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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Keith and Jana Harper, husband and wife, on
behalf of themselves and all others similarly
situated in the State of Washington

Plaintiffs,

vs.

DIRECTV, INC., a California Corporation.
Defendant.

NO. **C 09-0282**

COMPLAINT

RAJ

CLASS ACTION

- (1) Penalty Clause in Contract;
- (2) Unjust Enrichment;
- (3) Washington Consumer Protection Act, RCW 19.86.010 *et seq.*;
- (4) California Consumer Remedies Act, Cal.Civ. Code Section 1750 *et seq.*
- (5) California Unfair Competition Law, Cal. Bus. And Prof. Code Section 17200 and 17500
- (6) Declaratory Judgment Act, 28 U.S.C. § 2201

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 ★ MAR 04 2009 ★
 AT SEATTLE
 CLERK U.S. DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 BY _____ DEPUTY

AND DEMAND FOR JURY TRIAL

Plaintiffs Keith and Jana Harper, for their Complaint against Defendants DIRECTV et al allege:

INTRODUCTION

1. Plaintiffs bring this consumer class action against DIRECTV, Inc. ("DIRECTV") a leading provider of satellite television services in Washington State. DIRECTV engages in a uniform and class wide policy and practice of enforcing an alleged

1 contractual obligation against its customers to purchase DIRECTV's services for a specified
2 period of time, typically 18 or 24 months (the "term commitment"), by imposing an early
3 cancellation penalty on its customers who discontinue receiving DIRECTV's services before
4 the expiration of the alleged term commitment, even when, for example, the reason for
5 cancellation is due to a problem with the service.

6 2. These early cancellation penalties are often as high as \$480. DIRECTV
7 withdraws the early cancellation penalties and other amounts allegedly due directly from the
8 customers' bank accounts or credit cards, using account information provided by the customers
9 when they first ordered DIRECTV, without consulting them or otherwise obtaining their
10 express consent. The early cancellation penalties bear no relation to the damage, if any,
11 incurred by DIRECTV in connection with an early cancellation of the service. DIRECTV's
12 primary intention in implementing and enforcing the penalty is to force customers to pay for its
13 services for at least 18 months (and sometimes longer) and prevent customers from readily
14 changing to another satellite or cable provider, even if they are no longer able to use
15 DIRECTV's service due to faulty equipment or other reasons.

16 3. As set forth below, DIRECTV has no right, contractual or otherwise, to enforce
17 the supposed term commitment or impose an early cancellation penalty against its customers by
18 withdrawing funds directly from the customers' bank accounts or credit cards without their
19 consent or otherwise. Plaintiffs and the class members seek injunctive relief on behalf of all
20 current and former DIRECTV subscribers who were charged or may be charged an early
21 cancellation penalty and monetary relief on behalf of current and former DIRECTV customers
22 who paid DIRECTV an early cancellation penalty; the imposition of constructive trusts on all
23 monies by which DIRECTV was unjustly enriched as a result of collecting the early
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1 cancellation penalties and as a result of tethering Plaintiffs and the Class members to
2 DIRECTV's arbitrary terms and conditions; and all such other and further relief to which they
3 may be entitled to under the Washington Consumer Protection Act, Revised Code of
4 Washington (RCW) 19.86.010 et seq., the California Consumer Remedies Act, Cal.Civ. Code
5 Section 1750 et seq., the California Unfair Competition Law, Cal. Bus. And Prof. Code
6 Sections 17200 et seq. and 17500 et seq., the Declaratory Judgment Act, 28 U.S.C. Section
7 2201, unjust enrichment, relief from unlawful penalties, and other common law causes of
8 action including, without limitation, restitution.
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10 **PARTIES**
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12 4. Plaintiffs Keith and Jana Harper are married and are citizens of the State of
13 Washington and reside in Seattle, Washington within this judicial district.

14 5. At all relevant times herein, Defendant DIRECTV, Inc. is a California
15 corporation with its principal place of business in El Segundo, California. DIRECTV is the
16 largest direct-to-home satellite television provider in the United States with over 16.8 million
17 subscribers located throughout the United States. DIRECTV is also the second largest multi-
18 channel video programming provider in the United States. It conducts business in the state of
19 Washington and in this judicial district.
20

21 6. At all relevant times herein, Defendant DIRECTV does business in Los
22 Angeles, California.
23

24 **JURISDICTION AND VENUE**

25 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). The case is filed as
26 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, the matter in
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1 controversy exceeds the value of \$5,000,000, exclusive of interest and costs, and more than
2 two-thirds of the members of the proposed class are citizens of a state different than Defendant.

