

DIRECTV CLASS ACTION FAQ (updated 5-27-2007)

(latest news in red)

As you might surmise, this page contains no recent information and is mostly of historical relevance. The final assessment is that Directv's extortion campaign was extremely costly for it and counter-productive however Directv was able to escape liability for its misconduct due to a very protective court system.

1.0 INTRODUCTION.

This the Frequently Asked Questions web page sponsored by the Lakeshore Law Center, www.lawyers.com/lakeshorelaw. It provides comprehensive information concerning the DIRECTV campaign of extortion and the first comprehensive efforts to battle it--Class Action lawsuits filed around the nation. Please check this site for updates.

Current status of litigation against DIRECTV and DIRECTV's new lawsuit against me (Jeffrey Wilens):

1. Persano v. Directv

This lawsuit was just filed April 2005. It alleges that DIRECTV's access cards do not comply with Federal FCC regulations. This raises the question, how can DIRECTV complain about hacking of illegal access cards? More details to follow. Search the discussions on Wumarkus forum: <http://forums.wumarkus.com/>

Federal judge dismisses case September 2005. Essentially holds DIRECTV does not have to obey the FCC labeling requirements because no one can sue them for it. By the way, this is the same judge who dismissed an unrelated Racketeering lawsuit against DIRECTV.

2. Directv v. Wilens

On April 4, 2005, Judge Lewis granted my anti-slapp motion and dismissed the "conversion" claim vindicating my position.

On February 14, 2005, Judge Lewis denied DIRECTV's petition for a court order compelling Wilens to return the "Fisher/Bautista documents." The judge also denied DIRECTV's motion for a preliminary injunction except as to grant a protective order against dissemination of the materials.

On January 13, 2005, Directv sued Jeffrey Wilens in Orange County Superior Court for "conversion." An earlier case that was misfiled in Los Angeles County had been dismissed. Wilens obtained documents from former DIRECTV employees which help prove that DIRECTV intended to extort money from innocent consumers. DIRECTV claims Wilens' refusal to return the documents is "conversion" of the documents. Wilens did not steal these documents, nor did the former employees. The documents were given to the former employees by their supervisors in the course of their day to day operations.

The purposes for this lawsuit is twofold: to intimidate Wilens and to establish a legal precedent so DIRECTV can try to suppress use of the incriminating documents by thousands of persons being unjustly sued by DIRECTV.

Reuters Wire Story:
http://yahoo.reuters.com/financeQuoteCompanyNewsArticle.jhtml?duid=mtfh40036_2004-12-17_22-38-40_n17263699_newsml

Lawsuit can be downloaded from:

<http://www.overhauser.com/DTV/motion%20for%20preliminary%20injunction.pdf>

3. Blanchard v. DIRECTV .

California state court class action alleging unfair business practices and extortion. Dismissed as to Directv and now under appeal. On October 29, 2004, the Court of Appeal affirmed (upheld) the trial court dismissal order. It held the anti-slapp law still applies to class action lawsuits. A petition for review by the California Supreme Court was denied.

4. Sosa v. DIRECTV .

California federal class action alleging Racketeering (RICO). Entire action dismissed by Los Angeles federal court and now under appeal. Should be decided by early 2006. To read the lawsuit, go to <http://www.geocities.com/jeffrey+wilens/SOSA-RICO-CLASS-ACTION.htm>

5. Fisher v. DIRECTV .

Former "investigators" for DIRECTV John Fisher and David Bautista pursued claims for wrongful termination and unfair business practices alleging they had no choice but to resign rather than comply with DIRECTV's orders to extort money from people.

These claims were resolved in a confidential settlement.

The investigators will not be able to discuss DIRECTV's extortion racket or product documents except pursuant to a valid court order.

However, on July 1, 2004 and July 2, 2004, depositions were taken of two other former investigators, David Bautista and Jerry Melendez. Their testimony confirms DIRECTV's criminal conduct and would be very helpful in defending against DIRECTV's extortionate lawsuits.

Third parties interested in this information will have to utilize proper legal means to obtain this information.

I appreciate all the moral support provided by sites like <http://forums.wumarkus.com> and www.overhauser.com/dtv and hope they will continue the good fight and spread the word about DIRECTV'S evil campaign.

