailer discipline
17 pre-2009); SLC Report at 209-22 (describing post-2009 compliance efforts).)¹⁴ Given that the
18 SLC's investigation far exceeded the narrow and of limited scope inquiry Plaintiffs said would
19 suffice, they have no basis to challenge the good-faith thoroughness of the SLC's far broader
20 investigation.

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24 ¹⁴ Contrary to Plaintiffs' suggestion, the SLC was not required to transcribe the interview or the deposition. *See*
25 *Struogo ex rel. The Brazil Fund, Inc. v. Padegs*, 27 F. Supp.2d 442, 452 (S.D.N.Y. 1998) ("In the majority of cases
26 in which derivative actions have been terminated by special litigation committees, the interviews were not taken
under oath or before a stenographer.") (citing *Johnson v. Hui*, 811 F. Supp. 479, 489 (N.D. Cal. 1991) ("[T]he
absence of long transcribed interviews [under oath] does not undermine the undisputed facts which the SLC has
managed to prove")); *Rosengarten v. Buckley*, 613 F. Supp. 1493, 1503 (D. Md. 1985) (holding that the interview
summaries by the committee's counsel "reflect a comprehensive inquiry into the issues before the Committee").

1 3. *The SLC Demonstrably Addressed the Few Issues*
2 *Plaintiffs Claim the SLC Overlooked.*

3 In an attempt to shoehorn their disagreements with the SLC's conclusions into the
4 purely procedural review permitted by *Jacksonville*, Plaintiffs say that the SLC "refused to
5 address" various facts. But these statements are plainly wrong. Among other examples,
6 Plaintiffs say that the SLC "refused to address" the judicially determined fact that "[DISH's]
7 practices were not TCPA compliant following the 2009 AVC[.]" (Opp. at 3). The SLC Report,
8 however, repeatedly addresses—and accepts as fact—DISH's violations of the TCPA, including
9 after its entry into the 2009 AVC. (*See, e.g.*, SLC Report at 271 (discussing *Krakauer* jury
10 entering verdict against DISH for TCPA violations), 279 (charting the total TCPA violations
11 adjudicated in *U.S. v. DISH*), 318-320 (analyzing *Krakauer* court's decision to treble damages
12 for DISH's TCPA violations), 329 n.1298 ("The courts in *Krakauer* and *U.S. v. DISH* found
13 that DISH disregarded violations of the DNC Laws by the OE Retailers.")) The SLC Report
14 also describes in detail the changes DISH made to its compliance department in connection with
15 entering the 2009 AVC. (*See, e.g.*, SLC Report at 139-48, 221-22.)

16 Plaintiffs say that the SLC "refused to address" the judicial determination that DISH
17 "willfully and knowingly violated the TCPA." (Opp. at 3, 19.) Again, the SLC Report
18 repeatedly addresses and embraces this determination. (SLC Report at 21, 273, 318-19.)¹⁵

19 Plaintiffs even claim that the SLC Report simply ignores Judge Eagles' determination
20 that "Dish's . . . compliance policy was decidedly two-faced[.]" The SLC Report, however,
21 directly quotes that *exact portion* of the *Krakauer* court's decision when discussing the
22 *Krakauer* court's decision to treble damages and addresses in detail the implications of that
23 decision for the Director Defendants' potential liability. (*Compare* Opp. at 5, with SLC Report
24 at: 273, 318-20.)

25
26 _____
¹⁵ (*Compare* Opp. at 19-20, with SLC Report at 265-73, 318-323.)

1 The SLC's investigation and Report directly addressed every topic identified by
2 Plaintiffs. In many instances, Plaintiffs cite the SLC Report's discussion of these issues shortly
3 after claiming that the SLC failed to address the issue. (*See, e.g.*, Opp. at 6, 20, 22, 26, 29; *see*
4 *also* Opp. at 34 (claiming in the same sentence that the SLC "fails to address issue preclusion"
5 while also admitting that the SLC addressed that topic in the SLC Report and citing to those
6 pages of the SLC Report.)) Plaintiffs' Opposition identifies no flaw in the SLC's thoroughness.

7 4. *The SLC's Process Reflects No Bad Faith, Contrary to*
8 *Plaintiffs' Claim.*

9 Plaintiffs make several other wild claims about the SLC's investigation process in an
10 attempt to argue that the SLC somehow acted in bad faith. Plaintiffs have no evidence to
11 support any of these claims. Each is wrong.

12 Plaintiffs contend that the SLC did not step "into the shoes of the corporation[,]” citing
13 nothing. The Report is replete with examples of the SLC stepping into DISH's shoes,
14 evaluating whether the corporation could succeed on claims against the Director Defendants and
15 more broadly whether it would be in the best interest of DISH and all its stockholders for DISH
16 to pursue the Claims. (*Compare* Opp. at 19 *with* SLC Report at 16 ("The SLC has determined
17 that pursuit of the Claims would not be in the best interests of DISH and all of its stockholders
18 for four reasons"), 348 ("[S]uch a lawsuit would disrupt DISH's operations. It would
19 distract the people at the heart of developing and implementing DISH's strategic plans."), 352-
20 53 ("Attempting to litigate claims premised on DISH's Board knowingly causing DISH to
21 violate the DNC Laws would be harmful to DISH None of those costs is worth bearing for
22 the unlikely possibility that DISH might, somehow, prevail on claims that the SLC believes to
23 be meritless."))¹⁶

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26 ¹⁶ Plaintiffs also claim that the SLC did not make an "independent decision." (Opp. at 19 (quoting *Boland v. Boland*, 31 A.3d 529, 568 (Md. 2011).) But this again is pure, unsupported, argument.

1 Likewise, Plaintiffs contend, without evidentiary support, that the SLC “applied a
2 deferential standard to the Board’s previous actions.” (Opp. at 19.) The SLC, however, applied
3 precisely the standard required under Nevada law: The Director Defendants may not be held
4 personally liable under NRS 78.138 unless they engaged in an “intentional misconduct, fraud or
5 a knowing violation of law.” (*Compare* Opp. at 19 (quoting *Boland*, 31 A.3d at 568), *with* SLC
6 Report at 295-99 (applying NRS 78.138(7)(b)(1)-(2)).) To the extent that Plaintiffs mean to
7 dispute this standard, that is a substantive challenge, not subject to judicial review under
8 *Jacksonville*, and incorrect, as discussed below.

9 Plaintiffs contend that the SLC simply accepted the Director Defendants’ version of
10 events, again citing nothing. But, as the SLC Report makes clear, the SLC tested the veracity of
11 the Director Defendants’ assertions by multiple means, including by comparing their statements
12 to the contemporaneous documentary record (primarily board documents, their email
13 communications and those of other DISH personnel, representatives and counterparties, and
14 statements of other non-defendant witnesses) and the testimonial record from multiple witnesses
15 under oath in the Underlying Actions. (*Compare* Opp. at 18, *with* SLC Report at 31-32.)

16 Plaintiffs contend that the SLC did not question the Director Defendants, during their
17 interviews, about the documents that led to the findings of liability in the Underlying Actions.
18 (Opp. at 21-22.) This too is false, as reflected in the interview summaries produced by the SLC.
19 (*See* Opp. Ex. 31, Summary of Interview of Jim DeFranco at 4 (discussing email exchange
20 regarding compliance-related discipline of OE retailer), 7 (discussion of whether consumer
21 complaints caused DeFranco to question DISH’s compliance with DNC laws), 12 (discussion of
22 specific Sterling Satellite compliance dispute and why specific retailer was not terminated), 17-
23 18 (discussion of specific provisions of the 2009 AVC and why DeFranco believed DISH was
24 in compliance at the time of signing the agreement); Opp. Ex. 17, Summary of Interview of
25 Charlie Ergen at 3 (discussion of Ergen’s handling of a specific email relating retailer non-
26 compliance), 6 (discussion of Ergen’s knowledge of SSN’s noncompliance), 10-11 (discussion

1 of why DISH sought discretion not to terminate retailers under the 2009 AVC); Opp. Ex. 21,
2 Summary of Interview of David Moskowitz at 3-4 (discussion of specific email chains relating
3 DNC law non-compliance and DISH's response), 6 (discussion of specific provisions of the
4 2009 AVC and why Moskowitz believed DISH was in compliance at the time of signing the
5 agreement).)

6 Citing no evidence, Plaintiffs suggest that the SLC declined to transcribe its interviews
7 to conceal something; however, as Federico explained to Plaintiffs at his deposition, the SLC
8 had careful notes prepared of its interviews, rather than a transcription, because the SLC
9 believed that process was more likely to reveal the full truth of the situation. (*Compare* Opp. at
10 21, *with* Opp. Ex. 30, Transcript of Deposition of A. Federico, at 148:18-149:1 ("Q. Is it fair to
11 say that witnesses are more compelled to speak honestly when they are under oath? . . .
12 [Federico]: I really don't know if that's true. I think, you know, if honesty includes
13 completeness, no, I don't believe they are. I think they are going to be more complete when they
14 are just talking."))¹⁷ Plaintiffs ignore the very evidence they elicited in discovery.

15 Finally, Plaintiffs contend that the SLC had no choice but to determine that the Claims
16 lacked merit because any other course would have harmed DISH's interests in the Underlying
17 Actions. Plaintiffs support this contention solely with a citation to the SLC Report, which does
18 not support the contention. (Opp. at 7 (citing SLC Report at 351).) At the cited point, the SLC
19 Report identifies risk to DISH's positions in the Underlying Actions as an additional reason,
20 "for the time being," that, in the SLC's business judgement, it would not be in DISH's best
21 interest to pursue claims that *the SLC had already found to be meritless*.¹⁸ (Opp. at 7.) If the

22 ¹⁷ See also *Struogo*, 27 F. Supp.2d at 452 ("Strougo attacks the SLC for not conducting interviews under oath and
23 for conducting two interviews by telephone. Strougo's objections are unavailing. In the majority of cases in which
24 derivative actions have been terminated by special litigation committees, the interviews were not taken under oath
25 or before a stenographer.") (citing *Johnson v. Hui*, 811 F. Supp. 479, 489 (N.D. Cal. 1991) ("[T]he absence of long
transcribed interviews [under oath] does not undermine the undisputed facts which the SLC has managed to
prove"); *Rosengarten*, 613 F. Supp. at 1503 (holding that the interview summaries by the committee's counsel
reflect a comprehensive inquiry into the issues before the Committee").

26 ¹⁸ The SLC Report makes clear that this was an additional basis to decline to pursue claims, rather than a constraint
27 on the SLC's conclusion. (SLC Report at 16 (listing three reasons why the "[t]he SLC has determined that pursuit

1 SLC had found merit in the Claims, but believed that reporting that determination or litigating
2 the Claims would be detrimental to DISH's interests, the SLC could have sought a stay of this
3 Action until these proceedings threatened no harm to DISH. The SLC's determination was not
4 constrained by that possibility.¹⁹ And, in any event, a special litigation committee is entitled to
5 halt litigation of claims in the corporation's name, even meritorious claims (which these are
6 not), if warranted to preserve more valuable interests of the corporation. *See, e.g., In re*
7 *UnitedHealth Group Inc. Shareholder Derivative Litig.*, 754 N.W.2d 544, 559 (Minn. 2008)
8 (finding an SLC's decision to not pursue claims, even meritorious claims, is not "itself a sign
9 that the derivative process has been undermined").²⁰ Plaintiffs fundamentally fail to appreciate
10 that, as fiduciaries of DISH, they too must consider DISH's interests in the Underlying Actions.

11 The SLC conducted a good-faith, thorough investigation, satisfying both elements of the
12 *Jacksonville* standard. Plaintiffs' arguments to the contrary are baseless or readily belied by the
13 record. The Court should therefore defer to the SLC's determination that the Claims are not in
14 DISH's best interests and should be dismissed.

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19 of the Claims would not be in the best interests of DISH and all of its stockholders" before adding "and (4) *at least*
20 *for the time being*, pursuit of the Claims may be detrimental to DISH's interests in the Underlying DNC Actions")
(emphasis added).)

21 ¹⁹ Plaintiffs also cite minutes of an SLC meeting recording that, after the SLC had made its determination that the
22 Claims should not be pursued and the final draft of the Report had been prepared, the SLC invited DISH inside
23 counsel to review the draft to ensure that DISH's privileges asserted in the Underlying Actions were preserved.
(Opp. at 7 (citing Opp. Ex. 14, Meeting of the Special Litigation Committee of the Board of Directors of Dish
Network Corporation, dated February 19, 2019, DISH_SLC-Production_0000027).) This review did not affect the
SLC's determinations as to the merit of the Claims, which had already been made.

24 ²⁰ *See also Maldonado v. Flynn*, 485 F. Supp. 274, 285 (S.D.N.Y. 1980) ("The final substantive judgment whether
25 a particular lawsuit should be maintained requires a balance of many factors ethical, commercial, promotional,
26 public relations, employee relations, fiscal as well as legal.") (citing *Auerbach*, 393 N.E.2d at 1002)), *rev'd in part*,
671 F.2d 729 (2d Cir. 1982); *Klotz v. Consol. Edison Co. of N.Y., Inc.*, 386 F. Supp. 577, 582 (S.D.N.Y. 1974)
(rejecting plaintiff's argument that the SLC's business judgment decision to not pursue litigation was flawed when
the SLC "felt that litigation . . . would be counter-productive," especially when the corporation had an ongoing
relationship with the proposed defendant).

1 **III. Plaintiffs' Primary Arguments Are Irrelevant and Wrong.**

2 Plaintiffs' real arguments in opposition to the Motion to Defer, set forth at pages 19
3 through 41 of the Opposition, are irrelevant because they concern the substance of the SLC's
4 determinations, which are not subject to judicial review. They are also wrong.

5 **A. Plaintiffs' Criticism of the SLC's Determinations Is Legally**
6 **Irrelevant.**

7 Plaintiffs' Opposition presents one fundamental argument, with four supporting issues:
8 Plaintiffs complain that the SLC's determinations are so wrong that they amount to "bad faith."
9 (*See, e.g.*, Opp. at 20 ("[T]he SLC could not have reached this conclusion if it was investigating
10 in good faith"), 23 ("But each of these purported justifications is flawed, again raising
11 genuine issues of material fact regarding whether the SLC's investigation was thorough and in
12 good faith."), 24 ("The SLC could not have reached this conclusion in good faith.").)

13 This argument unquestionably challenges the substance of the SLC's determinations.
14 (*See, e.g.*, Opp. at 23 ("[E]ach of the purported justifications [for the SLC's determination] is
15 flawed."), 27 (The "SLC's reliance on *Charvat* is misplaced."), 23-24 ("[D]espite the fact that .
16 . . . , the SLC found"), 33 (The "SLC's attempt to discard DeFranco's testimony . . . also
17 fails").) In some instances, Plaintiffs argue that the SLC's determinations are inconsistent
18 with determinations made in the Underlying Actions. (*See, e.g.*, Opp. at 25 (The "SLC's
19 attempt . . . is directly at odds with the *Krakauer* court's finding").²¹ In some instances,
20 they argue that the SLC misapprehended facts. (*See, e.g.*, 10 n.27 ("While the SLC repeatedly
21 argues that DNC compliance risk was viewed as being immaterial . . . Dish's internal
22 documents reflect otherwise").²² And, in some instances, they argue that the SLC misapplied

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24 ²¹ (*See also e.g.*, Opp. at 21-22 ("[W]here the federal courts did not, the SLC accepted Defendants' innocent
25 explanations"), 22 (The SLC's "conclusion rests on testimony that was 'not credible' in *Krakauer*."), 29 ("In
26 contradiction to the judicial findings in *Krakauer*, the SLC claims").)

26 ²² (*See also e.g.*, Opp. at 10 n.26 ("[T]he SLC's conclusion that 'the 2009 AVC was not presented to the Dish
27 Board' was not made in good faith." (quoting SLC Report at 210)), 21 (The SLC "adopted Dish's debunked
28 'objectively reasonable belief' defense as the SLC's conclusion.").)

1 law. (*See, e.g.*, Opp. at 40 n.48 (“[T]he SLC wrongly argues that ‘[f]or DISH to prevail on the
2 Claims, it would also need to prove that the Retailers were so obviously its agents . . . that the
3 Director Defendants knowingly caused DISH to violate the DNC Laws” (quoting SLC
4 Report at 351)).)²³

5 Whatever the substantive challenge, Plaintiffs’ argument is irrelevant to this Motion to
6 Defer because, as previously explained, the substance of the SLC’s determinations is not subject
7 to review. *See supra* p. 14-16. The *Jacksonville* standard “‘focuses on the process used by the
8 SLC, rather than the substantive outcome of the process.’” 133 Nev. at 443, 401 P.3d at 1088
9 (*quoting Sarnacki*, 778 F.3d at 224).

10 Plaintiffs contend that their argument addresses *Jacksonville*’s procedural requirement,
11 not substance, at least to the extent the argument relies upon the supposed inconsistency
12 between the SLC’s findings and the *Krakauer* court’s findings. But this is not true. As
13 previously explained, *Jacksonville*’s procedural requirement concerns only thoroughness.²⁴
14 Plaintiffs’ argument has nothing to do with the thoroughness of the SLC’s investigation. The
15 SLC’s investigation obviously did not overlook the *Krakauer* court’s findings. The *Krakauer*
16 decision is fully discussed throughout the SLC’s Report. *See infra* p. 27-33.

17 Plaintiffs’ argument addresses the substance of the SLC’s determinations because it
18 relies upon the circular notion that the SLC misinterpreted or misapplied the *Krakauer* court’s
19 findings. If Plaintiffs assumed that the SLC’s findings were substantively correct, regardless of

20 ²³ (*See, e.g.*, Opp. at 27 (“The SLC cannot simultaneously argue in good faith that Defendants reasonably believed
21 that Dish was complying with the 2009 AVC and also that *Charvat* stands for the proposition that they did not have
22 to implement the promised TCPA compliance controls over their third-party retailers.”), 31 n.39 (“The SLC’s
23 argument that a private enforcement right is not provided for by the 2009 AVC is a red herring.”), 34-35 (“The
SLC brushes off the ability for Dish to assert issue preclusion . . . proclaiming that . . . the ‘Director Defendants
would be able to take different positions on issues than those found in the Underlying DNC Actions.’”)).

24 ²⁴ *Jacksonville*, 133 Nev. at 449-50, 301 P.3d at 1092 (“In accordance with the business judgment rule, courts can
25 ‘inquir[e] into the procedural indicia of whether the directors resorted in good faith to an informed decisionmaking
26 process.’”) (*quoting Wynn Resorts*, 133 Nev. 344, 399 P.3d at 343); *Jacksonville*, 133 Nev. at 449-50, 301 P.3d at
1092 (“The inquiry into whether the SLC made its determination in good faith and on an informed basis ‘focuses
on the process used by the SLC, rather than the substantive outcome of the process. Courts look to indicia of the
SLC’s investigatory thoroughness, such as what documents were reviewed and which witnesses interviewed.’”) (*quoting Sarnacki*, 778 F.3d at 224).

1 any conflict with the *Krakauer* court's findings, Plaintiffs would have no argument that the
2 findings were made in bad faith. The *Krakauer* court's findings are cited by Plaintiffs only as a
3 means of establishing that the SLC's ultimate determination is incorrect. Plaintiffs' argument
4 relies upon this Court reviewing and independently assessing the merits of the ultimate
5 determination made by the SLC.

6 A special litigation committee's determination concerning the meaning and relevance—
7 and therefore the effect on its investigation—of prior judicial findings is no less substantive than
8 a committee's determinations concerning the effect on its investigation of other facts, such as
9 those set forth in documents and testimony. There are multiple reasons why a special litigation
10 committee's determination might appear to differ from a prior judicial finding, including
11 differences in defendants, claims, available defenses, legal standards, or available evidence.
12 Under *Jacksonville*, a committee's determination concerning the effect of prior judicial findings,
13 like all substantive determinations, rests within the sound business judgment of the committee.²⁵

14 Plaintiffs implicitly admit that assessing the effect of the *Krakauer* court's findings
15 properly rested within the business judgment of the SLC. They indeed argue that the effect of
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17 ²⁵ The SLC also took into consideration judicial opinions on certain topics addressed by *Krakauer* and *U.S.*
18 *v. DISH* that were not consistent with Plaintiffs' interpretations, including the findings in *US v. DISH* case cited in
19 the SLC Report, which found expressly that DISH had taken substantial steps to address TCPA issues prior to and
20 during the time period at issue in this case. (*See, e.g.*, SLC Report at 140 n. 519 (quoting *U.S. v. DISH*, 256 F.
21 Supp. 3d at 847) ("In December 2007, Dish retained a company called PossibleNOW, Inc. (PossibleNOW) to assist
22 it in complying with Do-Not-Call Laws."); SLC Report at 157 (quoting *U.S. v. DISH*, 256 F. Supp. 3d at 849) ("In
23 August 2006, Retail Services formed a compliance department . . . to 'monitor . . . Retailers' compliance with the
24 standard Retailer Agreement, Dish's rules, and applicable laws and regulations."); SLC Report at 175 (citing *U.S.*
25 *v. DISH*, 256 F. Supp. 3d at 862-63) (discussing how DISH terminated United Satellite as an OE Retailer on
26 August 20, 2006 for making prerecorded calls); SLC Report at 176 n. 687 (quoting *U.S. v. DISH*, 256 F. Supp. 3d
27 at 852) ("Dish terminated some Order Entry Retailers after starting the Compliance Department. In February 2007,
28 Dish announced that it had terminated three Order Entry Retailers for Do-Not-Call violations. . . . In early October
2007, two additional Order Entry Retailers were terminated for using unauthorized third party affiliates for lead
generation. . . . In July 2008, Musso identified two additional Order Entry Retailers that had been terminated since
she started the Compliance Department and two more that were not renewed but would have been terminated.")62-
63; SLC Report at 279 (quoting *U.S. v. DISH*, 256 F. Supp. 3d at 931) (noting "With respect to DISH and its
Authorized Telemarketers' violations, the Court added that "[t]he fact that Dish employees acted in good faith
when they knowingly made such calls or that industry standards would allow such illegal calls is not a defense.");
U.S. v. DISH, 256 F. Supp. 3d at 911 ("Dish went to great lengths to prepare for the launch of the [Do Not Call]
Registry. Dish developed a scrubbing process for Account Number Campaigns to limit Registry Calls."); *id.* at 937
("Dish has maintained an Internal Do-Not-Call List since 1998.").