3 8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c) because
4 DIRECTV regularly transacts business and is subject to personal jurisdiction in the State of
5 Washington.

6 **FACTS**

7 9. DIRECTV typically receives orders for service from new customers and for
8 change in service from existing customers by telephone. When accepting orders for new
9 service, DIRECTV's policy and practice is to not inform customers of the term commitment or
10 early cancellation penalty and when accepting orders for changes in service, DIRECTV's
11 policy and practice is to not inform customers that when the change is made the term
12 commitment is extended and they are subject to an early cancellation penalty. It also typically
13 does not inform customers of its asserted right to withdraw the early cancellation penalty
14 directly from the customers' bank accounts or credit cards when the customers provide account
15 information upon ordering service.

16 10. Notwithstanding this lack of information to customers, DIRECTV claims that
17 customers agree to a term commitment and early cancellation penalty when DIRECTV's
18 equipment is installed at the customer's residence and to an extended term commitment when
19 malfunctioning equipment leased from DIRECTV is replaced or when customers change their
20 service. Supposedly this agreement is on the back of a form and is provided by an installer,
21 who typically is not an employee of DIRECTV. The installers are not instructed or authorized
22 to call the customer's attention to the back of the form, let alone explain the terms of the form if
23 customers have any questions.

24
25 11. DIRECTV also extends the alleged term contract when changes are made to
26 customer accounts. This often happens with an upgrade in service or replacement of
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1 malfunctioning equipment. It is unclear how DIRECTV maintains that these customers have
2 agreed to a term commitment or early cancellation penalty.

3 12. DIRECTV pursued this common course of conduct as alleged in paragraphs 9-
4 11 above in the state of Washington and as to the Plaintiffs and the Class in this state.

5 **PLAINTIFFS DEALINGS WITH DIRECTV**

6 13. Plaintiffs Keith Harper and Jana Harper ordered service from DIRECTV in
7 August of 2008. The service was connected by an individual whose name is presently
8 unknown to Plaintiffs but who came to Plaintiffs' house in a van with DIRECTV markings.
9

10 14. The service provided was inadequate, the Plaintiffs could not access all channels
11 they had paid for, and the DVR system was not working properly, resulting in deleted
12 recordings. Monthly payments were billed to Plaintiffs' credit card.

13 15. At no time did any DIRECTV personnel or employees, including the installer of
14 the service and equipment ever inform Plaintiffs of the early cancellation penalty or call their
15 attention to the contract provisions.
16

17 16. As a result of the substandard service provided by DIRECTV, Plaintiffs asked
18 DIRECTV to cancel the service. For the first time ever, an employee of DIRECTV informed
19 Plaintiffs that they were subject to an early cancellation fee. Subsequently, employees of
20 DIRECTV informed Keith Harper of the amount that Plaintiffs would have to pay as an early
21 cancellation fee, in which he was originally told to be \$410. Later, a DIRECTV employee
22 informed Keith Harper that the early cancellation fee was \$360.
23

24 17. Plaintiffs called DIRECTV several times to complain but were told by
25 DIRECTV customer service representatives they would have to pay the early cancellation
26 penalty if they cancelled their service.
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1 18. Thereafter Plaintiffs told DIRECTV to cancel their service but objected to the
2 imposition of any early cancellation penalties on the grounds such penalties are improper,
3 unconscionable and in violation of law. They were ultimately charged an early cancellation
4 penalty of \$360.

5 19. Plaintiffs have suffered an injury in fact in the loss of money or property as a
6 result of DIRECTV's unlawful and actionable conduct as allege herein.

7
8 **DIRECTV'S UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS PRACTICES**
9 **IMPOSING EARLY CANCELLATION PENALTIES**

10 20. Plaintiffs are not alone in their complaints concerning DIRECTV's imposition
11 of early cancellation penalties. The Internet contains scores of complaints from customers
12 complaining of DIRECTV's imposition of early cancellation penalties upon cancellation of
13 service that DIRECTV justifies by a standardized and uniform lease addendum customers
14 supposedly sign upon installation of equipment or receipt of replacement equipment. There are
15 also many complaints that DIRECTV has collected early cancellation penalties by deducting
16 them directly from customers' accounts without their consent.