Press coverage: <http://www.securityfocus.com/news/8472>

6. McClelland v. DIRECTV.

The arbitration claim is pending review in the American Arbitration Association.

Federal lawsuit filed in Colorado raising allegations similar to Sosa v. Directv (only in a more favorable jurisdiction). DIRECTV filed a motion to require this case to be arbitrated based upon the agreement signed by persons who settled with DIRECTV. That motion was finally decided some six months later with the judge ordering the case to be arbitrated.

<http://www.wumarkus.com/forums/dtv/files/McClelland-v-Directv-RICO-Complaint.pdf>

7. Freeman v. DIRECTV.

Federal class action in Los Angeles against DIRECTV and its investigators for illegally acquiring the postings and private messages from "Pirate Den" and "DSS Chat" websites. The Electronic Communications Privacy Act (another portion of which is being used by DIRECTV to sue end users) provides for penalties of \$1,000 per violation. Read the lawsuit:

<http://www.wumarkus.com/forums/dtv/files/Freeman-v-Directv-Pirates-Den-Lawsuit.pdf>

DIRECTV filed a motion to dismiss this case based on the argument they are not legally responsible for any misconduct of the owner of the Pirate Den. The court granted that motion and that ruling is also now on appeal. Briefing has been completed with a decision likely in late 2005.

8. Directv v. the World .

Mixed results reported across the nation by various attorneys but these cases are extremely defensible with competent counsel and a smart defendant. A list of crushing defeats suffered by DIRECTV can be found here: <http://www.overhauser.com/DTV/Court%20Rulings.htm>

Other cases have been quietly dumped by Directv. No doubt Directv will focus on defendants who have no lawyers or weak counsel, or who have mishandled the discovery process and "shot themselves in the foot somehow."

For example, Directv dismissed cases against my six Nevada defendants. Not only did Directv dismiss the cases but Directv paid \$6000 in sanctions because I brought motions to compel discovery responses.

Since then, Directv dismissed two more of my cases. Counting four other cases previously dismissed for "misjoinder," I have obtained dismissals for 14 out of 15 "end-user" defendants without paying a dime to Directv. One more defendant's case is pending in Arizona. Update: recently I was retained by several more defendants whose cases are all pending as well now. Results on those as they come in.

What are the lessons I have learned and perhaps you can apply?

1. Be very careful how you respond to discovery requests and testify at your deposition. Even writing a letter to DIRECTV and trying to explain your intentions for the device can end up with you (or your lawyer) shooting you in the foot.

Each of the six defendants was deposed and most acknowledged they had purchased a "smart card reader" of some sort. However, they did not admit buying the exact thing listed on the "Packing Slips" produced by DIRECTV. And why should they? Terms like "unlooper" and "clone Wildthing" are slang and have no real technical meaning. How can anyone who was acquiring a smart card device for legitimate purposes know what "slang" terminology applies to which particular devices?

So, probably the most important thing to remember is this: DIRECTV needs the defendant to admit that he bought exactly the thing listed on the packing slip or invoice DIRECTV obtained from the raided company. It is doubtful DIRECTV will be able to produce a witness to authenticate the documentation.

And that's where the second part of my advice comes in.

2. DIRECTV may not be able to produce evidence to authenticate the Packing Slip or other evidence of purchase. It looks like in many cases DIRECTV is going to rely on you to authenticate the Packing Slip. If you can't, then DIRECTV may be intending to rely upon a "declaration" from the custodial of records of the former business. To thwart this strategy, here is what you need to do.

a) Serve discovery requests requiring DIRECTV to identify the custodian(s) of record and provide current residence addresses as well as other information that might be relevant to the bias of the custodian.

Here are some example discovery requests:

<http://www.wumarkus.com/forums/dtv/files/Special-Interrogatories-Wilens.pdf>

<http://www.wumarkus.com/forums/dtv/files/Requests-Document-Production-Wilens.pdf>

Then be sure to follow up when DIRECTV is not cooperative or forthcoming with the required information. After the required "meet and confer" (an attempt to discuss the issues and resolve the discovery dispute with DIRECTV), you will probably have to file a formal motion to compel. The exact procedure varies from court to court but here is an example of one successful motion.