1 the *Krakauer* court’s findings was the *only* matter the SLC needed to consider. (Opp. at 3 (“The
2 SLC’s only job was to determine why another jury would not reach the same result as the
3 *Krakauer* jury regarding Defendants’ liability.”).) This misses the point. The Director
4 Defendants were not defendants in *Krakauer*, and their knowledge and fiduciary duties were not
5 at issue. The SLC could not simply consider whether a subsequent court would make the same
6 decisions as the *Krakauer* court because the *Krakauer* court did not even address the central
7 issue addressed by the SLC: director liability under NRS 78.138(7). Even so, by making the
8 point, Plaintiffs admit that the effect to be given to the *Krakauer* court’s findings was an
9 appropriate substantive determination to be made by the SLC.

10 Plaintiffs’ inconsistency argument is precisely what *Jacksonville* warned of when it
11 directed that the “court ‘may not under the guise of consideration of such [procedural] factors
12 trespass in the domain of business judgment.’” 133 Nev. at 443, 401 P.3d at 1088 (quoting
13 *Auerbach*, 393 N.E.2d at 1002). Even if the SLC’s determinations conflicted with those of the
14 *Krakauer* court, Plaintiffs’ arguments on that basis would nonetheless improperly challenge the
15 substance of the SLC’s determinations and be irrelevant under *Jacksonville*. Thus, the Court
16 need not confirm that, as shown below, the SLC’s determinations never conflicted with those of
17 the *Krakauer* court.

18 ***B. Plaintiffs’ Arguments Are Also Wrong.***

19 In all events, Plaintiffs’ substantive attacks on the SLC’s determinations are meritless.

20 ***1. The SLC Did Not Ignore the Krakauer Court’s Conclusion***
21 ***That DISH Violated the TCPA.***

22 Plaintiffs first argue that the SLC ignored the findings made by the *Krakauer* court
23 concerning DISH’s violations of the TCPA and the 2009 AVC. (Opp. at 20-22.) This is not
24 correct. The SLC expressly accepted the legal and factual findings made by the courts in
25 *Krakauer* and *U.S. v. DISH* as true. (SLC Report at 66 n.167 (“[T]he SLC has proceeded as
26 though the rulings made in the Underlying DNC Actions will stand and were well reasoned

1 based upon the evidence presented and legal standards applied.”.) The SLC began its
2 investigation from the premise that DISH had violated the TCPA with the willfulness and
3 knowledge required to treble damages in *Krakauer* and enter judgment in *U.S. v. DISH*. (*Id.*)
4 The SLC also accepted as true the *Krakauer* court’s conclusion that DISH had violated the 2009
5 AVC. (SLC Report at 66 n.167.)

6 Plaintiffs argue that the SLC necessarily ignored *Krakauer*’s evidentiary findings and
7 conclusions because the SLC found DISH unlikely to prevail in claims against the Director
8 Defendants.²⁶ (Opp. at 3 (“The SLC’s only job was to determine why another jury would not
9 reach the same result as the *Krakauer* jury regarding Defendants’ liability.”).) As discussed,
10 there was no inconsistency between the SLC’s conclusion and the *Krakauer* court’s
11 determinations because the relevant issues, parties, relevant legal standards, and evidence
12 differed.

13 2. *The SLC’s Determination Does Not Conflict with the*
14 *Krakauer Court’s Determination Concerning the 2009*
15 *AVC, and None of the SLC’s Reasons Are Flawed.*

16 According to Plaintiffs, the SLC’s determination concerning the Director Defendants’
17 belief that DISH was complying with the *TCPA* could not have been made in good faith.
18 Plaintiffs cite two reasons for this: (a) the determination supposedly conflicted with the
19 *Krakauer* court’s determinations concerning DISH’s failure to comply with the 2009 *AVC* and
20

21 ²⁶ In the course of this argument, Plaintiffs claim that *Krakauer* “rejected the credibility” of all evidence concerning
22 DISH’s TCPA compliance because “Judge Eagles . . . assessed the evidence . . . and determined that ‘the record is
23 silent about any efforts Dish [sic] took to comply with the promises and assurances it made’ in the 2009 AVC.”
24 (Opp. at 20 (quoting *Krakauer*, 2017 WL 2242952 at *7).) This finding and the various other quotations that
25 Plaintiffs reference concerned compliance with the 2009 AVC, not the TCPA. Moreover, as explained in the SLC
26 Report, the record before Judge Eagles was silent as to DISH’s efforts to comply with the 2009 AVC because
Judge Eagles excluded such evidence. (SLC Report at 323 (citing SLC Report Ex. 82, Pretrial Conference
Transcript 22:10-5 *Krakauer v. DISH Network, L.L.C.*, No. 14-cv-0333 (M.D.N.C. Jan. 6, 2017) (D.I. 316) (“I’m
going to let the Plaintiff in opening statement reference those parts of this agreement relevant to control . . .”).)
In any event, the SLC did not rely for its determinations upon evidence deemed not credible by the *Krakauer* court.
As reflected in the 1,329 footnotes and citations in the SLC Report, the SLC based its conclusions on a substantial
body of evidence, including evidence not at issue in *Krakauer*, including the Director Defendants’ personal
communications.

1 (b) some of the SLC's reasons for the determination supposedly lack merit. (Opp. at 23-29.)
2 Neither is relevant or true.

3 a. The SLC's Determination as to the TCPA Does Not Conflict with
4 the *Krakauer* Court's Determinations Concerning the 2009 AVC.

5 Plaintiffs are wrong to argue that the SLC's determinations conflict with or ignore the
6 *Krakauer* court's determinations with respect to the 2009 AVC.²⁷ Whether the Director
7 Defendants believed DISH was complying with the TCPA and whether DISH was found in
8 hindsight to have complied with the 2009 AVC are different issues. Plaintiffs' argument
9 conflates the Director Defendants with DISH; conflates the TCPA with the 2009 AVC; and
10 conflates the actual knowledge standard of NRS 78.138(7)(b)(1)-(2) with the TCPA's imputed
11 knowledge standard. The SLC considered the matter on which Plaintiffs contend the SLC
12 should have exclusively focused: "Dish's judicially determined failure to comply with its
13 promises in the 2009 AVC to monitor and enforce its third-party retailers' TCPA
14 compliance[.]" (Opp. at 24.) But the SLC correctly focused on the Director Defendants rather
15 than DISH, on the TCPA rather than the 2009 AVC, and on actual knowledge rather than
16 imputed knowledge.

17 It was necessary and appropriate for the SLC to focus its investigation on the Director
18 Defendants' personal conduct and knowledge. Contrary to Plaintiffs' position, DISH's
19 adjudicated wrongdoing under federal law did not establish the Director Defendants' personal
20 liability under Nevada law. Judgment against a corporation, even for treble damages, does not
21 establish corporate directors' personal liability.²⁸ See, e.g., *Dutchess Bus. Servs., Inc. v. Nev.*

22
23 ²⁷ Plaintiffs argue: "The SLC's singular focus on why Defendants believed Dish was complying with the **TCPA**
24 bypasses the issue the SLC should have been focused on, which is Dish's judicially determined failure to comply
with its promises in the **2009 AVC** to monitor and enforce its third-party retailers' TCPA compliance, regardless of
Dish's belief that it was not responsible for doing so[.]" (Opp. at 24 (emphasis added).)

25 ²⁸ See, e.g., *Dodo v. Strocker*, 219 P. 222, 224 (Colo. 1923) ("This is far from saying that [a director] is individually
26 charged with knowledge of everything with knowledge of which the company is charged."; "[H]ow can [a director]
be said to actually know what he does not know, merely because a board of directors, of whom he is one, are, by a
fiction of law presumed to know?").

1 *State Bd. of Pharmacy*, 124 Nev. 701, 724, 191 P.3d 1159, 1174 (2008) (holding that, where the
2 corporate entity had committed statutory violations, the corporate representative and CEO must
3 receive “a full opportunity of notice, discovery, and an opportunity to be heard before
4 potentially being found liable” to protect the individual’s due process rights).

5 Corporate misconduct and liability do not inexorably lead to director liability. This is
6 true even where a corporation has been found liable for egregious misconduct and required to
7 pay exemplary damages, such as treble and punitive damages. *See, e.g., Horman v. Abney*,
8 2017 WL 242571 (Del. Ch. Jan. 19, 2017) (dismissing *Caremark* claims against directors where
9 corporation paid treble damages for RICO violations); *In re General Motors Co. Derivative*
10 *Litig.*, 2015 WL 3958724 (Del. Ch. June 26, 2015) (dismissing claims against director
11 defendants where corporation paid punitive damages); *City of Birmingham Retirement & Relief*
12 *Sys. v. Good*, 177 A.3d 47, 57 (Del. 2017) (dismissing claims against director defendants where
13 corporation pled guilty to criminal conduct).²⁹ Given the statutory hurdles to such claims,
14 corporate directors are rarely found personally liable for corporate misconduct.³⁰

15 Whether corporate directors are liable for corporate wrongdoing depends upon their
16 relationship to the wrongdoing and any exculpation. In Nevada, NRS 78.138(7)(b)(1)-(2)
17 shields directors from personal monetary liability unless the directors engaged in fraud,
18 intentional misconduct, or a knowing violation of law. In *Chur v. Eighth Judicial Dist. Court*,
19 136 Nev. Adv. Op. 7, 458 P.3d at 342, the Nevada Supreme Court clarified that this standard
20 requires the Court to find that the defendant director actually, personally, knew not only of the

21 ²⁹ *See also Okla. Firefighters Pension & Retirement Sys. v. Corbat*, 2017 WL 6452240, at *9 (Del. Ch. Dec. 18,
22 2017) (dismissing claims against directors where the corporation “paid \$2.2 billion in fines as a result of [foreign
23 exchange rate manipulation] and . . . pleaded guilty to conspiracy to violate federal antitrust laws” (omission in
24 original)); *South v. Baker*, 62 A.3d 1 (Del. Ch. 2012) (dismissing claims against directors where corporate safety
25 violations led to employee injuries and death); *Cottrell v. Duke*, 829 F.3d 983, 986-87 (8th Cir. 2016) (dismissing
26 claims against directors where “[t]here is reasonable suspicion to believe that Mexican and USA [sic] laws have
27 been violated” through “an extensive and systematic practice of bribing Mexican officials” “orchestrated by top
28 executives,” including the subsidiary’s CEO and general counsel).

³⁰ *See also, e.g., Okla. Firefighters Pension & Retirement Sys.*, 2017 WL 6452240; *In re Caremark Int’l Inc. Derivative Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996) (noting that a *Caremark* claim is “the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment”).

1 conduct, but also that the conduct was illegal. Thus, as directed by Nevada law, the SLC
2 investigated whether the Director Defendants personally knew that DISH was violating the
3 TCPA. Neither *Krakauer* nor *U.S. v. DISH* addressed this question. Neither Underlying Action
4 addressed NRS 78.138. The Director Defendants were not even defendants in the Underlying
5 Actions; only one director testified. Thus, the SLC’s investigation obviously covered different
6 ground on this issue.

7 It was also appropriate for the SLC to focus its investigation upon the Director
8 Defendants’ knowledge concerning DISH’s compliance with the TCPA (and other DNC Laws),
9 rather than their knowledge concerning the 2009 AVC (although the SLC Report also addressed
10 the latter issue). The Underlying Actions awarded damages based upon DISH’s violations of
11 the TCPA (and other DNC Laws), not the 2009 AVC. (*See* Ex. 1 SLC Report Ex. 88, *Krakauer*
12 Jury Verdict Sheet); *Krakauer*, 2017 WL 2242952, at *13; *U.S. v. Dish Network LLC*, 256 F.
13 Supp. 3d 810, 991 (C.D. Ill. 2017).³¹ The Complaint here concerns only alleged violations of
14 the TCPA, not contractual obligations under the 2009 AVC. (Compl. ¶¶ 65-67.) To recover
15 from the Director Defendants for DISH’s violation of the TCPA, DISH would have to prove
16 that the Director Defendants knowingly caused or permitted DISH to violate the TCPA. *See*
17 NRS 78.138(7)(b). Knowledge that DISH was violating some other law or, in the case of the
18 2009 AVC, a contract, would be beside the point. Any failure by DISH to adhere to its purely
19 contractual obligations in the 2009 AVC in no way implicates the Director Defendants’
20 fiduciary duties. *In re Essendant, Inc. S’holder Litig.*, 2019 WL 7290944, *13 (Del. Ch. Dec.
21 30, 2019) (“[R]eferences to alleged breaches of the GPC merger agreement do not implicate bad
22 faith, at least not in the fiduciary duty context. . . . A board may even have a duty to breach a
23 contract if it determines that the ‘benefits [of breach] (broadly conceived) exceed the costs
24
25

26 ³¹ No party to the 2009 AVC has ever even asserted that DISH breached the 2009 AVC’s DNC provisions. (SLC
Report at 209.)

1 (broadly conceived).” (citation omitted)). Any findings by the *Krakauer* court concerning the
2 2009 AVC therefore are largely irrelevant to the merits of the Claims in this action.

3 According to Plaintiffs, the SLC’s determination that the Director Defendants believed
4 in 2010 and 2011 that DISH was not legally responsible for the retailers under the TCPA (and
5 other DNC Laws) is inconsistent with a supposed determination by the *Krakauer* court in 2015
6 that DISH was legally responsible for the retailers under the 2009 AVC. (*See, e.g.*, Opp. at 23-
7 24.) But there is no inconsistency. Once again, Plaintiffs are conflating issues. DISH’s legal
8 responsibility under the TCPA is a different issue from DISH’s legal responsibility under the
9 2009 AVC. Moreover, the *Krakauer* court did not find that anyone at DISH, much less any
10 Director Defendant, believed at the time that DISH was legally responsible for the retailers’
11 TCPA violations even under the 2009 AVC.³²

12 Finally, the SLC’s focus upon the Director Defendants’ actual knowledge, rather than
13 DISH’s imputed knowledge, as determined by the *Krakauer* court, was also correct.
14 Throughout their Opposition, Plaintiffs serially imply that the *Krakauer* court found that the
15 Director Defendants “willfully and knowingly” violated the DNC Laws. (Opp. at 1, 3, 6, 19,
16 37, 39.) Plaintiffs’ contention is not correct. As an initial matter, the sentence they selectively
17 quote states: “The Court finds that Dish Network willfully and knowingly violated the
18 TCPA[.]” (*Krakauer*, 2017 WL 2242952, at *13.) The *Krakauer* court’s decision did not
19 address the personal knowledge of any Director Defendant.

20 Plaintiffs claim the *Krakauer* court found that DISH “did not have a good faith basis to
21 believe it was not responsible” for the retailer violations identified in that case. (Opp. at 24.)
22 But there was no such finding. In raising this argument, Plaintiffs again conflate issues, this
23 time the standard for knowledge under NRS 78.138(7)(b)(1)-(2) and the standards for
24 knowledge under the DNC Laws. As recently affirmed by *Chur v. Eighth Judicial Dist. Court*,

25 _____
26 ³² The *Krakauer* court also did not find DISH liable for the retailers’ violations under the 2009 AVC; it found that
27 DISH had breached provisions of the 2009 AVC requiring DISH to monitor, investigate and penalize retailers.
28 *Krakauer*, 2017 WL 2242952, at *6-*8.

1 136 Nev. Adv. Op. 7, 458 P.3d at 342, NRS 78.138(7) requires a plaintiff to show that the
2 director defendant not only knew of the conduct, but had actual knowledge that the conduct was
3 illegal. A mistake of law or fact would preclude liability.

4 In *Krakauer*, DISH took the position that the retailer was an independent contractor for
5 whom DISH was not responsible. The *Krakauer* court rejected the position, but the *Krakauer*
6 court explicitly noted that it did not need to find “bad faith” on the part of anyone at DISH with
7 respect to that position to meet the TCPA’s standard for willfulness. See *Krakauer*, 2017 WL
8 2242952, at *9 (concluding that “[t]o recover treble damages, the plaintiffs must show that Dish
9 ‘willfully or knowingly violated’ the relevant provisions of the TCPA and must persuade the
10 Court, acting in its discretion, that trebling is appropriate [A] finding of willfulness does
11 not require bad faith.”), *discussed at* SLC Report at 313.

12 The *Krakauer* court did not find that anyone at DISH, much less a Director Defendant,
13 was actually aware that *DISH* was violating the DNC Laws. The *Krakauer* court gave special
14 meaning to the words “willfully and knowingly” based upon authority in the TCPA context.
15 The *Krakauer* court premised its determination that DISH “willfully and knowingly” violated
16 the DNC Laws on the willfulness of the *retailer*, which it imputed to DISH, and on DISH’s
17 knowledge that the *retailer* was violating the DNC Laws and failure to stop such violations.
18 *Krakauer*, 2017 WL 2242952, at *9-*10 (“Dish knew or should have known that its agent, SSN,
19 was violating the TCPA, and Dish’s conduct thus willfully and knowingly violated the
20 TCPA.”).

21 Contrary to Plaintiffs’ misleading analysis, this was not a finding that any Director
22 Defendant knew that *DISH* was violating the TCPA, which is the standard for liability imposed
23 by NRS 78.138(7). *Krakauer* made no such finding.

b. The SLC's Determinations Are Supported.

The SLC determined, for many reasons, that the Director Defendants believed that DISH was not legally responsible for the retailers under the TCPA. Plaintiffs contest some of the bases for the SLC's determination. Plaintiffs' arguments are flawed.

Plaintiffs first argue that the SLC "relies almost exclusively" upon the provisions in DISH's contracts with retailers characterizing the retailers as independent contractors, not agents. Plaintiffs argue that any reliance on these provisions was improper because such provisions "are not dispositive on the question of whether the parties have established an independent contractor or agency relationship." (Opp. at 26.) Plaintiffs' argument is wrong in two respects:

First, the SLC does not rely "almost exclusively" upon the "independent contractor" provisions. The SLC identified those provisions among myriad reasons for determining that the Director Defendants did not believe that DISH was legally responsible for its retailers.³³ Indeed, a substantial majority of the SLC's lengthy report is directed at this issue.

Second, since the provisions state that the retailers are independent contractors, they are consistent with, and thus support, the Director Defendants' stated beliefs that the retailers were not DISH's agents. (See SLC Report at 94-96.) It hardly matters that such provisions are not

³³ The SLC's determination was influenced by the fact that the Director Defendants received advice of counsel during the relevant time as to whether DISH was legally responsible for DNC violations by retailers. (See SLC Report at 309 ("[T]he Director Defendants believed, upon advice of counsel, that DISH would not violate the DNC Laws if it failed to stop Retailers, including OE Retailers, from violating the DNC Laws. The Director Defendants each affirmed this belief when interviewed by the SLC.")) The SLC's conclusion was influenced by the findings in *U.S. v. DISH*, including the finding that "Dish was a sophisticated enterprise with knowledgeable counsel . . . , [and] Dish put together [a] Working Group a year ahead of time to prepare for the TSR," 256 F. Supp. 3d at 932, as well as the finding that "Dish management in 2017 takes Do-Not-Call violations seriously as a result of the multistate investigations [that led] to this action and the July 2009 Assurance of Voluntary Compliance with 46 states, as well as other private lawsuits." *Id.* at 911. The SLC's determination was also based upon interviews with numerous witnesses, including not only the Director Defendants themselves, but also the personnel and outside advisors who interacted with them on DNC issues. (SLC Report at 15.) The SLC Report outlines the substantial body of evidence supporting the SLC's conclusion that the Director Defendants never expected the *Krakauer* court to find DISH in violation of any law. (SLC Report at 318-20.) The SLC specifically considered and discussed the *Krakauer* court's conclusions as to credibility, among other things, in reaching these conclusions. (See SLC Report at 320-24, 329 n.1298.)

1 dispositive. Even courts holding that they are not dispositive agree that they are relevant. *See*,
2 *e.g.*, *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 661 (4th Cir. 2019) (“The terms of the
3 agreement between the firms will remain highly relevant to the legal status of their
4 relationship.”).³⁴ It was entirely appropriate for the SLC to include them among its many other
5 reasons for crediting the Director Defendants’ stated beliefs.

6 Plaintiffs argue incorrectly that the “SLC’s reliance on *Charvat* is misplaced,” referring
7 to the United States District Court for the Southern District of Ohio’s summary judgment that
8 DISH could not be held liable for TCPA violations by one of DISH’s retailers. There was
9 nothing inappropriate about the SLC’s reference to *Charvat*. The SLC identified *Charvat* as a
10 further data point, from the relevant time period, supportive of the Director Defendants’ belief
11 that DISH was not legally responsible under the TCPA for violations by retailers. Plaintiffs do
12 not dispute that *Charvat* was the only final decision, during the relevant time, concerning
13 whether a party in DISH’s position might be responsible under the TCPA for violations by
14 retailers. Nor do they dispute that, consistent with the Director Defendants’ belief, the *Charvat*
15 court held that DISH was not legally responsible under the TCPA for such violations.³⁵

16 There is no merit to Plaintiffs’ attempt to distinguish *Charvat* on the ground that it does
17 not address DISH’s responsibility “in light of the 2009 AVC.” (Opp. at 27.) It addressed the
18 responsibility most directly relevant to the Claims and to the SLC’s investigation, DISH’s

19 ³⁴ *See also, e.g.*, *Robb v. United States*, 80 F.3d 884, 893 n.11 (4th Cir. 1996) (“While not dispositive of the matter,
20 this provision demonstrates that the parties did not believe an employer-employee relationship was created by the
21 contract.”) (citing Restatement (Second) of Agency § 220(2)(i) (relevant to distinguishing between an employee
and an independent contractor is “whether or not the parties believe they are creating the relation of master and
servant”)).

22 ³⁵ According to Plaintiffs, the *Charvat* court found DISH (then called EchoStar) not liable for the retailer violations
23 because it had not, at that time, implemented the “micro-managing controls” that the 2009 AVC supposedly
24 directed DISH to implement over its retailers. (Opp. at 28.) In fact, *Charvat v. EchoStar Satellite, LLC*, 676 F.
25 Supp. 2d 668, 678 (S.D. Ohio 2009), *vacated*, 535 Fed. Appx. 513 (6th Cir. 2013), found that DISH was not liable
26 for the TCPA violations of the retailers because: (1) DISH did not make the calls itself or explicitly direct the calls
made by the retailers; (2) the contract between DISH and retailers expressly prohibits the retailer from using
DISH’s name; and (3) plaintiff failed to state any “statutory duty” delegated to the retailer from the company. *Id.*
at 678. Moreover, regardless of the 2009 AVC’s requirements, the *Krakauer* court found that DISH’s level of
control over its retailers did not actually change after the 2009 AVC.