17 21. DIRECTV claims that class members receive the "Lease Addendum" when
18 DIRECTV's equipment is installed at the customer's residence and when malfunctioning
19 equipment leased from DIRECTV is replaced or when customers change their service.
20 Supposedly this agreement is on the back of a form that an installer, who typically is not an
21 employee of DIRECTV, provides. Plaintiffs are informed and believe and thereon allege that,
22 at all relevant times herein, the installers are not instructed or authorized to call the customer's
23 attention to the back of the form, let alone explain the terms of the form if customers have any
24 questions.
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1 22. Plaintiffs are informed and believe and thereon allege that, at all relevant times
2 herein, the provisions containing the term commitment and early cancellation penalty
3 provisions are found on the back of a document, the front of which consists of an equipment
4 installation checklist showing the equipment actually installed. The back is misleadingly
5 entitled, "DIRECTV EQUIPMENT LEASE ADDENDUM" ("Lease Addendum") and is filled
6 with single spaced terms in small type.

7
8 23. The top of the "Lease Addendum" states that it "MUST BE READ TOGETHER
9 WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED
10 TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM)
11 FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE
12 SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT." That is the
13 closest DIRECTV typically comes to obtaining customers' agreement to the terms of the
14 DIRECTV Customer Agreement. DEFENDANT does not require a customer to sign the Lease
15 Addendum or the Customer Agreement. It is the unsigned Customer Agreement, not the
16 "Lease Addendum," that includes language purportedly allowing DIRECTV to withdraw funds
17 from customers' accounts without notice or permission. Plaintiffs are informed and believe,
18 and based thereon alleges, that DIRECTV, as its custom and practice, does not provide a copy
19 of the Lease Addendum or the Customer Agreement to customers prior to delivery of its
20 equipment and/or activation of its satellite television services.
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22 24. The third paragraph of the "Lease Addendum" contains the term commitment.
23 It provides: "The programming package(s) must be maintained for a period of not less than (a)
24 eighteen (18) consecutive months for accounts with only standard receiver(s), or (b) twenty-
25 four (24) consecutive months for accounts with advanced product(s)/receiver(s) (DVR, HD, or
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1 HD DVR, including additional DIRECTV receiver(s).” The document does not state when the
2 period begins to run, or whether the customer is subject to the 18 or the 24 month period. It
3 also does not state that the period will start over upon a change of equipment or programming.
4 Plaintiffs are further informed and believe, and based thereon allege, that DIRECTV requires
5 this programming commitment without regard to how long the customer has continuously
6 received DIRECTV’s services or whether the customer voluntarily upgraded to a new receiver
7 or replaced an outdated or broken receiver. DIRECTV commits its customers to an additional
8 programming commitment each time they receive new or refurbished equipment, thereby
9 extending the length of the programming commitment. The extension of the programming
10 commitment is often done without prior notice to customers, and is contrary to the express
11 terms of the Lease Addendum which says, “After you have fulfilled your agreement to the
12 required programming package(s), you are not obligated to continue your subscription to
13 DIRECTV programming for any specific duration”.

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16 25. The terms and conditions of the Customer Agreement state as follows “Your
17 Cancellation. You may cancel Service by notifying us. In addition to any deactivation or
18 change of service penalties provided in Section 2, if you cancel Service or change your Service
19 package, you may be subject to any early cancellation penalty if you entered into a separate
20 programming commitment with DIRECTV in connection with obtaining Receiving Equipment,
21 and have failed to maintain the required programming package for the required period of time.”

22
23 26. Pursuant to the Customer Agreement, DEFENDANT “reserve[s] the right to
24 change the terms and conditions on which [it] offer[s] Service.”

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26 27. In the event DIRECTV makes a change to the terms and conditions of service, a
27 customer may cancel service if he/she does not agree to the changed terms or conditions.

1 However, the customer may still be charged the penalty and/or an additional "deactivation
2 penalty".

3 28. At all relevant times herein:

4 a. The "Lease Addendum" and Customer Agreement were conceived and drafted
5 in El Segundo, California. Specifically, DIRECTV's decision to impose a term
6 commitment and early cancellation penalty on its customers was made in El
7 Segundo, California and direction and oversight of the implementation and
8 enforcement of that policy occurs at DIRECTV's corporate headquarters in El
9 Segundo, California.

10 b. DIRECTV's policy of withdrawing these early cancellation penalties directly
11 from the customer's credit card or bank account was conceived and
12 implemented in El Segundo, California.

13 c. DIRECTV's decision not to have its customers sign the Customer Agreement
14 but instead to post it on its website was made in El Segundo, California.

15 d. DIRECTV's decision to have its installers provide customers with an installation
16 checklist with the "Lease Addendum" in small print on the reverse side, and not
17 to call attention to the term commitment and early cancellation penalty
18 provisions was made in El Segundo, California.

19 e. In addition, DIRECTV's decisions as to the instructions to be given its customer
20 service representatives, and devising of the training and oversight to be given its
21 customer service representatives, were made in El Segundo, California.
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