<http://www.wumarkus.com/forums/dtv/files/Motion-to-Compel-Discovery.pdf>

<http://www.wumarkus.com/forums/dtv/files/Reply-Opposition-Motion-Discovery.pdf>

If you or your attorney executes on these moves nicely then DIRECTV may be looking to dump your case. First, DIRECTV may try to give you low ball settlement, like \$500. Even if you pay DIRECTV one dime you may be forfeiting your right to ever sue DIRECTV back for wrongfully suing you in the first place. DIRECTV knows that. Often you can hold out and insist on a straight dismissal with no release of liability given by you to DIRECTV. That will help to keep your options open.

Recently, DIRECTV has produced Scott Madvig from Fulfillment Plus for deposition, his "database" and his snitch agreement with DIRECTV on a limited basis. Attorneys who have obtained that information have discovered "irregularities" in the records. There is serious doubt about the authenticity and accuracy of the database. You can expect DIRECTV to resist any effort by you to explore these issues.

The prestigious Electronic Frontier Foundation and the Stanford Law School Cyberlaw Clinic have created a fantastic website with additional information about fighting the DIRECTV campaign of extortion and fraud. <http://www.directvdefense.org>

In addition, for those who have already been sued and obtained a dismissal, you may have the right to sue for Malicious Prosecution seeking compensatory and punitive damages. This subject is discussed in greater detail below, but you may email jeff@lakeshorelaw.org for further information.

News Corp bought a controlling interest in DIRECTV in late 2003. It is still not clear whether they will "clean house." Many people have been fired or have left. DIRECTV has changed its litigation strategy several times and now has admitted it does not intend to sue numerous end users, even though it still tries to extort money from them by letters and phone calls.

Write, call or email the good folks at News Corp and tell them they to end this brutal campaign of harassment. Here is their contact information.

E-mail: investor@newscorp.com

Address: The News Corporation Limited
1211 Avenue of the Americas
New York, NY 10036

Phone: (212) 852-7017

Fax: (212) 852-7145

IR Contacts:

Reed Nolte

Vice President, Investor Relations

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Much of the following material is out of date but is left for historical purposes and the general discussion is educational.

All contact to the Lakeshore Law Center should initially be by email to jeff@lakeshorelaw.org. **Consumers should not call or fax material without permission; attorneys may call this office.**

Please read this entire FAQ and especially **2.0** and **2.1** before contacting us. We need the information requested in those sections.

We are now starting to collect declarations (sworn statements) from victims of the extortion campaign. You should first provide the information requested in **2.1** to my office. If have already done so and are "innocent," then go ahead and submit the declaration. See

<http://www.legal-rights.org/DTV/declaration.html>

KEEP SENDING THE DECLARATIONS. WE ALREADY HAVE OVER 100. THE MORE WE OBTAIN, THE MORE LIKELY WE WILL CONVINCING A JUDGE SOMEWHERE TO STOP DIRECTV NOW.

PLEASE NOTE THIS FAQ DOES NOT CONSTITUTE THE GIVING OF LEGAL ADVICE. THE LAKESHORE LAW CENTER IS ADVISING INTERESTED PERSONS WHO HAVE REQUESTED INFORMATION OF RECENT DEVELOPMENTS AND POSSIBLE COURSES OF ACTION. YOU SHOULD CONSULT WITH A LOCAL ATTORNEY IF POSSIBLE.

1.1 What are all these Letters sent by DIRECTV?

As reported in detail elsewhere, see www.legal-rights.org and www.dtvlawsuits.com for example, DIRECTV announced a campaign in 2001 to send 100,000 or more Demand Letters to consumers who acquired various electronic devices which "might" be used to tamper with DIRECTV access cards in order to receive free programming.

The letters are not investigatory in nature, nor are they polite, not even to good customers. Oddly, DIRECTV'S customer service division reportedly claims it is ignorant of the Demand Letter campaign and tries to mollify irate customers who call them to complain.

The Demand Letters' contents are discussed below at 3.5.

1.2 What is this Class Action about?

See 3.0 below for more details. Basically, this is the first comprehensive effort to stop DIRECTV'S extortion campaign and to obtain restitution and other compensation for the victims of that campaign.