1 responsibility under the TCPA. The 2009 AVC did not alter that responsibility. To the
2 contrary, the 2009 AVC preserved DISH's position that it was not legally responsible for
3 violations by retailers under the TCPA.³⁶

4 It is not clear what point Plaintiffs are making when they repeat the SLC's determination
5 that the "only Defendant contemporaneously informed of *Charvat* was Defendant Ergen."
6 Plaintiffs do not rule out that Ergen or DISH's counsel might have advised the other Director
7 Defendants based upon *Charvat*. In all events, even if no such communications occurred, it
8 would hardly be irrelevant that the only final judicial decision on the subject during the relevant
9 time period was consistent with the stated belief of the Director Defendants that DISH was not
10 legally responsible under the TCPA for violations by retailers. (*Compare* Opp. at 27-29, with
11 SLC Report at 310-11.)

12 Perhaps recognizing that there is ample evidentiary support for the SLC's determination
13 concerning the Director Defendants' belief regarding TCPA compliance, Plaintiffs attempt to
14 argue that it does not matter whether the Director Defendants knew DISH was violating the
15 TCPA. Citing inapt authority from other jurisdictions, Plaintiffs argue that the Director
16 Defendants can be held personally liable to DISH for their "personal acts and omissions that
17 cause damages, injuries or losses to the corporation," regardless of their actual knowledge
18 concerning any legal violations. (Opp. at 32.) However, Plaintiffs are obviously wrong under
19 Nevada law. The Nevada Supreme Court recently confirmed that "NRS 78.138 provides the
20 sole mechanism to hold directors and officers individually liable for damages in Nevada."
21 *Chur*, 136 Nev. Adv. Op. 7, 458 P.3d at 349. In *Chur*, the Supreme Court considered whether
22 allegations of gross negligence were sufficient to state a claim for breach of fiduciary duty
23 against directors. *Id.*, 458 P.3d at 340-42. The Supreme Court analyzed what NRS

24 _____
25 ³⁶ Plaintiffs argue irrelevantly, "The SLC cannot simultaneously argue in good faith that Defendants reasonably
26 believed that Dish was complying with the 2009 AVC and also that *Charvat* stands for the proposition that they did
27 not have to implement the promised TCPA compliance controls over third-parties." (Opp. at 27.) The SLC does
28 not argue that *Charvat* stands for any such proposition. *Charvat* does not address DISH's promises under the 2009
AVC and, in all events, those promises did not address DISH's obligations under the TCPA.

1 78.138(7)(b)’s terms “knowing violation” and “intentional misconduct” specifically require in
2 order to impose liability against directors. *Id.* The Supreme Court held that to impose personal
3 liability on a director of a Nevada corporation, a “claimant must establish that the director or
4 officer *had knowledge that the alleged conduct was wrongful* in order to show a ‘knowing
5 violation of law’ or ‘intentional misconduct’ pursuant to NRS 78.138(7)(b).” *Id.*, 458 P.3d at
6 342 (applying *In re ZAGG Inc. S’holder Derivative Action*, 826 F.3d 1222, 1232 (10th Cir.
7 2016) (emphasis added)).

8 Plaintiffs also claim that the *Krakauer* court found that the Director Defendants lacked
9 an “objectively reasonable belief” that DISH was complying with the TCPA and the United
10 States Court of Appeals for the Fourth Circuit affirmed this ruling. (Opp. at 28-29.) But this is
11 not true. The *Krakauer* court made no factual findings on this issue. Nor did the Court of
12 Appeals affirm any such finding. The *Krakauer* court found DISH’s interpretation of the law
13 incorrect; it did not need to determine whether DISH had an objectively reasonable belief.
14 *Krakauer*, 2017 WL 2242952, at *9 (“[A] finding of willfulness does not require bad faith . . .
15 .”).³⁷ The Fourth Circuit Court of Appeals upheld this ruling, affirming that, for purposes of
16 DISH’s liability for treble damages, it mattered only that DISH was indifferent to or
17 consciously disregarded violations by retailers.³⁸ No court found that DISH lacked an
18 objectively reasonable belief that (a) it was complying with the law and (b) was not legally
19 responsible for third parties’ TCPA compliance. And, in any event, as discussed above, the
20
21

22 ³⁷ In the Fourth Circuit appeal, DISH raised three main issues. “First, it challenge[d] the class certification on the
23 grounds that the court lacks jurisdiction over the class under Article III. Second, it raise[d] various objections to
24 the district court’s certification of the class as a matter of civil procedure. And third, it challenge[d] its own
25 liability for the improper calls placed by SSN.” *Krakauer v. Dish Network, L.L.C.*, 925 F.3d 643, 652 (4th Cir.
26 2019). The court explained that DISH’s liability was upheld because DISH was indifferent to or consciously
27 disregarded violations by SSN. *Id.* at 661-62.

28 ³⁸ DISH considered raising the objective reasonableness of its belief that its conduct complied with the law in its
U.S. Supreme Court appeal, but ultimately declined to do so. *Compare* Motion to Stay the Mandate, *Krakauer*,
No. 18-1518, at 15-16 (4th Cir. June 19, 2019) (D.I. 90) (discussing objectively reasonable standard), *with* Petition
for Writ of Certiorari, *Krakauer*, No. 19-496 (U.S. Oct. 15, 2019).

1 *Chur* decision precludes liability even where a director’s belief that the corporation is
2 complying with the law is not “objectively reasonable.”

3 3. *The SLC Did Not Disregard the Krakauer Court’s*
4 *Findings with Respect to DISH’s “Two-Faced” Conduct.*

5 Plaintiffs suggest that the *Krakauer* court found DISH to have taken a blatantly cavalier
6 approach to its own compliance with the TCPA. To do so, Plaintiffs truncate quotations from
7 the *Krakauer* court’s findings that DISH was “two-faced” or “looked the other way” with
8 respect to telemarketing compliance. (Opp. at 29-31.) From these snippets, Plaintiffs would
9 have this Court infer that the Director Defendants must have known that DISH was violating
10 DNC laws. Plaintiffs are not accurately describing the record.

11 Plaintiffs fail to inform the Court, as is clear enough from the *Krakauer* decision itself,
12 that the *Krakauer* court’s findings as to DISH’s dismissive attitude did not concern DISH’s,
13 much less the Director Defendants’, attitude toward *DISH’s* compliance with the DNC Laws.
14 These findings concerned DISH’s attitude toward the *retailers’* compliance with the DNC
15 Laws. *Krakauer*, 2017 WL 2242952, at *10 (“The evidence shows that Dish’s TCPA
16 compliance policy was decidedly two-faced. Its contract allowed it to monitor TCPA
17 compliance, . . . and it told forty-six state attorneys general that it would monitor and enforce
18 *marketer* compliance, . . . but in reality it never did anything more than attempt to find out what
19 *marketer* had made a complained-about call. . . . It never investigated whether a *marketer*
20 actually violated the TCPA and it never followed up to see if *marketers* complied with general
21 directions concerning TCPA compliance and or with specific do-not-call instructions about
22 individual persons.”) (emphasis added).³⁹

23
24
25 ³⁹ The *Krakauer* court noted that DISH had a compliance department that employed a specific procedure in
26 response to customer complaints. *Krakauer*, 2017 WL 2242952, at *8 (“The standard Dish response to a customer
27 complaint was to (1) identify the marketer who made the call, if it could, (2) ask the marketer for call records and
28 proof that the number had been scrubbed, and (3) regardless of the response—or lack of response—to ask the
marketer not to call that specific person again.”).

1 During the relevant time period, the Director Defendants and others at DISH believed
2 that retailers were independent contractors and, therefore, that DISH was not legally responsible
3 for the retailers' compliance with the DNC Laws. Thus, DISH made efforts directed at retailer
4 compliance because DISH believed it was good for business, but DISH did not do everything
5 within its power to ensure compliance. (SLC Report at 92 ("DISH approached Retailer legal
6 compliance as an aspect of the services that DISH purchased from Retailers because of its effect
7 on customer satisfaction, rather than a necessity for DISH's own compliance with the law."))
8 In contrast, DISH's internal DNC compliance was diligent. *U.S. v. DISH* observed that "Dish
9 went to great lengths to prepare for the launch of the [National Do-Not-Call] Registry,"⁴⁰ that
10 "Dish has maintained an Internal Do-Not-Call List since 1998,"⁴¹ that "Dish . . . honored the do-
11 not-call requests made to eCreek"⁴² and "set up procedures to honor" those requests.⁴³ It was
12 not until the decisions in the Underlying Actions and their affirmance on appeal that DISH
13 learned that it had been legally responsible for retailer compliance. DISH's mistaken
14 understanding of the law as to its responsibility for violations by retailers explains why DISH
15 might have taken a dismissive attitude towards the retailers' DNC compliance, despite the
16 Director Defendants' intent that DISH operate lawfully.

17 Plaintiffs argue that the 2009 AVC necessarily informed the Director Defendants that
18 DISH was legally responsible under the TCPA for the third-party retailers' DNC compliance.
19 (Opp. at 10, 23-24.) The 2009 AVC itself flatly contradicts this assertion. The 2009 AVC
20 expressly reiterated DISH's position that the retailers were not DISH's agents. (Ex. 2 (SLC
21 Report Ex. 29, 2009 AVC § 1.14 ("[N]othing in the Assurance is intended to change the
22 existing independent contractor relationships between DISH Network and its authorized
23

24 ⁴⁰ *U.S. v. DISH*, 256 F. Supp. 3d at 930.

25 ⁴¹ *Id.* at 937.

26 ⁴² *Id.* at 938.

27 ⁴³ *Id.*

1 retailers who sell DISH Network products and it believes that no agency relationship is created
2 by the agreements set forth herein.”)).) Contrary to Plaintiffs’ representations, the 2009 AVC
3 did not state that DISH would be liable for retailer DNC violations, nor did it require DISH to
4 ensure retailer compliance; it imposed monitoring, investigating and disciplining requirements
5 on DISH. (*Compare* Opp. 24, with SLC Report at 215-21 (discussing 2009 AVC at 4.74, 4.76,
6 4.78, 4.79).) The 2009 AVC states that, in DISH’s view, even these obligations exceed those in
7 the TCPA. (*Compare* Opp. at 9, with 2009 AVC at 3-4.)

8 Nothing set forth in the 2009 AVC nor in the findings of the Underlying Actions
9 conflicts with the SLC’s conclusion that the Director Defendants believed DISH was complying
10 with the TCPA. Nor did such materials conflict with the SLC’s less important determination
11 that the Director Defendants believed DISH was complying with the 2009 AVC. The Director
12 Defendants apparently were mistaken, but their mistake does not make them liable under NRS
13 78.138(7)(b)(1)-(2). In all events, there is no inconsistency concerning their belief about
14 DISH’s compliance with the TCPA and any requirements of the 2009 AVC.

15 *4. The SLC Did Not Ignore Issue Preclusion.*

16 Plaintiffs contend that the SLC ignored “established legal doctrine to exonerate
17 DeFranco.” (Opp. at 32.) Plaintiffs are again wrong. The “established legal doctrine” to which
18 Plaintiffs refer is the doctrine of issue preclusion, and the SLC hardly ignored it. The SLC
19 determined that DISH would not prevail on the Claims against DeFranco because he did not
20 knowingly cause or permit DISH to violate the TCPA. Contrary to Plaintiffs’ contention, issue
21 preclusion could not be used to prove otherwise.

22 “Issue preclusion bars the ‘successive litigation of an issue of fact or law actually
23 litigated and resolved in a valid court determination essential to the prior judgment, even if the
24 issue recurs in the context of a different claim.’” *Paulos v. FCHI, LLC*, 136 Nev. Adv. Op. 2,
25 456 P.3d 589, 593 (2020) (citing *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008)). “[T]he SLC has
26 proceeded as though the rulings made in the Underlying DNC Actions will stand and were well

1 reasoned based upon the evidence presented and legal standards applied.” (SLC Report at 66
2 n.167; *see also* SLC Report at 349-50 (“DISH’s litigation of the Claims would be complicated
3 by the factual determinations reached in the Underlying DNC Actions. As a litigant in the
4 Underlying DNC Actions, DISH may be precluded from asserting contrary facts in any
5 litigation that it undertook to prosecute the Claims.”).) The SLC therefore effectively applied
6 issue preclusion, for purposes of its investigation, with respect to every finding made in the
7 Underlying Actions. But it did not establish a viable claim against DeFranco.

8 Plaintiffs identify *Universal Furniture* as instructive on the question of whether DISH
9 could recover from DeFranco based upon issue preclusion. (Opp. at 39.) *Universal Furniture*
10 permitted a plaintiff to use offensive issue preclusion to avoid the need to re-litigate the
11 corporation’s adjudicated legal violations when seeking to recover for those violations from the
12 corporation’s director and officer. *Universal Furniture Int’l, Inc. v. Frankel*, 835 F. Supp. 2d
13 35, 42-43 (M.D.N.C. 2011), *aff’d*, 538 F. App’x 267 (4th Cir. 2013). *Universal Furniture*
14 observed, however, that the plaintiff would still need to litigate all matters related to the
15 individual defendant’s knowledge, intent, and conduct to obtain damages from the individual
16 defendant. *Universal Furniture*, 835 F. Supp. 2d at 45 (refusing to apply a finding from the
17 prior litigation regarding the corporation’s conduct to the individual defendant in the instant
18 litigation). The SLC did the same: After presuming without deciding that DISH’s federal law
19 TCPA violation was established, the SLC examined whether claims for personal liability of the
20 Director Defendants could be proven under Nevada corporate law. (*See, e.g.*, SLC Report at 66
21 n.167.) Plaintiffs cite no cases with respect to issue preclusion that permit a court to impute
22 findings made with respect to a corporation to an individual officer or director without requiring
23 separate findings of fact with respect to the individual’s conduct or intent.⁴⁴ In focusing on the

24 _____
25 ⁴⁴ Because the SLC found the Claims meritless, even assuming that DISH benefited from offensive issue
26 preclusion, there was no need for the SLC Report to dwell on the likelihood that DISH would be able to obtain
27 offensive issue preclusion. (SLC Report at 349-50.) Instead, the SLC Report primarily discussed the possibility
28 that DISH would face defensive issue preclusion as an additional challenge for DISH to overcome were it to
litigate. (SLC Report at 349-50.) The cases Plaintiffs cite with respect to issue preclusion support the SLC’s

Director Defendants' personal conduct, knowledge, and intent, the SLC indeed undertook the precise inquiry suggested by *Universal Furniture*.

CONCLUSION

At the evidentiary hearing, this Court should make factual findings confirming the independence of the SLC and the good-faith thoroughness of its investigation. Consistent with *Jacksonville*, upon making those findings, this Court should defer to the SLC's business judgment that this matter be dismissed.

DATED this 14th day of April 2020.

By /s/ Robert J. Cassity

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Nominal Defendant DISH Network Corporation*

conclusion that issue preclusion may apply to DISH's detriment, were it to litigate, particularly if DISH obtained offensive issue preclusion, without supporting Plaintiffs' position that all findings made with respect to DISH could be applied with equal force to the Director Defendants personally. *See, e.g., Universal Furniture Int'l, Inc. v. Frankel*, 835 F. Supp. 2d 35, 42-43 (M.D.N.C. 2011), *aff'd*, 538 F. App'x 267 (4th Cir. 2013) (refusing to apply issue preclusion to damages, because the issue may be more important to the CEO than it had been to the corporation); *Pinnacle Great Plains Operating Co., LLC v. Swenson*, 2017 WL 4855846, at *7 (D. Idaho Oct. 26, 2017) (finding no issue preclusion, primarily addressing claim splitting defenses); *EDCare Mgmt. v. Delisi*, 50 A.3d 448, 452 (D.C. Cir. 2012) (applying defensive, not offensive, issue preclusion).

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April 2020, a true and correct copy of the foregoing **REPLY IN SUPPORT OF THE SPECIAL LITIGATION COMMITTEE'S MOTION FOR SUMMARY JUDGMENT DEFERRING TO ITS DETERMINATION THAT THE CLAIMS SHOULD BE DISMISSED** was served by the following method(s):

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

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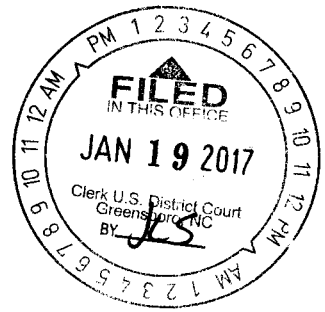
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EXHIBIT 1

EXHIBIT 1



IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS H. KRAKAUER,)
)
Plaintiff,)
)
v.)
)
DISH NETWORK L.L.C.,)
)
Defendant.)

1:14-CV-333

VERDICT SHEET

1. Was SSN acting as Dish's agent when it made the telephone calls at issue from May 11, 2010, through August 1, 2011?

☒ YES

☐ NO

If Yes, continue to Question 2. If No, skip all other questions and sign the verdict sheet.

2. Did SSN make and class members receive at least two telephone solicitations to a residential number in any 12-month period by or on behalf of Dish, when their telephone numbers were listed on the National Do Not Call Registry?

☒ YES as to Dr. Krakauer and all class members

If Yes, continue to Question 3 and skip the following questions.

☐ YES as to Dr. Krakauer and all class members except the following, whose numbers plaintiff has not proven were residential:

☐ Telephone numbers that LexisNexis always identifies as "unknown"

☐ Telephone numbers that LexisNexis identifies as residential before May 11, 2010 or after August 1, 2011

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004798

- ☐ Telephone numbers that LexisNexis identifies as "unknown" in the May 2010 to August 2011 time period that the calls were made but identifies differently at other times
- ☐ Telephone numbers that LexisNexis identifies as both residential and "unknown"
- ☐ Telephone numbers that LexisNexis always identifies as residential, including in the May 2010 to August 2011 time period that the calls were made
- ☐ Telephone numbers that LexisNexis identifies as cellular and possibly cellular
- ☐ NO

If you answer Yes in whole or in part, also answer Question 3. If you answer No to Question 2, skip Question 3 and sign the verdict sheet.

3. What amount, up to \$500, do you award for each call made in violation of the TCPA?

\$ 400.00

Robert Jackson
Foreperson

01/19/2017
Date

JA017112

EXHIBIT 2

EXHIBIT 2

LM

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

Acting by Attorney General,
Thomas W. Corbett, Jr.

Petitioner

v.

DISH NETWORK, LLC

Respondent

Docket No.

388 M.D. 2009

2009 JUL 15 A 10 14

RECEIVED
COMMONWEALTH COURT
OF PENNSYLVANIA

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, acting by Attorney General Thomas W. Corbett, Jr., through the Bureau of Consumer Protection, and avers that, pursuant to Section 201-5 of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.* ("Consumer Protection Law"), the parties hereto consent to the filing of the attached *Assurance of Voluntary Compliance* in the Commonwealth Court of Pennsylvania. The parties further agree that the Court shall maintain continuing jurisdiction over this Assurance in accordance with Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5.

JA017114

001634

ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of:

DISH NETWORK, L.L.C.,)
a Colorado Limited Liability Company)

1.1 This Assurance of Voluntary Compliance ("Assurance")¹ is being entered into between the Attorneys General of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia², Hawaii³, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (hereafter referred to as the "Attorneys General") and DISH Network, L.L.C.

1. BACKGROUND

1.2 DISH Network, L.L.C. ("DISH Network") is a limited liability company organized under the laws of the state of Colorado. Its principal place of business is located at 9601 S. Meridian Blvd, Englewood, CO 80112.

1.3 DISH Network is in the business of, among other things, providing certain audio and video programming services to its subscribers via direct broadcast satellites. In connection with the provision of these services, DISH Network sells and leases receiving equipment to allow access to such programming transmitted from such satellites. DISH Network sells and leases to its subscribers such receiving equipment both directly and through authorized retailers.

¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

² With regard to Georgia, the Administrator of the Fair Business Practices Act, appointed pursuant to O.C.G.A. 10-1-395, is statutorily authorized to undertake consumer protection functions, including acceptance of Assurances of Voluntary Compliance for the State of Georgia. Hereafter, when the entire group is referred to as the 'Respective States' or 'Attorneys General,' such designation, as it pertains to Georgia, refers to the Administrator of the Fair Business Practices Act.

³ With regard to Hawaii, Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized, pursuant to Hawaii Rev. Stat. Chap. 487, to represent the State of Hawaii in consumer protection actions.

1.4 DISH Network maintains a fleet of geosynchronous communications satellites and directly sells access to this satellite system to individuals who request access to audio and video programming licensed to DISH Network from video and audio content providers.

Attorneys General's Position

1.5 The Attorneys General assert that DISH Network enters into agreements with Third-Party Retailers that DISH Network authorizes, on a non-exclusive basis, to market, promote, and solicit orders from Consumers for the purchase of DISH Network Goods and/or DISH Network Services and/or to provide installation and activation services to Consumers in connection with their purchase of DISH Network Goods and/or DISH Network Services.

1.6 The Attorneys General assert that DISH Network controls the conduct, practices and procedures of its Third-Party Retailers through its DISH Network Retailer Agreement, or similar documents; through "Business Rules" that are established by DISH Network and must be followed by Third-Party Retailers; through training that DISH Network provides to its Third-Party Retailers; by requiring Third-Party Retailers to take all actions and refrain from taking any action as reasonably requested by DISH Network in connection with marketing, advertising, promotion and/or solicitation of orders; by requiring Third-Party Retailers to market, promote and describe DISH Network Goods and/or DISH Network Services in a manner approved by DISH Network; by setting all prices for its programming and related promotions and limiting its Third-Party Retailers' ability to offer and sell other goods and services to DISH Network's customers; by requiring Third-Party Retailers to perform installation services consistent with guidelines set forth in DISH Network's Installation Manual; and by requiring Third-Party Retailers to use DISH Network's trademarks, logos and service marks in connection with the retail sale of DISH Network Goods and/or DISH Network Services and otherwise controlling their appearance and conduct when interacting with consumers.

1.7 The Attorneys General assert that they have received complaints from Consumers against DISH Network that its Third-Party Retailers have made misrepresentations and material omissions of fact in connection with their marketing, promotion and sale of DISH Network Goods and/or DISH Network Services and that DISH Network has represented to Consumers that it is not responsible for the conduct of its Third-Party Retailers. The Attorneys General assert that DISH Network's Third-Party Retailers, with DISH Network's assent, are acting on DISH Network's behalf as its agents and are subject to DISH Network's control. The Attorneys General further assert that Consumers who do business with DISH Network's Third-Party Retailers reasonably believe that DISH Network's Third-Party Retailers are employees or agents of DISH Network who are acting on behalf of DISH Network and, therefore, DISH Network's Third-Party Retailers are apparent agents of DISH Network. The Attorneys General assert that, as either actual or apparent agents, DISH Network is responsible for the conduct of its Third-Party Retailers and is bound by the representations made by its Third-Party Retailers to Consumers.

1.8 The Attorneys General assert that DISH Network has failed to comply with federal, state and/or local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on federal, state, or local do-not-call lists.

1.9 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts in connection with their offer, sale and leasing of Dish Network Goods and Dish Network Services by failing to adequately disclose material terms and conditions, including, but not limited to, the terms of their Agreements, the limitations on the availability of programming, limitations on the use of satellite receivers, and limitations on the availability of rebates, credits and free offers.

1.10 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by failing to disclose to Consumers that purchased or leased DISH Network Goods were previously used and/or refurbished.

1.11 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by advertising prices without adequately disclosing the applicability of rebates and by making reference and comparison price offers when the goods or services that the Dish Network Goods and/or Dish Network Services were being compared to were materially different.

1.12 The Attorneys General assert that DISH Network has committed unfair and deceptive trade practices in violation of the Consumer Protection Acts by electronically debiting Consumers' bank accounts and credit cards without providing Consumers with adequate notice and without first obtaining adequate authorization from Consumers.

DISH Network's Position

1.13 DISH Network denies each allegation contained in paragraphs 1.5 through 1.12. Moreover, DISH Network asserts that it has not been deficient in any manner, legally or otherwise, in the way it and its retailers make disclosures to prospective customers; or in the advertising it uses and further asserts it has fully complied with all applicable consumer protection laws and regulations, both federally and across the several states. DISH Network asserts that it places a priority on its efforts to provide quality products and customer service and to that end has policies and procedures to provide a high level of service and fair dealing to customers. DISH Network believes its business practices exude the highest ethical conduct.

1.14 DISH Network asserts that it has cooperated with the Attorneys General during their inquiry. DISH Network values the suggestions of the Attorneys General as to ways in which it can improve its policies and procedures and is willing to agree to the obligations herein in an effort to promote customer relations. However, DISH Network asserts that by entering into this Assurance, it does so denying wrongdoing of any kind and affirmatively states that it

believes the requirements it has agreed to by signing this Assurance are policies, procedures and actions that exceed applicable legal and common law standards, and that it met all legal standards prior to the Attorneys General beginning their investigation. DISH Network asserts that by entering into this Assurance, DISH Network does not intend to create any legal or voluntary standard of care and expressly denies that any practices or policies inconsistent with those set forth in this Assurance violate any legal standard. It is DISH Network's intention and expectation that neither this Assurance nor any provision hereof shall be offered or cited as evidence of a legal or voluntary standard of care. Furthermore, DISH Network asserts that nothing in the Assurance is intended to change the existing independent contractor relationships between DISH Network and its authorized retailers who sell DISH Network products and it believes that no agency relationship is created by the agreements set forth herein. DISH Network agrees to this Assurance so that this matter may be resolved amicably without further cost or inconvenience to the states, their citizens, or DISH Network.

2. DEFINITIONS

As used in this Assurance the following words or terms shall have the following meanings:

- 2.1 "Advertise," "Advertisement," or "Advertising" shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing or leasing of, impart information about the attributes of, publicize the availability of, or affect the sale, lease, or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or infomercial, or any other medium.
- 2.2 "Agreement" shall refer to all agreements by whatever name between DISH Network and a Consumer for the purpose of the sale, lease, rental, installation and/or activation of any DISH Network Goods and/or DISH Network Services.
- 2.3 "Authorized Telemarketer" shall mean a business or other entity that is hired by DISH Network to conduct Telemarketing on DISH Network's behalf in connection with the offer, sale and/or lease of DISH Network Goods and/or DISH Network Services.
- 2.4 "Billing Agent" shall mean a business or other third-party entity with which Consumers directly interact that has been retained by DISH Network to bill Consumers and/or provide DISH Network other services associated with the

billing of Consumers for DISH Network Goods and/or DISH Network Services. "Billing Agent" does not mean any third party who has been retained by DISH Network for the purposes of collecting on delinquent accounts.

- 2.5 "Clear and Conspicuous" or "Clearly and Conspicuously," when referring to a statement or disclosure, shall mean that such statement or disclosure is disclosed in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, in a manner readily noticeable, readable, and understandable, and it must not be obscured in any manner. Audio disclosure shall be delivered in a volume and cadence sufficient for a Consumer to hear and comprehend it. Visual disclosure shall be of a size and shade and appear on the screen for a duration sufficient for a Consumer to read and comprehend it. In a print Advertisement or promotional material, including, but without limitation, point of sale display or brochure materials directed to Consumers, the disclosures shall be in a type size and location sufficiently noticeable for a Consumer to read and comprehend it, in a print that contrasts with the background against which it appears.
- 2.6 "Complaint" shall refer to a specified problem that a Consumer expresses that represents dissatisfaction with DISH Network Goods and/or DISH Network Services and requests a remedy. It does not include an inquiry or general grievance or concern.
- 2.7 "Consumer" shall have the same meaning as that term is defined in the Consumer Protection Acts identified in paragraph 2.8 of this Assurance. However, in the event that the Consumer Protection Acts identified herein do not define the term "consumer," then it shall have the same meaning as the term "Person" as defined in the Consumer Protection Acts, or other identifying individual or entity term, as defined by the Consumer Protection Acts.⁴
- 2.8 "Consumer Protection Act" shall refer to the respective state consumer protection statutes.⁵

⁴ In Virginia the "Consumer" shall have the same meaning as "consumer transaction" as defined in the Virginia statute cited in paragraph 2.8.

⁵ ALABAMA - Deceptive Trade Practices Act, AL ST 8-19-1, 13A-9-42, 8-19-8; ALASKA - Alaska Unfair Trade Practices and Consumer Protection Act, AS 45.50, *et seq.*; ARIZONA - Arizona Consumer Fraud Act, A.R.S. 44-1521, *et seq.*; ARKANSAS - Deceptive Trade Practices, AR ST 4-88-101, *et seq.*; COLORADO - § 6-1-101, *et seq.*, CRS; CONNECTICUT - Connecticut Unfair Trade Practices Act section 42-110a, *et seq.*; DELAWARE - Delaware Consumer Fraud Act, Del. Code Ann. tit. 6, 2511 to 2527; FLORIDA - Deceptive and Unfair Trade Practices Act, Fla. Stat. Ch. 501.201 *et seq.*; GEORGIA - Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; HAWAII - Hawaii Rev. Stat. Chap. 480-2(a); IDAHO - Consumer Protection Act, Idaho Code §§ 48-601, *et*

- 2.9 “Covered Marketer” means a Third-Party Retailer (1) who can: directly enter sales into DISH Network’s order/entry application system (“O/E Retailer”); or (2) whose business operations have resulted in, on average, over 51 DISH Network service activations per month during the previous calendar year.
- 2.10 “DISH Network Goods” shall mean the equipment and other goods that DISH Network offers, leases and/or sells to Consumers, directly and/or through Third-Party Retailers, that enable customers to receive DISH Network Services.
- 2.11 “DISH Network Services” shall mean the audio and video programming that DISH Network offers, leases, and/or sells to Consumers, directly and/or through Third-Party Retailers, including, but not limited to, the installation, service, activation and/or delivery of DISH Network satellite television programming, equipment, and/or other goods.
- 2.12 “Electronic Fund Transfer” or “EFT” shall mean an “electronic fund transfer,” as that term is defined in the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*

seq.; INDIANA - Deceptive Consumer Sales Act, Ind. Code Ann. §§ 24-5-0.5-1 to 24-5-0.5-12; IOWA - Consumer Fraud Act, Iowa Code § 714.16; KANSAS - Kansas Consumer Protection Act, K.S.A. 50-623, *et seq.*; KENTUCKY - Kentucky Consumer Protection Act, Kentucky Revised Statutes (KRS) 367.110, *et seq.*; LOUISIANA - Unfair Trade Practices and Consumer Protection Law, LSA-R.S. 51:1401 *et seq.*; MAINE - Maine Unfair Trade Practices Act, 5 M.R.S. sections 205-A *et seq.*; MARYLAND - Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated 13-101, *et seq.*; MASSACHUSETTS - Mass. Gen. Laws c. 93A, §§ 2 and 4; MICHIGAN - Michigan Consumer Protection Act, MCL 445.901, *et seq.*; MINNESOTA - Minn. Stat. §§ 325F.68 - 325F.70 (Prevention of Consumer Fraud Act), Minn. Stat. § 325F.67 (False Advertising Act), Minn. Stat. §§ 325D.43 - 325D.48 (Uniform Deceptive Trade Practices Act); MISSISSIPPI - Miss. Code Ann. Section 75-24-1, *et seq.*; MISSOURI - MO ST §407.010 to 407.130; MONTANA - Mont. Code Ann. § 30-14-101 *et seq.*; NEBRASKA - Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601, *et seq.*, 87-301; NEVADA - Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; NEW HAMPSHIRE - Regulation of Business Practices for Consumer Protection, NH RSA 358-A; NEW JERSEY - Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*; NEW MEXICO - New Mexico Unfair Practices Act, NMSA 57-12-1, *et seq.*; NEW YORK - Executive Law § 63(12) and General Business Law §§ 349 and 350; NORTH DAKOTA - N.D.C.C. §§ 51-15-01, *et seq.*; OKLAHOMA - Oklahoma Consumer Protection Act, 15 O.S. 751, *et seq.*; OREGON - Unlawful Trade Practices Act ORS 646.605 *et seq.*; PENNSYLVANIA - Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. 201-1, *et seq.*; RHODE ISLAND - Rhode Island Gen. Laws Sec. 6-13.1, *et seq.*; SOUTH CAROLINA - South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*; SOUTH DAKOTA - South Dakota Deceptive Trade Practices and Consumer Protection, SD ST 37-24-1, 37-24-6, 37-24-23, 37-24-31, 22-41-10; TENNESSEE - Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*; TEXAS - Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code 17.41, *et seq.*; UTAH - Consumer Sales Practices Act, Utah Code Ann. ** 13-11-1 through 23; VERMONT - Consumer Fraud Act, 9 V.S.A. §§ 2451 to 2466; VIRGINIA - Virginia Consumer Protection Act, Va. Code §§ 59.1-196 through 59.1-207; WASHINGTON - Washington Consumer Protection Act, RCW §§ 19.86, *et seq.*; WEST VIRGINIA - West Virginia Consumer Credit and Protection Act, WV Code § 46A-1-102, *et seq.*; WISCONSIN, Deceptive Trade Practices Act, Wis. Stat. 100.18(1); and WYOMING - Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq.*

- 2.13 “Telemarketing” shall mean “telemarketing” as that term is defined in the Federal Trade Commission’s Telephone Sales Rule, 16 C.F.R. §310.2(cc), and in other federal, state, or local laws defining that term. However, nothing herein shall be construed to affect, restrict, limit, waive, or alter the definition of “telemarketing” under the laws and statutes of the states, and nothing herein shall be construed to limit the authority of the Attorneys General to enforce states’ laws and statutes, including those regarding telemarketing.
- 2.14 “Telemarketing Acts” shall mean: ALABAMA - Telemarketing Act, Ala. Code § 8-19A-1, *et seq.*; ALASKA - AS 45.63, *et seq.*; ARIZONA - A.R.S. sec. 44-1271 thru 44-1282.; ARKANSAS - Consumer Telephone Privacy Act, Arkansas Code Annotated § 4-99-401, *et seq.*, Consumer Protection statute A.C.A. §§ 4-88-101, *et seq.*; COLORADO - § 6-1-901, *et seq.*, CRS; CONNECTICUT - Conn. Gen. Stat. sec 42-288a; DELAWARE - 6 Del. C § 25A; FLORIDA - Consumer Protection Fla. Stat. Ch. 501.059; GEORGIA - O.C.G.A. 46-5-27; HAWAII - Hawaii Rev. State. Section 481P-1 *et seq.*; IDAHO - Idaho Code § 48-1001, *et seq.*; INDIANA - Ind. Code 24-47-1 to -5; IOWA - Consumer Fraud Act, Iowa Code § 714.16; KANSAS - KSA 50-670 and K.S.A. 670(a); KENTUCKY - KRS 367.46951 to 367.46999; LOUISIANA -LSA-R.S. 45:844.11 *et seq.*, the Telephone Solicitation Relief Act of 2001; MAINE - Telephone Solicitations, 10 M.R.S. section 1499-B; MARYLAND - Telephone Consumer Protection Act, Md. Code Ann., Com. Law §§ 14-3201 through 14-3202; MASSACHUSETTS - Mass. Gen. Laws chapter 159C, and 201 Code of Mass. Regulations 12 *et seq.*; MICHIGAN - MCL 445.111, *et seq.* and 445.903(1)(gg); MINNESOTA - Minn. Stat. §§ 325E.311-325E.316 - Minnesota Do Not Call Act; MISSISSIPPI - Miss. Code Ann. Section 77-3-701, *et seq.* - Mississippi Telephone Solicitation Act; Miss. Code Ann. Section 77-3-601, *et seq.* - Unsolicited Residential Telephonic Sales Calls Law; MISSOURI - Telemarketing No-Call List, Mo. Rev. Stat. 407.1095 through 407.1110; MONTANA - Mont. Code Ann. §§ 30-14-1601 to -1606; NEBRASKA - Neb. Rev. Stat. §§ 59-1601, *et seq.*, 87-301; NEVADA - Nevada Revised Statutes 228.500., *et seq.*; NEW HAMPSHIRE - NH RSA 359-E; NEW JERSEY - Telemarketing Do Not Call Law, N.J.S.A. 56:8-119, *et seq.*; NEW MEXICO - NMSA 1978, S 57-12-22; NEW YORK - General Business Law §§ 396-m, 399-p, 399-pp and 399-z; NORTH DAKOTA - N.D.C.C. § 51-28-01, *et seq.*; OKLAHOMA - Commercial Telephone Solicitation Act, 15 O.S. 775A.1, *et seq.*; OREGON - Unlawful Telephone Solicitations Act ORS 646.561 to ORS 646.576; PENNSYLVANIA - Pennsylvania Telemarketer Registration Act, 73 P.S. § 2241, *et seq.*; RHODE ISLAND - Rhode Island Gen. Laws Sec. 6-13.1, *et seq.*; SOUTH CAROLINA - S.C. Code Ann. § 16-17-445 and 446; SOUTH DAKOTA - SDCL ch. 49-31; TENNESSEE - Tenn. Code Ann. § 65-4-405; TEXAS - Texas Telemarketing Disclosure and Privacy Act, Tex. Bus. and Com. Code §§ 304, *et seq.*; UTAH - Telephone and Facsimile Solicitation Act, Utah Code Ann. ** 13-25a-101 through 111 and the Telephone Fraud Prevention Act, Utah Code Ann. ** 13-26-1 through 11; VERMONT - 9 V.S.A. §2464a(b); VIRGINIA - Virginia Telephone Privacy Protection Act, Va. Code §§ 59.1-510 through 59.1-518; WASHINGTON - Commercial Telephone Solicitation Act, RCW 19.158.110(2)(a) and (b); WEST VIRGINIA - West Virginia Code § 46A-6F-101, *et seq.*; WISCONSIN Stat. § 100.52(4) and Wis. Admin. Code § ATCP 127; WYOMING - Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101, *et seq.*

- 2.15 "Third-Party Retailer" shall mean one or more independent persons, a corporation, a partnership, or any other type of entity, as the case may be, that is authorized by DISH Network to offer, lease, sell, service, Advertise, and/or install DISH Network Services and/or DISH Network Goods.

3. APPLICATION OF ASSURANCE TO DISH NETWORK AND ITS SUCCESSORS

3.1 DISH Network's duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to DISH Network and all of its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing, and the officers, directors, employees, shareholders, agents, servants, and assigns. DISH Network shall provide a copy of this Assurance to its subsidiaries, parents, affiliates, predecessors, successors and assigns of all of the foregoing to whom this Assurance applies, and the officers, directors, employees, shareholders, agents, servants, and assigns who have managerial-level responsibilities for performing the obligations outlined in this Assurance.

3.2 For the purposes of paragraphs 4.9, 4.15, 4.16, 4.28, 4.29, 4.30, 4.33, 4.38, 4.39, 4.40, 4.41, 4.42, 4.43, 4.47, 4.48, 4.49, 4.50, 4.51, 4.55, 4.56, and all of Section 5, the term Consumer shall not include any person or entity that purchases or leases any DISH Network Good and/or DISH Network Service solely for a commercial purpose. Nothing herein shall be construed to limit the authority of the Attorneys General to enforce state laws and statutes, including those regarding commercial and/or non-commercial contracts.

3.3 DISH Network shall require its Third-Party Retailers to comply with the terms and conditions of this Assurance.

4. TERMS OF ASSURANCE

Upon execution of this Assurance, DISH Network shall be bound from directly or indirectly engaging in the practices set forth herein and shall be required to directly or indirectly satisfy the affirmative requirements set forth herein.

General Consumer Protection Provisions

4.1 DISH Network shall not commit any unfair or deceptive trade practices as defined by any Consumer Protection Act.

4.2 DISH Network shall not misrepresent, expressly or by implication any term or condition of an offer to sell and/or lease any DISH Network Goods and/or DISH Network Services.

4.3 DISH Network shall not make any material omissions of fact regarding any term or condition of an offer to sell and/or lease any DISH Network Goods and/or DISH Network Services.

4.4 DISH Network shall not represent or imply that goods or services have characteristics, uses or benefits that they do not have.

4.5 DISH Network shall not offer, Advertise, lease, or sell any goods or services unless, at the time of the offer, Advertisement, lease, or sale, it is able to provide Consumers with a good or the service that complies with any representations that are made in connection with the offer, Advertisement, lease, or sale.

4.6 DISH Network shall not use any statements or illustrations in any Advertisement or representations made to Consumers that create a false impression of the grade, quality, quantity, make, value, age, size, color, usability, or origin of any goods or services or which may otherwise misrepresent the nature, quality and/or characteristics of any DISH Network Goods and/or DISH Network Services.

Material Terms/No Fine Print

4.7 In any Advertisement promoting the availability of DISH Network Services and/or DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose any limitations on the availability of DISH Network Services.

4.8 In any Advertisement promoting a benefit that requires any commitment or minimum term of service, DISH Network shall Clearly and Conspicuously disclose any commitment to a minimum term of service required to accept the offer and whether the offer is subject to payment of cancellation fees, termination fees, and any other fines, fees or penalties if Consumers terminate an Agreement prior to the expiration of the commitment period.

4.9 DISH Network shall Clearly and Conspicuously disclose to Consumers at the point of sale or lease prior to scheduling activation or installation of DISH Network Goods and/or DISH Network Services all material terms and conditions of the offer, including, but not limited to: (i) any known limitations on the availability of DISH Network Services; (ii) costs, fees, penalties or other payment terms Consumers must pay, excluding taxes or other fees required by a governmental entity if they are not known, to receive DISH Network Goods and/or DISH Network Services and to return and/or cancel any DISH Network Goods and/or DISH Network Services; (iii) any commitment to a minimum term of service required to accept any offer for DISH Network Goods and/or DISH Network Services; and (iv) all cancellation fees, termination fees, and any other fines, fees or penalties that Consumers may be asked to pay if they terminate an Agreement or cancel their service.

4.10 DISH Network shall not fail to Clearly and Conspicuously disclose any material term or condition of an offer to sell or lease any DISH Network Goods and/or DISH Network Services, including, but not limited to, failing to Clearly and Conspicuously disclose terms or conditions of an offer by using fine or small print or an inaudible broadcast.

Equipment Offers

4.11 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers offering DISH Network Goods involving the use of more than one satellite television receiver, all material terms and limitations regarding the use of multiple satellite television receivers in connection with the broadcast of DISH Network Services, including, but not limited to, any additional charges that must be paid in connection with the use of more than one satellite television receiver.

4.12 DISH Network shall not sell to Consumers any previously used and/or refurbished DISH Network Goods, including, but not limited to, any satellite television receivers, unless, prior to the sale, it Clearly and Conspicuously discloses to Consumers that the DISH Network Good has been previously used and/or refurbished.

4.13 DISH Network shall promptly replace any leased DISH Network Goods that cease to operate when such cessation is not caused or attributable to improper installation by Consumers or misuse or abuse of the equipment at no cost to Consumers other than the actual cost to ship the replacement good to Consumers.

Programming Availability

4.14 When Advertising or offering local channels, if local channels are not or may not be available in all areas where the Advertisement is reasonably expected to appear, DISH Network shall Clearly and Conspicuously disclose in the Advertisement that all local channels may not be available.

4.15 When Advertising or offering DISH Network premium sports packages, DISH Network shall Clearly and Conspicuously disclose in the Advertisement that blackouts may apply or that all games may not be available.

4.16 DISH Network shall Clearly and Conspicuously disclose to Consumers at the point of sale or lease prior to activation or installation of DISH Network Goods and/or DISH Network Services all material terms and limitations concerning the availability of local channels, including, but not limited to, disclosing whether local channels are available in the Consumer's area and specifically identifying which channels are not available.

4.17 DISH Network shall Clearly and Conspicuously disclose to Consumers who order sports packages and channels, at the point of sale or lease prior to activation or installation of

DISH Network Goods and/or DISH Network Services, all material terms and limitations concerning the availability of sports packages and channels, including, but not limited to, specifically disclosing whether the sports channels are available in the Consumer's area and that blackouts may apply or that all games may not be available.

4.18 DISH Network shall not represent that DISH Network Services are or may be available in a certain area when they are not.

Rebates, Credits and Free Offers

4.19 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers that include the offer of a rebate, credit, or other discount, all material terms, limitations, and conditions associated with the offer and obtaining the benefit of the offer.

4.20 DISH Network shall not disclose the price for any DISH Network Goods and/or DISH Network Services less any rebate, credit, discount or other amount to Consumers unless DISH Network Clearly and Conspicuously discloses in any Advertisements or representations any material qualifications or limitations for obtaining the rebate, credit, discount or other amount.