Actually, there are now two class actions. The first class action was filed in California State Court. A copy of the Complaint can be found at <http://www.legal-rights.org/DTV/classsuit.html>. An amended complaint was filed in February 2003 but it basically made no changes except for the identity of some of the plaintiffs.

The Class Action received national legal attention in the [National Law Journal](#).

1.3 I live in Florida, Colorado, etc. [Any state other than California]. Does this apply to me?

Yes it does. The Class Action is on behalf of all persons in the United States who receive the DIRECTV Demand Letters. DIRECTV is a California corporation and is overseeing and conducting the extortion campaign from California. That gives California courts jurisdiction over letters sent throughout the nation.

1.4. What is a Class Action and How do I join this one?

A class action is a type of lawsuit in which one person or a few people represent the interests of a much larger group of people. A class action is a judicially recognized administrative device that allows for the resolution of civil actions involving large numbers of affected parties. The person or persons who are listed as plaintiffs in the class action are called "named plaintiffs" or "class representatives" in this FAQ.

Under California law, a "class action" can be designated as such at the time the lawsuit is filed. However, at that point it is really just a "potential" class action. Eventually, the Court will determine whether the case can or cannot proceed as a class action. If it determines it can, typically some sort of notice will be provided to the affected class members. If it determines it cannot proceed as a class action, then affected class members will have to bring their own lawsuits or personally join this one in order to have a chance at receiving compensation.

If you received one or more DIRECTV Demand Letters, then you are already a member of the proposed class and do not need to do anything more to "join" the Class Action at this time. However, we are requesting you contact us to provide certain information as discussed in **2.0** and **2.1** below. In the future, if the class is not certified, we will need some way to contact you to see if you are interested in becoming a named plaintiff at that time.

1.5 What is the latest news about the Class Action?

As indicated above, the new Class Action was filed in August 2003. It is case no. CV-03-5972-AHM (RZx). More details will be provided in future updates. An important ruling could be issued anytime after November 10th and it will be posted when it is issued.

The state court class action was dismissed in April and is currently under appeal. No appellate decision can be expected until early 2004. If you want to read the gory details about the ruling, see below.

Great news! The notorious California "Anti-Slapp" law has been amended so it no longer applies to most class actions. This change of the law should give us a good chance of winning the appeal and sending the case back to the trial judge.

It also means that future lawsuits may not be subject to the "Anti-Slapp" law.

Please keep up the fight. Keep emailing our office with your responses to the questions in section 2.1 and keep sending in the declarations when requested to do so by our office.

If you want to read the court papers, links will be posted here as soon as possible.

The motion to dismiss state court lawsuit by DIRECTV:

<http://www.satlaw.org/Lawsuits/Classaction/120902directv-brief.pdf>

The opposition to motion to dismiss:

<http://www.satlaw.org/Lawsuits/Classaction/OppositiontoSLAPP.htm>

The reply by DIRECTV to opposition:

<http://www.satlaw.org/Lawsuits/Classaction/ReplytoOppositionforMotiontoStrike.pdf>

The transcript of Oral Argument:

<http://www.satlaw.org/Lawsuits/Classaction/Argumentonmotiontostrike.htm>

The Court's Ruling in the state court lawsuit:

<http://www.satlaw.org/Lawsuits/Classaction/AntiSLAPPmotiondecision.pdf>

The Motion for Reconsideration in the state court lawsuit:

<http://www.satlaw.org/Lawsuits/Classaction/Motionforreconsideration.htm>

Old News

On April Fools Day, 2003, the Honorable Charles W. McCoy dismissed the Class Action lawsuit in a ruling that will be appealed. A copy of the ruling is posted below. Suffice it to say at this point that the ruling contains numerous factual and legal errors and will be appealed.

We are deeply disappointed but have no intention of giving up just because of one bad ruling. You could download the ruling yourself (link is above) and see some glaring factual errors which undermined the judge's ruling.