4.21 DISH Network shall Clearly and Conspicuously disclose in all of its Advertisements and other representations it makes to Consumers concerning the offer of a free good or service all terms and conditions of the offer.

4.22 DISH Network shall comply with the Federal Trade Commission (FTC) Guide Concerning Use of the Word "Free" and Similar Representations, 16 C.F.R. § 251.

4.23 DISH Network shall comply with all federal, state and local laws, rules and regulations regarding any free offers or other prize, gift, award and incentive promotions.

Retroactive Changes to Guarantee/Warranty/Refund Program

4.24 DISH Network shall not retroactively change the terms of any warranty, guarantee, refund, or similar program offered in connection with the sale or lease of any DISH Network Goods and/or DISH Network Services unless the change is being made for the benefit of Consumers, such as expanding the coverage of any warranty, broadening the scope of any refund or other program or coverage, and/or extending any deadlines or expiration dates.

Reference and Comparison Prices

4.25 In all of its Advertisements and other representations it makes to Consumers, DISH Network shall comply with the terms of the FTC's guidelines on the use of reference

prices and with all federal, state and local laws, rules and regulations regarding reference-pricing, including, but not limited to: (i) disclosing the reference price; and (ii) only offering as a reference price a price that has been actively and openly offered for a reasonable period of time.

4.26 DISH Network shall not compare the price of any of DISH Network Goods and/or DISH Network Services with a competitor's price unless the comparison is for a specifically identified item that does not materially differ in composition, grade, quality, style, design, model, name or brand, kind or variety from DISH Network's comparable product.

4.27 DISH Network shall not compare the price of any of DISH Network Goods and/or DISH Network Services to a competitor's price that includes charges to consumers for which DISH Network charges separately, unless DISH Network includes in its advertised price all charges that the competitor includes in its price.

Formation of Contract: Required Procedures, Notices and Disclosures

4.28 DISH Network shall Clearly and Conspicuously disclose the following information to all Consumers to whom it sells or leases any DISH Network Goods and/or DISH Network Services, in a written Agreement:

- (A) the length of the term of any Agreement;
- (B) a toll-free number that the Consumer may call to request an itemization of any cost that the Consumer will incur in order to purchase and/or lease or receive DISH Network Goods and/or DISH Network Services that are being offered in the Agreement;
- (C) any minimum programming requirements;
- (D) the amount and mode of calculation of any cancellation or termination fee;
- (E) equipment return policies, procedures, and fees;
- (F) the billing cycle, the amount of any late fees and the date on which any late fees will be imposed;
- (G) all additional fees for miscellaneous services, e.g., third-party billing agent fees, customer service fees, etc.; and
- (H) all payment options that are regularly offered to the Consumer.

4.29 DISH Network shall Clearly and Conspicuously disclose on the Consumer's first bill for any DISH Network Goods and/or DISH Network Services a statement informing the Consumer that if the price, or any portion thereof, is not the price which the Consumer agreed to pay, then DISH Network will either honor the price to which the Consumer agreed or allow the Consumer to cancel his or her Agreement without being charged any penalties or fees. In the event the Consumer receives DISH Network's first bill and the price, or any portion thereof, is not the price which the Consumer agreed to pay, for a period of thirty-five (35) days after the first bill is sent to the Consumer, DISH Network shall either honor the price which the Consumer

agreed to pay or allow the Consumer to cancel his or her Agreement without charging the Consumer any early-termination penalties or fees.

4.30 DISH Network shall, prior to activating DISH Network Services, orally disclose to Consumers the information contained in Paragraph 4.28's subparagraphs A, C, D, E, and G, unless the Consumer purchases DISH Network Goods and/or DISH Network Services via the Internet. If the Consumer purchases and/or leases DISH Network Goods and/or DISH Network Services via the Internet, the disclosures contained in paragraph 4.28's subparagraphs A, C, D, E, and G shall be incorporated into the Consumer's transaction by a method that requires the Consumer to acknowledge such disclosures by checking a box for the disclosures indicating that the Consumer has read and understands each disclosure contained therein, prior to completion of the Consumer's transaction.

4.31 In sales transactions conducted on the Internet, DISH Network shall not add by default or include without affirmative authorization by the Consumer any DISH Network Goods and/or DISH Network Services to the Consumer's transaction(s). Additionally, DISH Network shall not have any selection box indicating a Consumer's request for any DISH Network Service or related service(s) pre-checked during the online sales process.

4.32 If DISH Network offers its Digital Home Protection Plan (DHPP) or any similar plan at no cost to the Consumer for a period of time ("promotional period"), DISH Network shall Clearly and Conspicuously disclose to Consumers as part of its offer the terms and conditions of the offer, including, but not limited to: a) whether the consumer will be automatically billed for DHPP following the expiration of the promotional period; b) that the consumer must cancel DHPP within the promotional period to avoid being automatically billed for it; c) the cost of DHPP and the date that the consumer will be billed for it; d) the means by which the consumer may cancel DHPP during the promotional period; and e) that the offer is optional; and shall obtain the Consumer's express agreement to the offer.

4.33 DISH Network shall, prior to the installation of any DISH Network Goods and/or activation of any DISH Network Services, provide the Consumer with a copy of all Agreement(s) governing the sale, lease, and/or use of any DISH Network Goods and/or any DISH Network Services, including the Agreement containing the disclosures required by Paragraph 4.28. Prior to leaving the Consumer's residence once installation is complete, DISH Network shall provide the Consumer with a fully executed copy of such Agreement(s). For purposes of this paragraph, a fully executed Agreement shall constitute an Agreement that has been signed by the Consumer signifying his or her acceptance of the terms and conditions contained in the Agreement.

4.34 DISH Network shall Clearly and Conspicuously identify by name, mailing address, and toll-free telephone number the entity that the Consumer should contact with questions regarding: (A) billing; (B) installation; (C) equipment; and (D) service. DISH Network may provide this information in the Agreement.

4.35 In the event DISH Network assigns any Consumer's account to a third party during the term of the Agreement, DISH Network shall Clearly and Conspicuously inform the Consumer in writing of the assignment and provide the Consumer with the name, address, and the telephone number of the third party. DISH Network shall communicate such information to the Consumer at least thirty (30) days prior to such assignment.

4.36 DISH Network shall require its Third-Party Retailers to maintain and store a copy of any fully executed Agreement. DISH Network shall maintain and store a copy of all fully executed Agreements it receives from Consumers for the entire period during which the Consumer is a DISH Network customer and for a minimum period of at least one (1) year thereafter. DISH Network shall use all commercially reasonable efforts to make a copy of any fully executed Agreement available to the Consumer within fifteen (15) days of the Consumer's request for such Agreement. In the event that a Consumer requests a copy of his or her Agreement and DISH Network is unable to locate a copy of it, DISH Network shall notify the Consumer of that fact within thirty (30) days of the date of the Consumer's request.

4.37 DISH Network shall not enforce any Agreement unless it is able to provide the Consumer with a copy of his or her fully executed Agreement within (30) thirty days of receiving the Consumer's request for a copy. The provisions of this paragraph shall have no effect on a Consumer's obligation to return any DISH Network Goods at the expiration or termination of any Agreement or DISH Network's right to charge the consumer a fee subject to the provisions of this Assurance if the Consumer does not return any DISH Network Goods in a reasonable time or collect on programming charges incurred by the Consumer that remain unpaid.

Contract Terms

4.38 DISH Network shall not include in its Agreements a waiver of Consumers' rights and/or remedies unless DISH Network Clearly and Conspicuously discloses the rights or remedies that the Consumers are being asked to waive. Further, DISH Network shall not include in its Agreement in connection with the sale, lease, installation or use of DISH Network Goods and/or DISH Network Services, any language requiring Consumers to waive any rights and/or remedies in contravention of any local, state or federal law.

4.39 DISH Network shall put the following terms in a box or similar design at the top half of the first page of any Agreement that DISH Network requires the Consumer to sign for the purchase or lease of any DISH Network Goods and/or DISH Network Services:

- (A) the length of the Agreement;
- (B) the terms of any early cancellation fee, including the amount and the method of calculation, *i.e.*, whether the penalty is prorated; and

- (C) the terms of any fee for a customer's failure to return equipment, including the maximum amount that may be charged for each piece of the equipment the Consumer is leasing that is not returned.

4.40 DISH Network shall use a minimum of 11-point font size in all written Agreements DISH Network enters with Consumers, directly and through Third-Party Retailers.

4.41 DISH Network shall use plain and understandable English in all Agreements DISH Network enters with Consumers, except as provided in Paragraph 4.42

4.42 DISH Network shall, when offering and/or selling DISH Network Goods and/or DISH Network Services, furnish upon request a Spanish-language version of any Agreements and other documents it provides to Consumers who seek to purchase and/or lease DISH Network Goods and/or DISH Network Services.

Electronic Fund Transfers and Credit Card Autopay

4.43 In all transactions, DISH Network shall:

- (A) when enrolling a Consumer in an EFT program for recurring automatic payment, obtain written or electronic authorization from the Consumer, which authorization shall include the process by which Consumers may revoke their authorization or cancel their enrollment in the EFT program, and shall otherwise comply with the requirements of the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*, for obtaining preauthorization to receive recurring electronic fund transfers from a Consumer's bank account;
- (B) when enrolling a Consumer in a Credit Card AutoPay ("CCA") program for recurring automatic payment, obtain written, electronic, or verbal authorization from the Consumer, which authorization shall include explaining to Consumers the process by which Consumers may revoke their authorization or cancel their enrollment in the CCA program;
- (C) maintain the Consumer's written or electronic authorization required under this paragraph for the duration of the Consumer's enrollment in such a program and for a period of not less than two (2) years after the Consumer terminates or revokes the authorization;
- (D) at least ten (10) days prior to effectuating an EFT or credit card charge under an EFT or CCA program, provide a written or electronic bill to the Consumer disclosing: (i) the charges and the exact amount that will be subject to an EFT or credit card charge pursuant to the EFT or CCA program in which the Consumer is enrolled; (ii) the goods or services for which the EFT or credit card charge is

being made; (iii) the date on which the recurring EFT or credit card charge will be made; and (iv) a DISH Network telephone number that Consumers may call with any inquiries related to their bills;

- (E) if DISH Network requires a credit card or debit card from a Consumer in order for the Consumer to qualify for a promotion to lease any DISH Network Goods or receive any DISH Network Services ("Qualifying Card"), Clearly and Conspicuously disclose to the Consumer, prior to the Consumer's submission of the card number, that by submitting his or her credit or debit card to qualify for a promotion to lease any DISH Network Goods or receive any DISH Network Services, he or she is authorizing DISH Network to automatically charge or debit his or her card for the cost of any unreturned equipment or for an early-termination or cancellation fee, if applicable;
- (F) when obtaining a Qualifying Card from the Consumer, confirm whether the Qualifying Card is a credit or debit card;
- (G) obtain written authorization from the Consumer to automatically charge or debit the Consumer's Qualifying Card for any penalty fees owed by the Consumer, including, but not limited to, unreturned equipment and early-termination or cancellation fees; such written authorization shall be obtained in a Clear and Conspicuous manner and in no event through a clause in an Agreement unless the clause is Clearly and Conspicuously set apart from, and more prominent than, all other clauses in the Agreement; and
- (H) promptly correct any incorrect charge or debit DISH Network makes to a Consumer's debit or credit card by restoring funds to the Consumer's bank account or refunding the amount to the Consumer's credit card. An "incorrect charge or debit" includes, but is not limited to, any amount charged to a Consumer for unreturned equipment or early cancellation of an Agreement where it is later determined that the Consumer does not, in fact, owe the amount.

4.44 In all transactions, DISH Network shall not:

- (A) use, in any Agreement with Consumers, the term "Credit Card" to refer to or mean a debit card or any other form of an Electronic Fund Transfer as that term is defined by the Electronic Fund Transfer Act, 15 U.S.C. §1601, *et seq.*;
- (B) use a Consumer's credit or debit card or bank account provided by the Consumer to enroll in an EFT or CCA program for any charges other than the Consumer's monthly statement amount, unless the same credit or debit card was provided as the Qualifying Card;

- (C) make a one-time EFT or charge to a debit or credit card without receiving the Consumer's express prior written, electronic, or verbal authorization for the charge;
- (D) make an EFT or charge to a debit or credit card belonging to someone other than the customer named on the specific DISH Network account without obtaining the non-account-holder's prior express written, electronic, or verbal authorization for the payment;
- (E) make a charge to a debit card for any penalty payment, including, but not limited to, a cancellation or termination fee or unreturned equipment fee, without providing the Consumer with at least ten (10) days' written notice, or email notice if the Consumer has affirmatively chosen to receive his or her monthly statement electronically, of the maximum amount that will be charged or debited and the date on which the charge or debit will be made, or, in the case of unreturned equipment fees, the charge DISH Network is going to impose for each piece of unreturned equipment that the Consumer has leased, and the date the charge or debit will be made, and such notice shall include, where applicable, a description of how the Consumer can calculate his or her exact early-cancellation charge and a table showing the exact price of each piece of equipment, along with a toll-free number that the Consumer may call to inquire about the notice; and
- (F) make an automatic credit or debit from any credit or debit card for any penalty payment, including, but not limited to, an early-cancellation fee or unreturned equipment fee, from any credit or debit card other than a credit or debit card that belongs to a DISH Network account holder.

Termination of Services and Equipment Return

4.45 DISH Network shall not bill a Consumer a cancellation, termination, and/or other fee in connection with the termination of DISH Network Services and/or the return of DISH Network Goods unless it can document that it has complied with the terms of its Agreement and any representations it has made to Consumers regarding DISH Network's and/or the Consumer's obligations with respect to cancellation or termination of DISH Network Services and/or the return of DISH Network Goods.

4.46 Prior to charging any Consumer who voluntarily cancels DISH Network Services any cancellation, termination, and/or other fee in connection with the termination, and/or return of any DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose to the Consumer the following information: (i) the exact amount of any cancellation or termination and/or other fee that the Consumer is being charged; (ii) if the amount of any cancellation, termination and/or other fee that the Consumer is being charged is related to the return of any DISH Network Goods, the exact pieces of equipment and the maximum charge per piece of

equipment; (iii) notification that the Qualifying Card will be debited or charged for the termination, cancellation, and/or fee related to the return of DISH Network Goods; (iv) the terms and conditions under which the Consumer must return any DISH Network Goods to DISH Network; (v) a toll-free telephone number that the Consumer may call to discuss or dispute the bill; and (vi) the procedure the Consumer may follow to avoid incurring the cancellation, termination and/or other fee, if any.

4.47 Prior to charging any Consumer whose DISH Network Services are involuntarily terminated any cancellation, termination, and/or other fee in connection with the termination, and/or return of any DISH Network Goods, DISH Network shall Clearly and Conspicuously disclose to the Consumer the following information: (i) the maximum amount of any cancellation or termination fee; (ii) if the amount of any fee that the Consumer is being charged is related to the return of any equipment, the maximum charge per piece of equipment; (iii) notification that the Qualifying Card will be debited or charged; (iv) a toll-free telephone number that the Consumer may call to discuss or dispute the bill; and (v) the procedure the Consumer may follow to avoid incurring the cancellation, termination and/or other fee, if any.

4.48 If a Consumer notifies DISH Network or one of its Third-Party Retailers of a problem regarding a recurring impairment and/or material limitation to the quality or usability of any DISH Network Services, including, but not limited to, recurring material interference of signal reception, that is not caused or attributable to improper installation by the Consumer, a change in alignment of the satellite receiving equipment that is not caused by DISH Network, misuse or abuse of the equipment, and/or other factors not within DISH Network's control, DISH Network shall either (i) allow the Consumer to cancel his or her Agreement without the imposition of a termination fee, or (ii) directly or through its Third-Party Retailer, schedule and complete an in-home service appointment to correct the problem. If DISH Network cannot correct the impairment or limitation problem within thirty (30) days of DISH Network's receipt of such Consumer's initial impairment or limitation notification, the Consumer shall have the right to cancel his or her Agreement with DISH Network without the imposition of an early-termination fee.

4.49 DISH Network shall not deactivate or otherwise terminate any Consumer's account unless it notifies the Consumer that the Consumer's DISH Network Services are to be deactivated or otherwise terminated, at least twenty (20) days prior to the deactivation or termination, and Clearly and Conspicuously discloses the upcoming deactivation or termination, the reason for the deactivation or termination and what actions or recourse, if any, the Consumer may take to avoid the deactivation or termination.

4.50 DISH Network shall not wrongfully terminate any Consumer's Agreement. For purposes of this Assurance, wrongful termination of a Consumer's Agreement shall include termination as a result of any error by DISH Network or in violation of any Agreement. In the event DISH Network wrongfully terminates any Agreement, DISH Network shall (i) refund any amount it charged the Consumer in connection with the wrongful termination and (ii) not charge

the Consumer whose Agreement was wrongfully terminated any reactivation fee or other fee to reactivate DISH Network Services. If, as a result of DISH Network's wrongful termination of any Agreement, DISH Network reports any information regarding a Consumer to any credit-reporting agency or bureau, DISH Network shall provide the bureau or credit-reporting agency with a report correcting the information it previously provided to the credit-reporting agency or bureau.

4.51 DISH Network shall not charge Consumers any fee in connection with the return of any DISH Network Goods if DISH Network fails to comply with the terms of any Agreement or any representations that it makes to Consumers in connection with the return of any DISH Network Goods.

4.52 DISH Network shall not charge any Consumer any cancellation or termination fee in connection with the termination of any DISH Network Services that exceeds the amount of the Consumer's remaining payment obligation under any Agreement.

4.53 DISH Network shall not charge any Consumer any cancellation, termination or other fee in connection with the return of any DISH Network Goods that exceeds the Manufacturer's Suggested Retail Price (M.S.R.P.).

Credit Check Policies

4.54 When conducting a credit check, DISH Network shall disclose to Consumers prior to the sale or lease of any DISH Network Goods and/or DISH Network Services, any requirement that Consumers provide DISH Network with their social security numbers in order to activate any DISH Network Services or to purchase or lease any DISH Network Goods. DISH Network shall further disclose to Consumers, prior to the sale or lease of any DISH Network Goods and/or DISH Network Services, the reason for requiring a social security number. If requested by the Consumer, DISH Network shall identify at the time of such request any third party with whom DISH Network may share the Consumer's social security number. Furthermore, DISH Network shall comply with all federal, state and local laws, regulations, and rules regarding the gathering, maintaining, storing, destruction and sharing of Consumers' social security numbers.

4.55 DISH Network shall issue an adverse action notice pursuant to the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*, to any Consumers against whom DISH Network took any adverse action based in whole or in part on any information contained in the Consumer's credit report, including, but not limited to, refusing to offer a promotional discounted price for any DISH Network Services and/or DISH Network Goods or requiring a deposit in connection with the purchase of any DISH Network Services and/or the purchase or lease of any DISH Network Goods.

Third-Party Retailers

4.56 DISH Network shall require its Third-Party Retailers to offer, lease, Advertise, install, and/or sell DISH Network Goods and/or DISH Network Services, and to make representations to Consumers in connection therewith, in a manner consistent with the terms of this Assurance.

4.57 DISH Network shall require its Third-Party Retailers to use telemarketers who comply with the provisions of this Assurance. If DISH Network learns that any of its Third-Party Retailers are conducting any Telemarketing activities, directly or through any other telemarketer, that violate the terms of this Assurance, DISH Network shall take appropriate disciplinary action against such Third-Party Retailers. Appropriate disciplinary action may include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket (directly or through a third-party) for a period of time;
- 5) prohibiting telemarketing (directly or through a third-party);
- 6) requiring the Third-Party Retailer to impose appropriate guidelines on its Telemarketing activities, such as procedures for compliance with the TCPA and/or any other federal, state or local laws regarding Telemarketing;
- 7) requiring the Third-Party Retailer to terminate a person or entity that is Telemarketing on its behalf; and/or
- 8) other appropriate and reasonable discipline under the circumstances

4.58 DISH Network shall affirmatively investigate Complaints made to it or to the Better Business Bureau by Consumers, regulatory agencies or law enforcement entities, when such Complaints are brought to the attention of DISH Network, pertaining to its Third-Party Retailers' offer, Advertisement, installation, lease, and/or sale of DISH Network Goods and/or DISH Network Services, and shall take appropriate and reasonable disciplinary action as soon as reasonably practicable, against any Third-Party Retailer it has determined to be in violation of the requirements of this Assurance. Appropriate action may include retraining and other disciplinary action, up to and including termination of the Third-Party Retailer's authority to offer, Advertise, install, lease, and/or sell DISH Network Goods and/or DISH Network Services. Upon request of an Attorney General, DISH Network shall provide the Attorney General with the following information: (i) the name, address, and phone number of the Consumer who made the allegation or complaint; (ii) a copy or description of the allegation or complaint; (iii) the name, address and phone number of the Third-Party Retailer against whom the allegation or complaint was lodged; and (iv) a description and any documentation of the specific action it took regarding the complaint or allegation. DISH Network shall maintain the information required under this paragraph for a period of not less than six (6) years including, but not limited to, any

record that refers or relates to any Complaints it receives against any Third-Party Retailers and any record that refers or relates to any investigation by DISH Network of such Complaints.

4.59 DISH Network shall be bound by and honor any representations that are made to Consumers by its Third-Party Retailers who offer, Advertise, install, lease, and/or sell DISH Network Goods and/or DISH Network Services made with DISH Network's prior authorization, approval, permission or knowledge.

4.60 Within thirty (30) days of the date of the entry of this Assurance, DISH Network shall provide each Third-Party Retailer who offers, Advertises, installs, leases, and/or sells DISH Network Goods and/or DISH Network Services with a copy of this Assurance and inform such Third-Party Retailers that in order to continue acting as authorized DISH Network Third-Party Retailers, they must abide by the applicable terms and conditions of this Assurance.

4.61 DISH Network shall not allow its Third-Party Retailers to charge any fees to Consumers for DISH Network Services and/or DISH Network Goods other than: (i) for installation or activation, if the amount and the purpose of the fees are Clearly and Conspicuously disclosed in writing to Consumers prior to their entering any Agreement with DISH Network; and (ii) any after-sale services and/or goods performed or sold by the Third-Party Retailer.

4.62 DISH Network shall require its Third-Party Retailers, when offering, installing, servicing, leasing, and/or selling any DISH Network Goods and/or DISH Network Services, to identify themselves to Consumers, including Clearly and Conspicuously disclosing their name, address and telephone number, and their relationship to DISH Network, and DISH Network shall require its Third-Party Retailers, upon receipt of any Complaint from a Consumer, to provide the Consumer with DISH Network's toll-free telephone number for resolving Complaints.

Account Assignment to Third Parties

4.63 In the event that DISH Network assigns a Consumer's account to a Billing Agent, at least forty-five (45) days in advance of such assignment, DISH Network must send the Consumer a notice Clearly and Conspicuously disclosing the following: (i) the name, address and phone number of the Billing Agent; (ii) an itemization of the amounts that have been assigned to the billing agent; and (iii) a description of the services provided for which the amounts are being billed.

4.64 DISH Network shall comply with the Fair Debt Collection Practices Act, 15 U.S.C. § 1601, *et seq.*, and all state and local collections laws.

4.65 DISH Network shall monitor and be responsible for the conduct of any Billing Agent to which it assigns any Consumer's account, including, but not limited to, receiving and

resolving Consumer complaints made against such Billing Agents in connection with the billing for any DISH Network Goods and/or DISH Network Services.

4.66 In the event that DISH Network assigns a Consumer's account to a Billing Agent, the terms of such an assignment shall include the requirement that the Billing Agent abide by any terms contained in any Agreement concerning the collection of any outstanding balance owed by the Consumer.

Telemarketing and Do Not Call

4.67 DISH Network shall comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists unless otherwise exempted by such laws.

4.68 DISH Network shall comply with all federal, state and local laws requiring the acquisition or purchase of national and state do-not-call databases and shall not make any Telemarketing calls to Consumers in the applicable state or municipality until it has acquired or purchased all do-not-call databases required by federal, state, or local laws.

4.69 DISH Network shall not initiate an outbound Telemarketing call directly or through an Authorized Telemarketer to a person who has previously stated to DISH Network or an Authorized Telemarketer that he or she does not wish to receive a Telemarketing call made by or on behalf of DISH Network, or has expressed a desire to be placed on DISH Network's internal do-not-call list.

4.70 DISH Network shall require any and all Authorized Telemarketers during any Telemarketing calls they make to (i) provide to the Consumer the first name of the representative that is making the call and (ii) inform the Consumer that the Telemarketing call is made on DISH Network's behalf.

4.71 DISH Network shall register with any and all governmental entities or agencies as required by applicable federal, state and local laws in each jurisdiction in which it engages in Telemarketing activities.

4.72 DISH Network shall, if and to the extent that it is not already the existing practice of DISH Network, establish and implement an internal do-not-call list, as well as policies and procedures, to ensure that, subject to exemptions provided in federal, state or local law, DISH Network and any Authorized Telemarketer through which it contacts Consumers for the purpose of offering and/or selling DISH Network Goods and/or DISH Network Services, do not call any Consumers on DISH Network's internal do-not-call list or any Consumer listed on any federal, state or local do-not-call list, unless otherwise exempted by such laws. DISH Network shall monitor or retain a third-party vendor to monitor outbound telemarketing campaigns conducted by an Authorized Telemarketer to determine whether the Authorized Telemarketer is complying

with all applicable federal, state, and local do-not-call laws. Upon request from an Attorney General, DISH Network shall provide the Attorney General with a copy of such written policies and procedures.

4.73 DISH Network shall issue business rules to its Authorized Telemarketers and Covered Marketers, requiring them to comply with the terms of this Assurance.

4.74 DISH Network shall affirmatively investigate Complaints regarding alleged violations of federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state, or local do-not-call lists, unless otherwise exempted by such laws, and shall take appropriate action as soon as reasonably practicable against any Authorized Telemarketers and Covered Marketers it has determined to be in violation of the requirements of this Assurance. Upon request from an Attorney General, DISH Network shall provide the Attorney General with the following information: (i) the name, address, and phone number of the Consumer who made the allegation or Complaint; (ii) a copy or description of the allegation or Complaint; and (iii) the name, address and phone number of the Authorized Telemarketer or Covered Marketer against whom the allegation or Complaint was lodged. Further, DISH Network shall be required to notify the Attorney General of the specific action it took regarding the Complaint or allegation if so requested.

4.75 Within thirty (30) days of the date of the execution of this Assurance, DISH Network shall provide each Authorized Telemarketer and each Covered Marketer with a copy of this Assurance and inform them that in order to continue acting as DISH Network Authorized Telemarketers or Covered Marketers, they must abide by the terms and conditions of this Assurance.

4.76 DISH Network shall appropriately discipline an Authorized Telemarketer if DISH Network reasonably determines that, in connection with Telemarketing DISH Network Goods and/or DISH Network Services, the Authorized Telemarketer has: (a) failed to fulfill contract requirements with respect to compliance with federal, state, or local telemarketing laws; (b) violated federal, state, or local telemarketing laws; and/or (c) failed to comply with the terms of this Assurance as they relate to this Telemarketing and Do Not Call section. Such disciplinary action shall include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket for a period of time;
- 5) prohibiting Telemarketing;
- 6) requiring the Authorized Telemarketer to improve its process and procedures for compliance with the Telephone Consumer Protection Act (TCPA), 47 U.S.C. §227, *et seq.*, and/or any other federal, state and local laws regarding Telemarketing;

- 7) requiring the Authorized Telemarketer to terminate certain employees involved in TCPA violations and/or violations of any other federal, state and local laws regarding Telemarketing;
- 8) requiring the Authorized Telemarketer to terminate Telemarketing affiliates;
- 9) requiring the Authorized Telemarketer to retrain employees in TCPA compliance and/or compliance with any other federal, state and local laws regarding Telemarketing; and/or
- 10) other appropriate and reasonable discipline under the circumstances.

In determining what disciplinary action shall be taken, DISH Network shall take into consideration the egregiousness of the Authorized Telemarketer's conduct, the number of violations, the Authorized Telemarketer's willingness to cure the problem, and whether DISH Network has previously disciplined the Authorized Telemarketer.

4.77 DISH Network shall require any Covered Marketer that Telemarkets any DISH Network Goods and/or DISH Network Services to establish written policies and procedures to comply with all federal, state and local laws regarding Telemarketing, including, but not limited to, those which prohibit calling Consumers who are on any federal, state and local do-not-call list.

4.78 DISH Network shall monitor, directly or through a third-party monitoring service approved by DISH Network, its Covered Marketers to determine whether they are Telemarketing Consumers and, if so, to determine whether the Covered Marketer is complying with all applicable federal, state, and local do-not-call laws. Upon request from an Attorney General, DISH Network shall provide the requesting Attorney General with a copy of such written policies and procedures. DISH Network states that it has had persons pose as potential subscribers in order to engage in "sting"-type operations to determine if certain Covered Marketers are complying with its do not call policies. Among other things, DISH Network will continue engaging in such practices as part of the monitoring process described above.

4.79 DISH Network shall appropriately and reasonably discipline a Covered Marketer if DISH Network reasonably determines that, in connection with Telemarketing DISH Network Goods and/or DISH Network Services, the Covered Marketer has: (a) failed to fulfill contract requirements with respect to compliance with federal, state, or local telemarketing laws; (b) violated federal, state, or local telemarketing laws; and/or (c) failed to comply with the terms of this Assurance as they relate to this Telemarketing and Do Not Call section. Such disciplinary action shall include one or more of the following remedies:

- 1) termination;
- 2) imposing monetary fines;
- 3) withholding of compensation;
- 4) suspending the right to Telemarket for a period of time;
- 5) prohibiting Telemarketing;

- 6) requiring the Covered Marketer to improve its process and procedures for compliance with the TCPA and/or any other federal, state and local laws regarding Telemarketing;
- 7) requiring the Covered Marketer to terminate certain employees involved in TCPA violations and/or violations of any other federal, state and local laws regarding Telemarketing;
- 8) requiring the Covered Marketer to terminate Telemarketing affiliates;
- 9) requiring the Covered Marketer to retrain employees in TCPA compliance and/or compliance with any other federal, state and local laws regarding Telemarketing; and/or
- 10) other appropriate and reasonable discipline under the circumstances.

In determining what disciplinary action shall be taken, DISH Network shall take into consideration the egregiousness of the Covered Marketer's conduct, the number of violations, the Covered Marketer's willingness to cure the problem, and whether DISH Network has previously disciplined the Covered Marketer.

Complaint Handling

4.80 DISH Network shall maintain all Consumer Complaints it receives and DISH Network's responses to those Consumer Complaints for a period of at least three (3) years from the date of DISH Network's receipt of the Consumer Complaint. DISH Network may maintain these Complaints electronically if it so chooses.

4.81 Within thirty (30) days of the entry of this Assurance, DISH Network shall appoint a person or persons or an entity to act as a direct contact for the Attorneys General Offices (or other state agencies responsible for Complaint mediation) for resolution of Consumer Complaints. DISH Network shall provide the Attorneys General (or other state agencies) with the name(s), address(es), telephone number(s), facsimile number(s) and e-mail address(es) of the person(s) or entity(ies) within three (3) days of his/her/its appointment.

4.82 DISH Network shall record a Consumer Complaint by including: (i) a description of the Complaint; (ii) the date DISH Network received the Complaint; (iii) a summary of relevant communications with the Consumer regarding the Complaint; and (iv) a description of the ultimate resolution of the Complaint that includes any relief provided.

5. RESTITUTION

5.1 DISH Network agrees to pay restitution and/or other appropriate relief to Consumers who have Eligible Complaints. For purposes of the Restitution section of this Assurance, an Eligible Complaint is a written request or demand from a Consumer residing in the signatory Attorney General's state and that: (i) was received by DISH Network and/or one of

the Attorneys General and/or any other state agency located in one of the signatory Attorney General's states handling Consumer complaints between January 1, 2004 and the date of the entry of this Assurance, and the Complaint remains either fully or partially unresolved; or (ii) is received by DISH Network, either directly from a Consumer or through a third party such as an Attorney General's Office, any state Consumer complaint-handling agency or Better Business Bureau, within one hundred and fifty (150) days from the date of the entry of this Assurance and concerns conduct that occurred during the two-year period prior to the date of this Assurance.

5.2 Consistent with the terms of this Assurance, DISH Network shall resolve each Eligible Complaint by offering the Consumer the option of either (i) accepting restitution or some other appropriate relief offered by DISH Network or (ii) if DISH Network is unable to resolve the Complaint to the Consumer's satisfaction, using the Claim Form attached hereto as Exhibit A, DISH Network shall inform the Consumer that he/she may submit his/her Eligible Complaint to a neutral third-party (the "Claims Administrator") who shall manage and administer a complaint-resolution program pursuant to the terms of this Assurance. The selection of the Claims Administrator and any successor administrator shall be subject to the approval of the Attorneys General.

5.3 Within fifteen (15) days of receiving an Eligible Complaint, DISH Network shall attempt to resolve the Eligible Complaint by offering the Consumer who filed the Eligible Complaint restitution and/or some other appropriate relief. If, within (15) days of receiving an Eligible Complaint, DISH Network is unable to resolve the Eligible Complaint to the Consumer's satisfaction, DISH Network shall inform the Consumer of his or her ability to submit his or her complaint to the Claims Administrator for resolution by mailing the Consumer the Claim Form attached hereto as Exhibit A. The Claim Form shall describe the restitution and/or other appropriate relief that DISH Network is offering to resolve the Eligible Complaint and shall explain the procedure for accepting DISH Network's offer and for rejecting the offer and submitting the Eligible Complaint to the Claims Administrator for resolution. Acceptance by a Consumer of any relief offered by DISH Network shall not act as a release by the Consumer of any claims that he or she may have against DISH Network. However, DISH Network shall have the right to raise defenses available to it arising from the acceptance of the offer, including that the relief provided shall mitigate any damages that are asserted. If a Claim Form is returned to DISH Network as undeliverable, DISH Network shall attempt to locate the Consumer by: (i) mailing the Claim Form to any forwarding address provided by the U. S. Postal Service for the Consumer; (ii) mailing the Claim Form to any additional addresses for the Consumer contained in DISH Network's business records; and (iii) contacting the Consumer at any phone number, e-mail address, or facsimile number that is contained in DISH Network's business records regarding the Consumer for the purpose of obtaining a correct mailing address and mailing the Claim Form to the Consumer at the correct mailing address.

5.4 A Consumer may elect to have his/her Eligible Complaint decided by the Claims Administrator by submitting the Claim Form to DISH Network within forty-five (45) days of the date of the mailing of the Claim Form by DISH Network. The Consumer may return the Claim

Form to DISH Network via the U.S. Postal Service or via facsimile or other additional manner set forth by DISH Network. For purposes of this paragraph, the date on which a Claim Form is returned to DISH Network shall be either (i) the date of any postmark contained on the envelope used to return the Claim Form to DISH Network via U.S. mail; or (ii) the date on which the Claim Form is returned to DISH Network via facsimile.

5.5 DISH Network shall, within ten (10) days of its receipt of a Claim Form from a Consumer, provide the Claims Administrator a copy of: (i) the Consumer's Eligible Complaint; (ii) the Consumer's submitted Claim Form; and (iii) any other document mailed by the Consumer with either his/her Claim Form or Eligible Complaint. DISH Network shall also provide the Claims Administrator any documents transmitted by the Consumer to DISH Network prior to the Claims Administrator's resolution of the Consumer's Eligible Complaint relating to the Consumer's Eligible Complaint and any other relevant information.

5.6 DISH Network shall provide any Consumers who accept its offer of restitution and/or other appropriate relief with the restitution payment and/or any other appropriate relief that was accepted by the Consumer no later than thirty (30) days from the date the Consumer accepted DISH Network's offer of restitution and/or other appropriate relief.

5.7 Within thirty (30) days of the date of the entry of this Assurance, DISH Network shall hire the Claims Administrator. For the purpose of protecting the proprietary and customer information to be provided to him/her by DISH Network, the Claims Administrator shall enter into a contractual relationship with DISH Network consistent with the terms of this Assurance.

5.8 DISH Network shall pay the Claims Administrator and all costs associated with the complaint-resolution program provided for in this Assurance.

5.9 The Claims Administrator shall be responsible for, among other things, the collection of all Eligible Complaints and supporting documents necessary for determination of restitution and/or other appropriate relief to Consumers. The Claims Administrator shall request from DISH Network and the Consumer all information he/she deems necessary to make a full and fair resolution of an Eligible Complaint. The Claims Administrator shall conduct a paper review of the Eligible Complaint and any supporting documentation. No state or federal rules of evidence shall apply to the Claims Administrator's review. The complaint-resolution program shall be designed in a Consumer-friendly non-legal environment to encourage the Consumer's participation in the process. *Ex parte* communication with the Claims Administrator will not be allowed pertaining to any specific Eligible Complaint or as to the criteria used in evaluating each Eligible Complaint.

5.10 The Claims Administrator is responsible for the coordination of the complaint-resolution program with the full and complete cooperation of all parties to this Assurance. The Claims Administrator's resolution of Eligible Complaints shall be binding only on the Attorneys General and DISH Network. The Claims Administrator shall conduct hearings on Eligible

Complaints by telephone when requested by either party or when deemed necessary by the Claims Administrator for his or her resolution of an Eligible Complaint. The Consumers shall be informed in writing of the option for a telephonic hearing.

5.11 The Claims Administrator shall issue a decision regarding an Eligible Complaint within a reasonable period of time following receipt of the Eligible Complaint and all required and/or requested documents, but in no event shall the decision be issued later than thirty (30) days following receipt of the Eligible Complaint or any supporting documentation without good cause, and shall deliver the decision to DISH Network and to the Consumer whose Eligible Complaint is the subject of the decision. In the event a decision issued by the Claims Administrator requires DISH Network to provide a Consumer with a restitution payment and/or other appropriate relief, DISH Network shall, within thirty (30) days of its receipt of such decision, deliver to the Consumer the required restitution payment and/or other appropriate relief.

5.12 On the first and second year anniversary date of the hiring of the Claims Administrator, DISH Network shall provide a report broken down by state to the Attorneys General, in a format and medium to be agreed upon by DISH Network and the Attorneys General, setting forth the following information:

- (A) the number of Eligible Complaints received from DISH Network;
- (B) a description of the nature of each Eligible Complaint, including a description of the business practices that are the focus of the Eligible Complaint;
- (C) the name and address of each Consumer who filed an Eligible Complaint;
- (D) a description of the resolution of the Eligible Complaint, including the amount of any restitution payment and a description of any other relief offered;
- (E) a statement whether the Eligible Complaint was submitted to the Claims Administrator; and
- (F) if the Eligible Complaint was submitted to the Claims Administrator, the decision of the Claims Administrator and response, if any, of any Consumer to the decision, including documentation of a Consumer's acceptance of any relief ordered by the Claims Administrator.

5.13 At the request of DISH Network, the Attorneys General, or the Claims Administrator, the Claims Administrator or his/her designee, shall meet and confer with the Attorneys General and DISH Network for any purpose relating to the administration of the complaint-resolution program provided for under this Assurance, including, but not limited to, monitoring and auditing the complaint-resolution program. Problems that arise concerning the implementation of the complaint-resolution program may be resolved by agreement among the Attorneys General, DISH Network and the Claims Administrator.

6. PAYMENT TO THE ATTORNEYS GENERAL

6.1 Within thirty (30) days of entry of this Assurance, DISH Network shall pay the sum of Five Million Nine Hundred Ninety-One Thousand Dollars (\$5,991,000), to the Attorneys General. Such sum is to be divided among the Attorneys General as they may agree and said payment shall be used by the Attorneys General for attorneys' fees and other costs of investigation and litigation and/or for future public protection purposes, or be placed in, or applied to, the consumer protection enforcement fund, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of each of the Attorneys General.⁶

7. GENERAL PROVISIONS

7.1 The acceptance of this Assurance by the Attorneys General shall not be deemed approval by the Attorneys General of any of DISH Network's Advertising or business practices. Further, neither DISH Network nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorneys General, or any other governmental unit, have approved, sanctioned or authorized any practice, act, Advertisement, representation, or conduct of DISH Network.

7.2 This Assurance does not constitute an admission by DISH Network for any purpose of any fact or of a violation of any law, rule or regulation, nor does this Assurance constitute evidence of any liability, fault or wrongdoing. This Assurance is entered into without trial or adjudication of any issue of fact or finding of liability of any kind. Neither this Assurance, nor any negotiations, statements or documents related thereto, shall be offered or received in evidence as an admission of liability or wrongdoing. This Assurance is not intended to confer upon any person any rights or remedies, shall not create any third-party beneficiary rights and may not be enforced by any person, entity or sovereign except the Attorneys General.

7.3 DISH Network shall comply with the terms of this Assurance within ninety (90) days following the execution of this Assurance, or within the time frames otherwise set by this Assurance.

7.4 The Attorneys General shall not institute any civil proceeding or action under their Consumer Protection Acts and Telemarketing Acts⁷ against DISH Network or its successors, employees, officers and/or directors for any conduct occurring prior to the entry date

⁶ With regard to the State of Colorado, such funds and any interest thereon shall be held by the Attorney General in trust to be used, first, for reimbursement of the state's costs and attorneys' fees incurred by the Attorney General in this matter and second, for future consumer education, consumer protection, or antitrust enforcement efforts.

⁷ In Indiana, Minnesota, Mississippi, South Carolina, Tennessee and Texas, state agencies other than the Attorney General also have enforcement authority for Do Not Call violations and are not releasing those claims in this settlement.

of this Assurance that is based on the conduct addressed in Section Four (4) of the Assurance. This Assurance constitutes a complete settlement and release of all claims on behalf of the Attorneys General against DISH Network with respect to all civil claims, causes of action, damages, restitution, fines, costs, attorneys' fees and penalties pursuant to the Consumer Protection Acts and Telemarketing Acts arising from any acts, issues, policies or practices prior to the entry of this Assurance and which related to or were based upon the specific subject matter raised in Section Four (4) of this Assurance. However, nothing in this Assurance, including this Paragraph 7.4, shall constitute a settlement and/or release of any claims, causes of action, damages, restitution, fines, costs, attorneys' fees and/or penalties arising from any acts, issues, policies or practices which relate in any way to or are based upon DISH Network unilaterally altering, directly or through any Third-Party Retailers, the terms of any Agreement without the express written consent of the Consumer with whom it entered the Agreement, including, but not limited to, any alteration in any terms concerning programming or pricing in any long-term contracts, or which relate to or are based upon the inclusion in DISH Network's Agreement of any provision that permits its unilateral alteration, directly or through any Third-Party Retailers, of the terms of any Agreement concerning the purchase and/or lease of DISH Network Services and/or DISH Network Goods.

7.5 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

7.6 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

7.7 Subject to Paragraph 7.4, nothing in this Assurance shall limit the right of the Attorneys General to obtain information, documents or testimony from DISH Network pursuant to any state or federal law, regulation or rule.

7.8 Subject to Paragraph 7.4, nothing in this Assurance shall be construed to limit the authority of the Attorneys General to protect the interests or people of their State.

7.9 If any provision of this Assurance shall come into conflict with any newly enacted law or change in an existing law; there is a change in DISH Network's business practices; there are any changes or advancements in technology; or there are any other reasons that may be appropriate under the circumstances, the parties to this Assurance may modify this Assurance with the express written consent of all parties and court approval, if necessary.

7.10 Nothing in this Assurance constitutes an agreement by the Attorneys General concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

7.11 No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing and signed by the party to be charged and then only to the extent set forth in such written waiver, modification or amendment.

7.12 Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance.

7.13 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

7.14 This Assurance sets forth the entire agreement between the Attorneys General and DISH Network resolving the allegations in paragraphs 1.5 through 1.12.⁸

7.15 Nothing in this Assurance shall be construed to waive any claims of sovereign immunity the Attorneys General or their States may have in any action or proceeding.

7.16 DISH Network will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

7.17 If a signatory Attorney General determines that DISH Network has failed to comply with any of the terms of this Assurance, and if in the signatory Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of their State, the signatory Attorney General agrees not to initiate any action or proceeding pursuant to the Assurance against DISH Network based upon a dispute relating to DISH Network's compliance without first notifying DISH Network in writing of such failure to comply. DISH Network shall then have ten (10) business days from receipt of such written notice to provide a written response to the signatory Attorney General. Nothing in this Assurance shall be construed to limit the authority of the Attorneys General to protect the interests of their States or the people of their States. Further, subject to paragraph 7.4, nothing in this Assurance shall be construed to limit or bar the Attorneys General or any other governmental entity from enforcing laws, regulations or rules against DISH Network at any point in time.