1. The second sentence of the ruling reveals the judge has fully adopted DIRECTV'S propoganda because without any evidence the judge states: "In response to numerous instances of pirating, DIRECTV send demand letters to addresses which purchased alleged satellite-theft devices." The judge was not presented evidence of even one actual instance of piracy; he just bought DIRECTV's hype.
2. In perhaps the most troubling part of the analysis, the judge tried to distinguish between a letter which demands a specified sum of money (and which presumably would be extortion) and the DIRECTV letter which does not demand a particular sum of money. The judge then presented the following set of "facts" which we all know bear no resemblance to reality: "Second, and significantly, DIRECTV's demand letters do not demand particular sums. Rather, they list a phone number letter recipients may call to discuss settlement and/or possible litigation. On calling the number, any caller can explain his or her situation. If he or she has not pirated DIRECTV services, DIRECTV does not request fees or pursue litigation. Accordingly, DIRECTV'S written demand

does not necessarily end in payment of fees or litigation. By demonstrating to DIRECTV that he or she did not steal DIRECTV services, any Plaintiff using pirating equipment in a 'lawful' manner can avoid fees or litigation."

We have no idea where the judge got the idea that DIRECTV negotiates and as long as you deny intercepting signals, it apologizes and leaves you alone. There was no evidence of this and we all know it is completely false.

As indicated above, this ruling is wrong and it will be appealed. The judge should not have made factual findings which are not based upon any evidence and without giving plaintiffs a chance to conduct discovery. The judge also said the case of Fuhrman v. California Satellite Systems (1986) 179 Cal.App.3d 408 is not binding, but that opinion was issued by a higher court and should have controlled here. That was also a case where a satellite company sent out 8,000 letters demanding payment. That court agreed it could be extortion to send such letters and get paid.

You can expect DIRECTV's flunkies to act even more arrogant and cocky now. Let them.

Defendant DIRECTV is represented by the law firm of Quinn Emanuel Urquhart Oliver & Hedges, LLP. See <http://www.quinnemanuel.com/>
Not surprisingly, the law firm is as nasty and heavy-handed as DIRECTV itself.

The Class Action was filed on October 28, 2002 in the Los Angeles County Superior Court for the State of California. It has been assigned Case No. BC284166.

2.0 WHAT SHOULD I DO NOW?

Please **do not call** our office. All contact by consumers should initially be by email. If we want you to mail or fax something, we will let you know. Attorneys and Reporters are invited to call this office. We need attorneys who are willing to defend consumers who have been sued as discussed in sections **2.5** and **2.5.1** below.

Consumers contacting this office by email should answer the questions listed in **2.1**. You should receive a response from the Lakeshore Law Center within 72 hours.

Consumers who are innocent victims of DIRECTV's extortion will be asked to complete a declaration for use in court. Submitting the declaration does not make you a party to the Class Action; instead it is just evidence to be used in the case against DIRECTV. Persons who have contacted us in the past are being sent notices about the need to submit the declaration, but we may miss some people so don't hesitate to take the initiative. Be sure you complete the declaration fully by inserting all the requested information and circling the various choices.

See <http://www.legal-rights.org/DTV/declaration.html>

If you have already been served a summons and lawsuit by DIRECTV, then you need to contact local counsel immediately. We cannot recommend a particular attorney at this time, but it is possible we will make a referral after reviewing the information you provide in **2.1** below. You should also see **2.5** and **2.5.1** below.

2.1 Questions to answer in your email to Lakeshore Law Center.

- A. What is your Name, Address and Phone number?
- B. How many letters have you received and from whom? Have you already settled?
- C. What did you purchase? (If you don't know, call DIRECTV and ask them. If you still deny you bought anything, then state that.)
- D. When did you buy the item(s)?
- E. How much did the item(s) cost?
- F. Did you buy the item(s) for yourself or someone else?
- G. What was your purpose (or the ultimate recipient's purpose) for obtaining the item(s)? Please be specific and do not just provide a vague one-word answer like "educational" purposes.
- H. To what use did you (or the ultimate recipient) put the item(s)? Again, be specific.
- I. Did you subscribe to DIRECTV at some point or now and do you have a satellite dish?
- J. If you have a DIRECTV satellite dish and never subscribed to the service, then what is your explanation for that?
- K. Can you truthfully testify under oath that you have NOT in the past 5 years
 - (1) used or attempted to use the device(s) to tamper with DIRECTV smart cards to allow you or others to view unauthorized satellite programming?
 - (2) received or viewed unauthorized satellite programming?If you bought the item for someone else, same question but just let us know what you knew of their use of the device(s).