⁸This Assurance of Voluntary Compliance will not have any effect on the Assurance of Voluntary Compliance or Discontinuance titled "In the Matter of: EchoStar Satellite Corporation" entered by thirteen states in 2003.

7.18 Nothing herein shall prevent the Attorneys General from agreeing to provide DISH Network with additional time beyond the ten (10) business day period to respond to the notice.

8. REPRESENTATIONS AND WARRANTIES

8.1 DISH Network represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, and that this Assurance is the result of good faith negotiations.

8.2 DISH Network represents and warrants that signatories to this Assurance have authority to act for and bind DISH Network.

9. COMPLIANCE WITH ALL LAWS

9.1 Nothing in this Assurance shall be construed as relieving DISH Network of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

10. NONCOMPLIANCE

10.1 DISH Network represents that it has fully read and understood this Assurance and understands the legal consequences involved in signing this Assurance (including that in certain states; a violation of this Assurance is punishable by contempt, and in others, a violation of this Assurance is *prima facie* evidence of a violation of that State's consumer protection statute). DISH Network expressly understands that any violation of this Assurance may result in any signatory Attorney General seeking all available relief to enforce this Assurance, including an injunction, civil penalties, court and investigative costs, attorneys' fees, restitution, and any other mechanism provided by the laws of the state or authorized by a court.

11. MONITORING FOR COMPLIANCE

11.1 Upon request by any signatory Attorney General, DISH Network shall provide books, records and/or documents to the signatory Attorney General relating to compliance with this Assurance. DISH Network shall make any requested information related to compliance with this Assurance available within thirty (30) days of the request, by the signatory Attorney General. This shall in no way limit the signatory Attorney General's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

11.2 Within thirty (30) days of entry of this Assurance, DISH Network shall submit a copy of this Assurance to each of its officers, directors, and any employee necessary to ensure DISH Network's compliance with the terms of this Assurance.

11.3 The Attorneys General have the right to test shop DISH Network for the purpose of confirming compliance with this Assurance and state law. The test shoppers are not required to disclose that they are representatives of the Attorneys General when making contact with DISH Network. Further, DISH Network hereby agrees that the Attorneys General may record any or all aspects of its solicitations or visit(s) with DISH Network in audio and/or video form without notice to DISH Network. DISH Network agrees to void any sale that is commenced by a test shopper and return any monies paid by a test shopper upon notification that it was test shopping conducted by the Attorneys General.

12. PRIVATE RIGHT OF ACTION

12.1 Nothing in this Assurance shall be construed to affect, restrict, limit, waive or alter any private right of action that a Consumer may have against DISH Network.

13. NOTIFICATION TO PARTIES

13.1 Any notices required to be sent to the Attorneys General pursuant to this Assurance shall be sent by United States certified mail, return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State of	For DISH Network: R. Stanton Dodge Executive Vice President and General Counsel 9601 S. Meridian Blvd. Englewood, CO 80112 cc: Helen Mac Murray Mac Murray, Petersen & Shuster LLP 6530 West Campus Oval, Suite 210 New Albany, OH 43054 Telephone: (614) 939-9955
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13.2 Any party may designate a different individual to receive the notices required to be sent by sending written notification to the other parties at least thirty (30) days before such change will occur identifying that individual by name and/or title and mailing address.

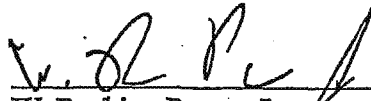
14. COSTS

14.1 Where necessary DISH Network shall pay all court costs associated with the filing of this Assurance.

In the Matter of:
Dish Network Assurance of Voluntary Compliance

Dated: 7/2/09

Troy King
Attorney General of Alabama



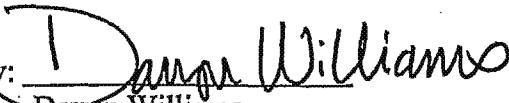
W. Rushing Payne, Jr.
Deputy Attorney General
Office of the Attorney General
500 Dexter Avenue
Montgomery, Alabama 36130
(334) 353-4951
(334) 242-2433 (fax)

JA017149

001669

FOR THE STATE OF ALASKA

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: 
Davyn Williams

Alaska Bar No. 0711093

Assistant Attorney General

Office of the Attorney General

1031 W. 4th Avenue, Suite 200

Anchorage, Alaska 99501

(907) 269-5200

Assurance of Voluntary Compliance
In the Matter of Dish Network, L.L.C.

TERRY GODDARD
ATTORNEY GENERAL
FOR THE STATE OF ARIZONA

By: Dana Rosen Givler for Rebecca
Rebecca Salisbury Salisbury
Assistant Attorney General

Date: June 24, 2009

FOR THE STATE OF ARKANSAS:



Jean C. Block
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
501.682.2108 Direct
501.683.1513 Fax

ASSURANCE OF VOLUNTARY COMPLIANCE

In the matter of:

**DISH NETWORK, L.L.C.,)
a Colorado Limited Liability Company)**

Agreed to and accepted by the State of Colorado, ex rel. John W. Suthers
This 6th day of July, 2009

**JOHN W. SUTHERS
Attorney General**



**ANDREW P. McCALLIN
First Assistant Attorney General
Consumer Protection Section**

1525 Sherman Street – 7th Floor
Denver, CO 80203
(303) 866-5134
FAX: (303) 866-4916
Andrew.McCallin@State.CO.US

Attorney for the State of Colorado

JA017153

• 001673

FOR THE STATE OF CONNECTICUT

RICHARD BLUMENTHAL
ATTORNEY GENERAL

By 

Brendan T. Flynn
Assistant Attorney General
Juris Number 419935
Office of the Attorney General
110 Sherman Street
Hartford, CT 06105

JA017154

001674

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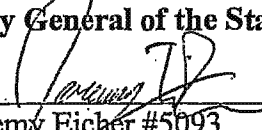
In the matter of:

DISH NETWORK, L.L.C.,)
a Colorado Limited Liability Company)

Signature Page

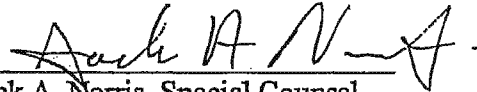
FOR THE STATE OF DELAWARE:

JOSEPH R. BIDEN, III
Attorney General of the State of Delaware

By:  _____
Jeremy Eicher #5093
Deputy Attorney General
Delaware Department of Justice
Fraud and Consumer Protection Division
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 577-8600 (telephone)
(302) 577-6499 (facsimile)

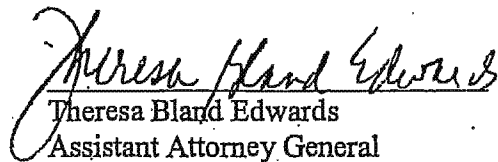
Date: 6/11/09

BILL McCOLLUM
ATTORNEY GENERAL
STATE OF FLORIDA



Jack A. Norris, Special Counsel
Florida Attorney General's Office
Multistate Litigation
110 S.E. 6th Street
Fort Lauderdale, FL 33301
BAR no: 0364861

Date: 6-29-2009



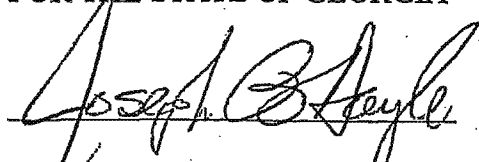
Theresa Bland Edwards
Assistant Attorney General
Florida Attorney General's Office
Economic Crimes
110 S.E. 6th Street
Fort Lauderdale, FL 33301
BAR no.: 252794

Date: 7/1/09

JA017156

001676

FOR THE STATE OF GEORGIA



Joseph B. Doyle, Administrator
Fair Business Practices Act

Date: JUNE 10, 2009


JA017157

In the Matter of
DISH NETWORK, L.L.C

Assurance of Voluntary Compliance

DATED: June 30, 2009

STEPHEN H. LEVINS, Executive
Director
Office of Consumer Protection of the
State of Hawaii


JEFFREY E. BRUNTON
Staff Attorney
Office of Consumer Protection
State of Hawaii
235 South Beretania Street, Suite 801
Honolulu, Hawaii 96813

JA017158

001678

FOR THE STATE OF IDAHO:

LAWRENCE G. WASDEN
ATTORNEY GENERAL FOR THE
STATE OF IDAHO



STEPHANIE N. GUYON

Deputy Attorney General

Office of the Idaho Attorney General

Consumer Protection Division

P.O. Box 83720

Boise, ID 83720-0010

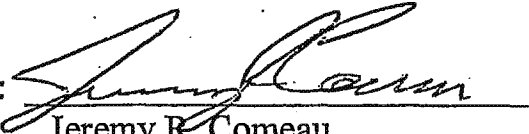
Telephone: (208) 334-2424

Facsimile: (208) 334-4151

Email: stephanie.guyon@ag.idaho.gov

FOR THE STATE OF INDIANA

Gregory F. Zoeller
Attorney General of Indiana

By: 
Jeremy R. Comeau
Deputy Attorney General
Atty. No. 26310-53
Office of Attorney General
Indiana Government Center South
302 West Washington Street, 5th Floor
Indianapolis, IN 46204
317.232.6317
jcomeau@atg.in.gov

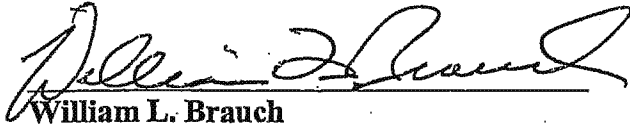
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JA017160

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In Re: AVC with Dish Network, L.L.C.

For the Iowa Attorney General:



William L. Brauch
Special Assistant Attorney General
Director-Consumer Protection Division

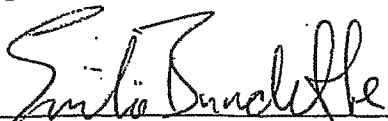
Date: June 23, 2009

JA017161

001681

SLC_ DNC_Investigation_0013921

FOR THE STATE OF KANSAS:



Emilie Burdette, KS Bar #22094

Assistant Attorney General

Consumer Protection Division

Office of Kansas Attorney General Steve Six

120 SW 10th Avenue

Topeka, Kansas 66612

(786) 296-3751

**DISH NETWORK – ASSURANCE OF VOLUNTARY COMPLIANCE
WITH COMMONWEALTH OF KENTUCKY**

APPROVED BY:

R. STANTON DODGE
Executive Vice President and General Counsel
DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

HELEN MAC MURRAY
SHAUN K. PETERSEN
Mac Murray, Petersen & Shuster LLP
6530 West Campus Oval, Suite 210
P.O. Box 365
New Albany, OH 43054
Telephone No.: (614) 939-9955
Facsimile: (614) 939-9954
Email: hmacmurray@mcpslaw.com
spetersen@mcpslaw.com
Counsel for DISH Network, L.L.C.



MARYELLEN B. MYNEAR
Litigation Manager/Assistant Attorney General
Office of the Kentucky Attorney General
Consumer Protection Division
1024 Capital Center Dr.
Frankfort, KY 40601
Telephone: (502) 696-5389
Facsimile: (502) 573-7151
Email: maryellen.myneer@ag.ky.gov

JA017163

001683

FOR THE STATE OF LOUISIANA

JAMES D. "BUDDY" CALDWELL

Attorney General

State of Louisiana

By: 

L. Christopher Styron

La. Bar Roll No. 30747

Assistant Attorney General

State of Louisiana

Public Protection Division

Consumer Protection Section

1885 N. 3rd Street, 4th Floor

Baton Rouge, Louisiana 70802

(225) 326-6468



Isabel Wingerter

La. Bar Roll No. 20428

Deputy Director, Public Protection Division

Assistant Attorney General

State of Louisiana

1885 N. 3rd Street, 4th Floor

Baton Rouge, Louisiana 70802

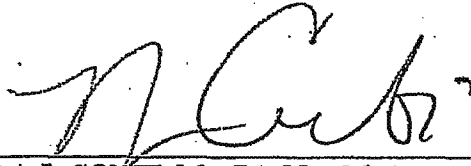
(225) 326-6464

JA017164

001684

FOR THE ATTORNEY GENERAL, STATE OF MAINE

JANET T. MILLS
Attorney General

A handwritten signature in cursive script, appearing to read 'L. Conti', written over a horizontal line.

LINDA J. CONTI, Me. Bar No. 3638
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
Tel. (207) 626-8591

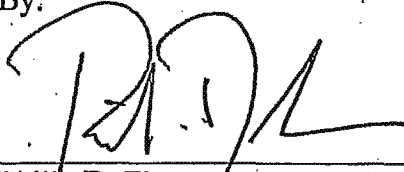
JA017165

001685

FOR THE STATE OF MARYLAND

DOUGLAS F. GANSLER
ATTORNEY GENERAL

By:

A handwritten signature in black ink, appearing to read 'P. D. Ziperman', written over a horizontal line.

Philip D. Ziperman, Deputy Chief
Consumer Protection Division
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
(410) 576-6374

FOR THE COMMONWEALTH OF MASSACHUSETTS

David W. Monahan

David W. Monahan
Deputy Chief, Consumer Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
617-727-2200, x. 2954
617-727-5765 (fax)

June 19, 2009

JA017167

001687

FOR THE STATE OF MINNESOTA

LORI SWANSON
ATTORNEY GENERAL

By: Jeffrey E. Grell
Jeffrey E. Grell (021078X)
Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1400
St. Paul, MN 55101
(651) 215-6367

JA017169

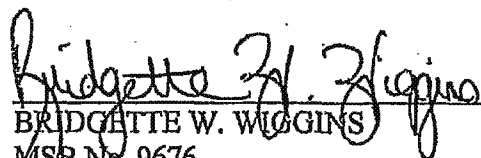
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SLC_ DNC_Investigation_0013929

**In the matter of
DISH NETWORK, L.L.C.,
a Colorado Limited Liability Company**

Dated: June 19, 2009

**JIM HOOD
Attorney General of the State of Mississippi**

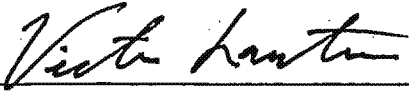

**BRIDGETTE W. WIGGINS
MSB No. 9676
Special Assistant Attorney General
Mississippi Attorney General's Office
Post Office Box 22947
Jackson, MS 39225
Phone: (601) 359-4279
Facsimile: (601) 359-4231**

JA017170

001690

SLC_ DNC_Investigation_0013930

FOR THE STATE OF MISSOURI:



Victoria Lautman
Assistant Attorney General
Consumer Protection Division
1530 Rax Court
Jefferson City, MO 65109
Telephone: 573-751-3392
Facsimile: 573-751-7948
Victoria.Lautman@ago.mo.gov

days before such change will occur identifying that individual by name and/or title and mailing address.

14. COSTS

14.1 Where necessary DISH Network shall pay all court costs associated with the filing of this Assurance.

FOR THE STATE OF MONTANA:

STEVE BULLOCK
Montana Attorney General

By: Kelley L. Hubbard
KELLEY L. HUBBARD
Assistant Attorney General

APPROVED BY:

R. STANTON DODGE
Executive Vice President and General Counsel
DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

HELEN MAC MURRAY
SHAUN K. PETERSEN
Mac Murray, Petersen & Shuster LLP
6530 West Campus Oval, Suite 210
P.O. Box 365
New Albany, OH 43054
Telephone No.: (614) 939-9955
Facsimile: (614) 939-9954
Email: hmacmurray@mcpslaw.com;
spetersen@mcpslaw.com

Counsel for DISH Network, L.L.C.

STATE OF NEBRASKA
ATTORNEY GENERAL JON BRUNING

By: _____

Leslie C. Levy
Assistant Attorney General
Nebraska Department of Justice
2115 State Capitol Building
Lincoln NE 68509
402.471.2811

Date: _____

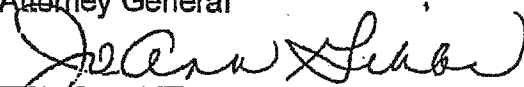
6.23.09

JA017173

001693

1 CATHERINE CORTEZ MASTO
2 Attorney General

3 By:


4 JO ANN GIBBS
5 Senior Deputy Attorney General
6 Nevada Bar No. 005324
7 555 E. Washington Avenue, #3900
8 Las Vegas, Nevada 89101
9 702-486-3789
10 Attorneys for Plaintiff, State of Nevada
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JA017174

STATE OF NEW HAMPSHIRE
Kelly A. Ayotte, Attorney General:

By: 

Richard W. Head, NH Bar No. 7900
Associate Attorney General
33 Capitol Street
Concord, NH 03301
603-271-1248

In the matter of:
DISH NETWORK, L.L.C.
Assurance of Voluntary Compliance

Dated: June 19, 2009

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY

By: Nicholas Kant

Nicholas Kant
Deputy Attorney General

Consumer Fraud Prosecution Section
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Telephone: (973) 648-4584
Fax: (973) 648-4887

JA017176

001696

SLC_ DNC_Investigation_0013936

In the matter of:

DISH NETWORK, L.L.C.,)
a Colorado Limited Liability Company)

For the State of New Mexico:
Gary K. King
Attorney General

By: Lawrence Otero
Lawrence Otero
Assistant Attorney General
Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504
Ph: (505) 827-6704
Fx: (505) 827-6685

Date: 18 June 2009

JA017177

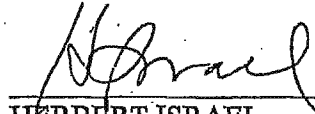
001697

SLC_ DNC_Investigation_0013937

FOR THE STATE OF NEW YORK

ANDREW M. CUOMO
Attorney General

By:

A handwritten signature in cursive script, appearing to read "H. Israel", is written over a horizontal line.

HERBERT ISRAEL
Assistant Attorney General

Dated: July 3, 2009

JA017178

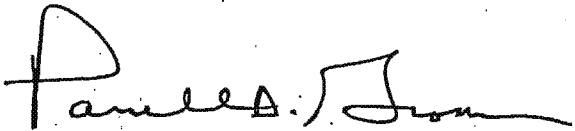
001698

In the matter of:

DISH NETWORK, L.L.C.
A Colorado Limited Liability Company

STATE OF NORTH DAKOTA

Wayne Stenehjem
Attorney General of North Dakota



Parrell D. Grossman, State ID No. 04684
Assistant Attorney General
Director
Consumer Protection & Antitrust Division
Office of Attorney General
PO Box 1054
4205 State Street
Bismarck, ND 58502-1054
(701)328-5570
(701)328-5568 (Fax)

Dated this 23rd day of June, 2009

JA017179

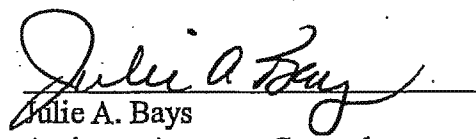
001699

SLC_ DNC_Investigation_0013939

In the Matter of:
Dish Network, LLC Assurance of Voluntary Compliance

Dated: June 23, 2009

W.A. DREW EDMONDSON
ATTORNEY GENERAL


Julie A. Bays
Assistant Attorney General
Consumer Protection Unit
313 N.E. 21st
Oklahoma City, Oklahoma 73105
Phone: (405) 522-3082
Fax: (405) 522-0085

JA017180

001700

1 In the Matter of:

2 DISH NETWORK, L.L.C., a Colorado Limited Liability Company.

3 Assurance of Voluntary Compliance

4 APPROVAL BY COURT

5 APPROVED for FILING and SO ORDERED this __ day of _____, 2009.

6

7

Circuit Court Judge
Marion County, State of Oregon

8

9

ACCEPTANCE OF DOJ

10 ACCEPTED this 30th day of June, 2009.

11

JOHN R. KROGER
Attorney General for the State of Oregon

12

13

By: 

14

Andrew U. Shull (OR Bar #024541)
Assistant Attorney General
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301-4096
andrew.shull@doj.state.or.us
(Appearance in Oregon Only)

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In the Matter of:

DISH NETWORK, L.L.C.
a Colorado Limited Liability Company

ASSURANCE OF VOLUNTARY COMPLIANCE

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION

THOMAS W. CORBETT, JR.
Attorney General

By: 

Thomas J. Blessington
Senior Deputy Attorney General
Pennsylvania Office of Attorney General
Bureau of Consumer Protection
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107
(215) 560-2414

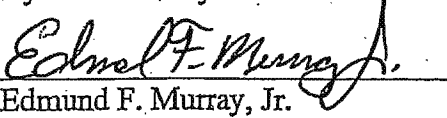
DATE: July 2, 2009

JA017182

001702

SLC_ DNC_Investigation_0013942

PATRICK C. LYNCH
ATTORNEY GENERAL
STATE OF RHODE ISLAND
By His Attorney



Edmund F. Murray, Jr.
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400 ext. 2401

JA017183

001703

SLC_ DNC_Investigation_0013943

FOR THE STATE OF SOUTH CAROLINA:

Mary Frances Jowers

MARY FRANCES JOWERS

Assistant Attorney General

Office of the South Carolina Attorney General

1000 Assembly Street, Room 519

Columbia, SC 29201

Phone: 803.734.3680

Fax: 803.734.3677

mfjowers@scag.gov

JA017184

001704

SLC_ DNC_Investigation_0013944

In the Matter of:
Dish Network, L.L.C

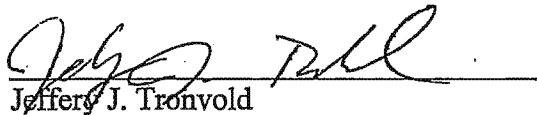
FOR THE STATE OF SOUTH DAKOTA

LAWRENCE E. LONG
ATTORNEY GENERAL

By:

Date:

6/23/09



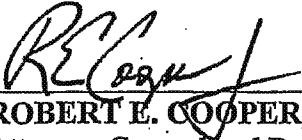
Jeffery J. Tronvold
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
(605) 773-3215 Telephone
(605) 773-4106 Facsimile

JA017185

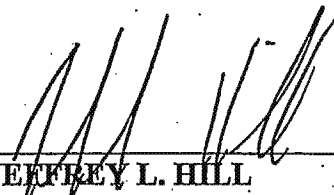
001705

SLC_ DNC_Investigation_0013945

FOR THE ATTORNEY GENERAL, STATE OF TENNESSEE



ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934



JEFFREY L. HILL
Senior Counsel
B.P.R. No. 16731
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Telephone (615) 741-2614
Facsimile (615) 532-2910

JA017186

001706

SLC_ DNC_Investigation_0013946

Date: 6-29-09


COUNSEL FOR THE STATE OF TEXAS

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy First Assistant Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division
& Public Health Division


D. ESTHER CHAVEZ
State Bar No. 04162200
Consumer Protection & Public Health Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone: (512) 475-4628
Facsimile: (512) 473-8301

JA017187

001707

We, the undersigned, have the authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and content of the foregoing Assurance and to its entry:

Signed this 25th day of June, 2009.

FOR THE STATE OF UTAH:

MARK L. SHURTLEFF
Utah Attorney General



JEFFREY BUCKNER, USB #4546

Assistant Attorney General
Office of Utah Attorney General
Commercial Enforcement Division
160 East 300 South, Fifth Floor
P. O. Box 140872
Salt Lake City, UT 84114-0872
801-366-0310

FOR THE STATE OF VERMONT
ATTORNEY GENERAL WILLIAM H. SORRELL



Sarah E.B. London
Assistant Attorney General
Vermont Attorney General's Office
Public Protection Division
109 State Street
Montpelier, VT 05609-1001

Date: 6/22/09

In the Matter of
DISH Network, L.L.C.

Assurance of Voluntary Compliance

DATED: June 16, 2009

COMMONWEALTH OF VIRGINIA,
EX REL. WILLIAM C. MIMS,
ATTORNEY GENERAL

William C. Mims
Attorney General

Martin L. Kent
Chief Deputy Attorney General

Maureen R. Matsen
Deputy Attorney General
Civil Division

David B. Irvin
Senior Assistant Attorney General and Chief
Antitrust and Consumer Litigation Section

By: Courtney M. Malveaux
Courtney M. Malveaux
Assistant Attorney General
(VSB No. 51064)
Antitrust and Consumer Litigation Section
Office of the Attorney General of Virginia
900 East Main Street, 6th Floor
Richmond, Virginia 23219
Telephone: (804) 786-1925
Facsimile: (804) 786-0122

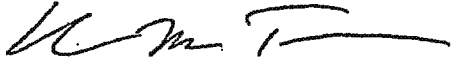
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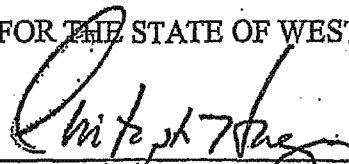
FOR THE STATE OF WASHINGTON

ROBERT M. MCKENNA
Attorney General



KATHERINE M. TASSI WSBN 32908
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

FOR THE STATE OF WEST VIRGINIA



CHRISTOPHER HEDGES (WV #7894)

ASSISTANT ATTORNEY GENERAL

Consumer Protection and Antitrust Division

Post Office Box 1789

Charleston, West Virginia 25326-1789

Telephone: 304-558-8986

Facsimile: 304-558-0184

FOR THE STATE OF WISCONSIN

J.B. VAN HOLLEN
Attorney General

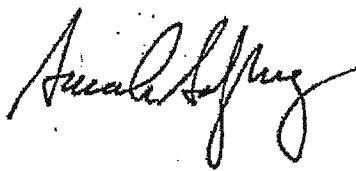
Nelle R. Rohlich

Dated: 7/1/09

NELLE R. ROHLICH
Assistant Attorney General
State Bar No. 1047522

Attorneys for State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8901

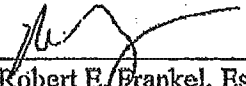


BRUCE A. SALZBURG
Attorney General of Wyoming
123 Capitol Avenue
Cheyenne, WY 82002
(307) 777-7841 (telephone)
(307) 777-6869 (facsimile)

JA017194

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ON BEHALF OF RESPONDENT:



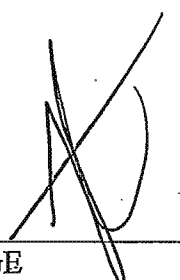
Robert E. Frankel, Esq.
Attorney ID: 67962
9601 S. Meridian Blvd.
Englewood, CO 80126

Counsel for DISH Network L.L.C.

JA017195

001715

APPROVED BY:



R. STANTON DODGE
Executive Vice President and General Counsel
DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112


HELEN MAC MURRAY
SHAUN K. PETERSEN
Mac Murray, Petersen & Shuster LLP
6530 West Campus Oval, Suite 210
P.O. Box 365
New Albany, OH 43054
Telephone No.: (614) 939-9955
Facsimile: (614) 939-9954
Email: hmacmurray@mcpslaw.com
spetersen@mcpslaw.com

Counsel for DISH Network, L.L.C.

JA017196

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EXHIBIT A

[Date]

[Consumer Name]
[Street Address]
[City, State, Zip]

re: Dish Network Complaint Resolution Program

Dear [Consumer Name]

Pursuant to a settlement that was reached between Dish Network, L.L.C. ("Dish Network") and the Office of the [Insert State] Attorney General, we are offering you the restitution described below to settle the complaint that you filed against Dish Network concerning your satellite television service. If you wish to accept the restitution offer described below, you do not need to do anything. Dish Network will be providing you the below described restitution within forty-five (45) to seventy-five (75) days from the date of this letter. If you wish to reject the restitution offer described below and request that a neutral third party administrator resolve your complaint against Dish Network, you must complete, sign, and mail the attached Claims Notice to Dish Network at the following address:

DISH NETWORK CLAIMS RESOLUTION

[Street Address]
[City, State, Zip]

Description of Restitution Offer:

If you have any questions, you may contact either the Office of the [Insert State Name] Attorney General at [Insert Contact Number] or you may contact Dish Network by calling [Insert Dish Network Contact Name and Title], at [Insert Contact Number].

Sincerely

[Dish Network Representative]

CLAIMS NOTICE INSTRUCTIONS

If you wish to accept the restitution offer contained in the enclosed letter from Dish Network, you do not need to do anything. Dish Network will provide you with the restitution that is offered in its letter within 45 to 75 days from the date of the letter. If you wish to reject the restitution offer stated in the enclosed letter from Dish Network and to request that a neutral third party administrator resolve your complaint against Dish Network, you must complete, sign, and mail this Claims Notice to the Dish Network at the following address:

DISH NETWORK CLAIMS RESOLUTION

[Street Address]

[City, State, Zip]

The Claims Notice must be postmarked within forty-five (45) days of the date on the enclosed final offer letter from Dish Network. In addition to completing and signing the Claim Form, you should also include copies of any documents that you believe support your claim. If your Claims Notice is not received by the Claim Administrator by the deadline, or is found to be fraudulent, it will be rejected by the Claim Administrator.

If you submit a valid Claims Notice, your claim will be mediated by the Claims Administrator. The Claims Administrator will conduct a review of the claim and supporting documentation and may obtain additional information from Dish Network or request that you submit additional information. If necessary, the Claims Administrator may also conduct a hearing, which may be held by telephone at the request of any party, during which you may explain your claim. At the conclusion of the evaluation, the Claims Administrator will notify you of the resolution of your claim and will offer you any resolution he/she believes appropriate. The decision of the Claims Administrator will be final.

If you have any questions about this Claims Notice, please include them on a separate piece of paper and send them to the address listed above, or simply attach them to the Claims Form.

CLAIMS NOTICE

Print or Type

Please Provide All Requested Information

CONTACT INFORMATION

Name: _____ Phone: _____
Address: _____ Work Phone: _____
City: _____
State: _____ Zip Code: _____
Email: _____

ACCOUNT INFORMATION

I purchased Dish Network equipment on the following date: _____

Where did you buy Dish Network equipment?

From a Retail Store _____ Store Name _____

Over the Internet _____ Web Site Name (if known) _____

By 800 telephone number _____ (yes/no)

What type of equipment did you purchase? _____

I purchased Dish Network service on the following date: _____

What service plan(s) did you purchase? _____

Please provide the account-holder name and the address at which Dish Network service is/was provided if different from above:

Name: _____

Address: _____

City: _____

State: _____ Zip Code: _____

Phone: _____
I canceled Dish Network service for this address on the following date (if applicable): _____.

CLAIM

(Explain) _____

Use additional pages if necessary.

I do not believe that the offer by Dish Network is sufficient to compensate me for my claim because:

Use additional pages if necessary.

I request the following relief:

I have attached documents in support of my claim (Copies only. Original documents will not be returned):

☐ Yes

☐ No

CERTIFICATION

By signing and dating this form, I attest that all information provided by me in this Claims Notice (and attachments, if applicable) is true and accurate to the best of my knowledge, information and belief.

Signed _____

Dated _____

**WRITTEN CONSENT OF THE SOLE MEMBER
OF
DISH NETWORK L.L.C.
AS OF
JULY 9, 2009**

The undersigned, being the sole member (the "Member") of DISH Network L.L.C., a Colorado limited liability company (the "Company"), in lieu of holding a meeting, hereby adopts the following resolution by written consent in accordance with the Colorado Limited Liability Company Act, as amended (the "Act"):

NOW, THEREFORE, BE IT RESOLVED, that: (a) the form, terms and provisions of the assurance of voluntary compliance with the Commonwealth of Pennsylvania, Office of Attorney General, attached hereto as Exhibit A ("Assurance of Voluntary Compliance"), be, and the same hereby are, authorized, ratified and adopted in all respects, with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as the Chief Executive Officer or Executive Vice President, General Counsel, and Secretary of the Company (each, a "proper officer" and collectively, the "proper officers"), or any one of them, shall in their discretion approve; and (b) the execution and delivery of the Assurance of Voluntary Compliance by any proper officer, with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as any proper officer shall approve, shall constitute conclusive evidence: (i) of such approval; and (ii) that the Assurance of Voluntary Compliance has been authorized, ratified, and adopted hereby; and further

RESOLVED, that the proper officers of the Company and its subsidiaries be and each one of them acting alone or with one or more proper officers hereby is, authorized, empowered and directed to consummate in the name of and on behalf of the Company, the Assurance of Voluntary Compliance with such non-material modifications, changes, or amendments to the terms and conditions of the Assurance of Voluntary Compliance as the proper officers (or any one of them) shall in their discretion approve; and further

RESOLVED, that the proper officers of the Company be, and each one of them acting alone or with one or more other proper officers hereby is, authorized, empowered and directed, in the name and on behalf of the Company, from time to time, to make, execute and deliver, or cause to be made, executed and delivered, all such other and further agreements, certificates, instruments or documents, to pay or reimburse all such filing fees and other costs and expenses, and to do and perform or cause to be done or performed all such acts and things, as in their discretion or in the discretion of any of them may be necessary or desirable to

enable the Company to accomplish the purposes and to carry out the intent of the foregoing resolutions; and further

RESOLVED, that any and all actions previously taken by any of the proper officers within the terms of the foregoing resolutions be, and the same hereby are, ratified, and confirmed in all respects.

[signature page follows]

IN WITNESS WHEREOF, the undersigned, constituting the sole member of the Company, waives all notices, evidences its approval of the foregoing actions relating to the Assurance of Voluntary Compliance, and gives its full ratification thereto as of the date first written above.

SOLE MEMBER

DISH DBS Corporation

By: 

Name: R. Stanton Dodge

Title: Executive Vice President,
General Counsel and Secretary

Exhibit A

Assurance of Voluntary Compliance

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
Acting by Attorney General,	:	Docket No.
Thomas W. Corbett, Jr.	:	
	:	M.D. 2009
Petitioner	:	
	:	
v.	:	
	:	
DISH NETWORK, LLC	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

I, Thomas J. Blessington, Senior Deputy Attorney General, Pennsylvania Office of Attorney General, Bureau of Consumer Protection, hereby certify that on the date set forth below, I caused to be served a true and correct copy of the Assurance of Voluntary Compliance in the above-captioned matter upon the person(s) listed below via first class mail, postage prepaid:

R. Stanton Dodge
Executive Vice President
and General Counsel
DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

Helen Mac Murray, Esquire
Shaun K. Petersen, Esquire
Mac Murray, Petersen & Shuster LLP
6530 West Campus Oval, Suite 210
P.O. Box 365
New Albany, OH 43054

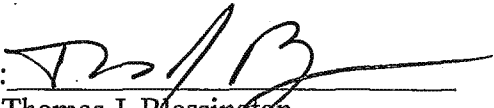
JA017205

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SLC_ DNC_Investigation_0013965

Robert E. Frankel, Esquire
DISH Network, L.L.C.
9601 S. Meridian Blvd.
Englewood, CO 80112

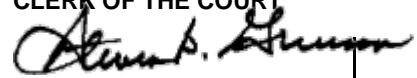
Dated: 7-16-09

By: 
Thomas J. Blessington
Senior Deputy Attorney General
Pennsylvania Office of Attorney General
Bureau of Consumer Protection
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107
(215) 560-2414

JA017206

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SLC_ DNC_Investigation_0013966



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

PLUMBER'S LOCAL UNION NO. 519.
PENSION TRUST FUND, et al. .

Plaintiffs .

vs. .

CHARLES ERGEN, et al. .

Defendants .

.

CASE NO. A-17-763397-B
A-17-764522-B

DEPT. NO. XI

**Transcript of
Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

STATUS CHECK

WEDNESDAY, JUNE 10, 2020

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

JA017207

APPEARANCES:

FOR THE PLAINTIFF:

DAVID C. O'MARA, ESQ.
BENNY C. GOODMAN, III, ESQ.
ERIK W. LUEDEKE, ESQ.
RANDALL J. BARON, ESQ.

FOR THE DEFENDANTS:

MARK E. FERRARIO, ESQ.

FOR THE SLC:

J. STEPHEN PEEK, ESQ.
BARR FLINN, ESQ.

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 10, 2020, 9:00 A.M.

2 (Court was called to order)

3 THE COURT: If I could go to DISH Network.

4 -- roll call, Dulce, for everybody that was on the
5 phone?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: So, Mr. O'Mara inquired if I would have
8 a conference call with you to talk about our schedule. Mr.
9 O'Mara, what do you want to ask me?

10 MR. BARON: Your Honor, this is Randall Baron. Is
11 it okay if I speak on his behalf?

12 THE COURT: It is, Mr. Baron.

13 MR. BARON: I think he was going to make sure that
14 we were aware of the procedures. I think that defendants'
15 motion for summary judgment it was their desire in order to
16 meet their burden to bring live witnesses. We wanted to make
17 sure before we get out there and, you know, get hotel rooms
18 and everything else that that is still going forward. We also
19 wanted to inquire as to the length of the proceedings and our
20 view -- our cross-examination of the three witnesses they
21 intended to call live would not be that extensive. We'd be
22 having some argument, so we wanted to make sure we were not
23 reserving more time than we needed. So I think that's our
24 position, and I wanted to make sure the Court was able to tell
25 us its position.

1 THE COURT: How long do you think you will need? I
2 thought we talked about two days before.

3 MR. PEEK: Your Honor, this is Stephen Peek. And,
4 yes, we did. We believe that with direct and the cross-
5 examination and whatever opening, closings that the Court will
6 allow would consume the entire two days. I realize that
7 Monday -- I think one of the dates is a Monday.

8 THE COURT: Uh-huh.

9 MR. PEEK: So it might -- I don't know if we start
10 right on time at 9:00 o'clock --

11 THE COURT: Probably not.

12 MR. PEEK: -- but we think the entire two days is
13 necessary.

14 THE COURT: We probably would not start either day
15 at 9:00 o'clock, because I'm backed up trying to catch up on
16 all the Rule 16 conferences in both the Business Court cases
17 and the regular civil cases. So --

18 MR. PEEK: Understood, Your Honor.

19 THE COURT: -- we'll see how that works.

20 So, yes, I still have you on my calendar for July
21 6th and 7th. For those people who are in the courtroom or
22 have been here in the last couple weeks you would have noticed
23 there were blue Post-It notes on the chairs people are allowed
24 to sit in to govern social distancing. Everybody who comes in
25 has to wear a mask. All the exhibits have to be electronic.

1 Witnesses can be by video or live. It's up to the witness,
2 but they have to wear a mask, too. So there have been some
3 challenges in the presentation of evidence as a result of the
4 social distancing rules that Judge Bell has imposed in her
5 administrative orders, but we have been trying to manage.

6 Currently the escalators are not working and it's
7 hard to get up in the building because you can only get four
8 people on the elevator, so there's a really long line. But
9 you can take the stairs if you want. Anything else you want
10 to know?

11 MR. PEEK: There are a couple of other questions,
12 Your Honor, as to whether or not you will have any kind of a
13 pretrial conference --

14 THE COURT: No.

15 MR. PEEK: -- or this will suffice for that.

16 THE COURT: We're not having a pretrial conference.
17 We're not having a pretrial conference on an interim
18 evidentiary hearing on a motion for summary judgment. Not
19 doing a pretrial conference. Sorry, Mr. Peek. Anything else?

20 MR. PEEK: Okay. Yes, Your Honor. We're trying to
21 work out dates for submission of exhibits and witness lists in
22 accordance with EDCR 2.67 as well as Rule 16.1. There seems
23 to be somewhat of a disagreement with counsel on the other
24 side as to whether or not the exhibits need to be disclosed
25 prior to the hearing. So I wanted to get that clarification

1 on that with the Court.

2 THE COURT: Dulce will need your exhibits prior to
3 the hearing, because she is having to accept them
4 electronically. I will let her work with your staff as to the
5 best platform to submit those to her, because I am not
6 touching paper from you guys. So it has to be in a format
7 that I can look at. The evidentiary hearing we were in last
8 week the exhibits that were submitted electronically were too
9 large for Dulce to provide me, and we're not on a platform
10 that I could review it, so it put me in a bit of a difficult
11 quandary in trying to review some of the exhibits that were
12 provided by counsel. So I would ask your staffs to coordinate
13 with Dulce to make sure that the electronic exhibits that you
14 submit are ones we can actually use.

15 MR. PEEK: Your Honor, the issue is not so much
16 that. It's that Mr. Baron did not think that we needed to
17 exchange exhibits as required by EDCR 2.67 and Rule 16.1.

18 THE COURT: EDCR 2.67 does not apply to this
19 hearing, but Rule 16 does. So if you intend to use witnesses
20 or exhibits, it would be really nice if you would disclose who
21 they are at least a week before the hearing.

22 Anything else?

23 MR. PEEK: I think that's the only -- oh, yeah. One
24 more thing, Your Honor, is when would you require proposed
25 findings of fact, conclusions of law?

1 THE COURT: Can you email them to me the Friday
2 before the hearing. Oh. Wait. The Friday before the hearing
3 is a holiday. How about the Thursday before the hearing?

4 MR. PEEK: That will work, Your Honor.

5 THE COURT: The Thursday before the hearing, July
6 2nd.

7 MR. PEEK: Your Honor, another question that's been
8 asked by my client, I think Mr. McGinn and Mr. Ferrario have
9 that question, as well, is how many non-court personnel will
10 be permitted in the courtroom --

11 THE COURT: My courtroom holds 20. My courtroom
12 holds 20. RPM said 12. We did measuring ourselves and got an
13 inspection for up to 20 non-court staff.

14 MR. PEEK: Okay. We will work with opposing counsel
15 to make sure that we fall within that guideline, Your Honor.

16 THE COURT: Yeah.

17 MR. PEEK: And then one more question that I've been
18 asked by -- it's my question, as well as my co-counsel's
19 question is while we're examining we will have masks, or no
20 masks?

21 THE COURT: You have to wear the masks all the time.
22 I was letting the lawyers take the mask off at the podium, and
23 I was scolded and told to have them put it back on.

24 MR. PEEK: Okay. And that would be the same, then,
25 for the witness?

1 THE COURT: Everybody in the courtroom wears a mask
2 the whole time from the time you get in line to come in the
3 building until the time you get out of the line to go out.

4 MR. PEEK: Okay, Your Honor.

5 MR. BARON: And I guess the last question is are the
6 escalators fixed yet or --

7 THE COURT: No, the escalators are not fixed. You
8 will either have to take the elevators, which are limited to
9 four people, which means there's a really long line, or you
10 could climb the stairs, which is what I did this morning.
11 It'll probably be really hot in July.

12 MR. PEEK: So even at my advanced age of 75 I'll
13 have to climb the stairs?

14 THE COURT: Yeah. I asked the escalator repair guy
15 -- I asked the escalator repair guy how much longer he
16 thought, and he said, well, this one might be working in
17 another week or so, but that other one I don't know. So I've
18 got no idea. I just work here. I'm not the chief judge.

19 MR. PEEK: Okay, Your Honor. Randy said he would
20 help me up the stairs, so --

21 THE COURT: He's going to help you? Well, you know,
22 you could figure out how to get four people in an elevator,
23 stand in the line to get four people in and then, you know.

24 MR. BARON: Your Honor, I have one question on
25 procedure. Are you -- it's not a trial, so --

1 THE COURT: No, it's not a trial.

2 MR. BARON: -- because it's summary judgment and an
3 interim evidentiary proceeding, are you expecting there to be
4 an opening statement, then, and then a closing argument, or
5 you expecting there be a presentation of evidence and then
6 argument on the summary judgment like we would typically do?

7 THE COURT: I always give counsel the opportunity to
8 make a statement, both opening and closing.

9 MR. BARON: Okay.

10 MR. PEEK: But it's not required?

11 THE COURT: Not required at all. You can skip
12 ahead. You've briefed this fully. But if you want to
13 convince me, keep going. That's why you're lawyers.

14 Anything else? I'm sorry, guys. It's been a long
15 week, and it's only Wednesday.

16 MR. PEEK: Well, Your Honor, [inaudible] back to
17 Monday and Wednesday hearings again.

18 THE COURT: Monday, Tuesday, and Wednesday. I've
19 been in preliminary injunction hearings for the last three
20 weeks. Anything else?

21 MR. BARON: No, Your Honor. Thank you for taking
22 the time.

23 MR. PEEK: A general question is if I want to appear
24 at a hearing, can I come to the courtroom or --

25 THE COURT: There are currently three people in the

1 courtroom waiting. I have people in the courtroom this
2 morning here for calendars. Will Kemp was here yesterday.

3 MR. PEEK: All right. Thank you, Your Honor. You
4 answered my question.

5 THE COURT: You can come, or you can call on the
6 phone. It's up to you.

7 Anything else on DISH?

8 MR. PEEK: Thank you. No, Your Honor. Thank you
9 very much.

10 THE PROCEEDINGS CONCLUDED AT 9:09 A.M.

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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**FLORENCE HOYT
Las Vegas, Nevada 89146**

Florence M. Hoyt

FLORENCE HOYT, TRANSCRIBER

6/25/20

DATE