2.2 How are you going to use this information?

First of all, your responses are protected by the attorney-client privilege and will not be divulged without your consent.

Secondly, the information will be used to determine whether to recommend you join the lawsuit as a named plaintiff in the future if a class action is not approved by the court.

Thirdly, the information will be used to determine whether a declaration (a type of sworn statement) should be obtained from you. We would like to ask the Court to "enjoin" (stop) DIRECTV from sending these threatening letters. In support of that motion, we would like to submit declarations from some of the people who received the letters. That is why you must be truthful to us. We cannot and will not submit false declarations to the court. **The declaration is now available online at <http://www.legal-rights.org/DTV/declaration.html>**

WE NEED YOUR COOPERATION IF THE CLASS ACTION IS TO BE SUCCESSFUL.

2.3 What if my answers to the questions show I am innocent?

You should consider refusing to submit to the extortion by following this procedure:

1. Help out the Class Action by completing Declaration mentioned in **1.0**.
2. Ignore the Demand Letters. Use this time to locate a local attorney who can defend you if you are sued. With some careful shopping on your part, you may be able to locate an attorney who will be able to defend you for around \$5,000 if you are sued. That's only a little more money than DIRECTV typically wants to settle.

See section **2.5.1** for the names of some attorneys who may be able to defend you for an affordable fee. **We may be able to defend you if you are sued in California or Nevada or Arizona.**

3. Once you find an attorney who will defend you if you are sued, there is generally no urgency to hire or pay him yet. Just be ready to do so immediately if you are served a lawsuit ("summons" and "complaint")

4. If you are sued, you have a strong motivation NOT to settle. The Lakeshore Law Center intends to bring malicious prosecution lawsuits (on a contingency fee basis) on behalf of anyone who has successfully defended against a DIRECTV lawsuit. We will be seeking at least \$100,000 in damages for each case. See the discussion at section **2.5** below. DIREC TV may later try to get you to forfeit your right to sue it for malicious prosecution. Be careful.

5. DIRECTV has filed some lawsuits against recipients of the Demand Letters and continues to do so. But many other persons have not been sued months after the "deadlines" stated in the Demand Letters have passed. There does not appear to be anyway to estimate how likely you are to be sued. So you may not be sued at all.

6. Even if you are sued, DIRECTV is not doing that well in court. Where it has been unable to convince the consumer to settle the case after being sued, on a number of occasions DIRECTV has just dismissed the case on its own. In other cases, some attorneys have successfully filed motions to challenge portions of the lawsuit. You will need to get the most recent information from your local attorney, but you should not assume you will lose even if sued.

7. Also, once you are sued, be extremely careful about agreeing to a settlement that would prevent you from suing DIRECTV for malicious prosecution. Why should you give up your right to recover thousands of dollars because DIRECTV wants an "easy out" and your lawyer goes along? Feel free to have your attorney contact my office to discuss this before you agree to any settlement with DIRECTV. I may be able to persuade your attorney to keep defending you even if you have "run out of money."

2.3.1 What are the advantages of becoming a named plaintiff in the class action?

If you are a named plaintiff and the case is successful, you may receive damages, including punitive damages. If you are a member of the proposed class, but not a named plaintiff, you will not receive any compensation if the court does not approve a class action.

Also, if you are a named plaintiff, my legal representation will be at no cost to you, and it is likely that your representation by a local attorney, if necessary, will be at no cost to you.

However, we are no longer accepting representation of additional named plaintiffs, although this may change in the future. Of course, if the court does not permit this matter to proceed as a class action, then you may be asked to join as a named plaintiff at that time if we have your information.

2.3.2 Why do I have to pay money to DIRECTV to become a named plaintiff?

A valid extortion claim requires that the victim actually pay money under duress. Otherwise, the tort of extortion is not completed under California law.

2.3.3 How can I sue DIRECTV for extortion if I signed a settlement agreement with them?

The Class Action contends that money you paid to DIRECTV under duress must be returned to you. The same logic applies to any "release of liability" that you gave DIRECTV in the settlement agreement. If DIRECTV is guilty of extortion, the "release of liability" you signed under duress is not going to be valid.

2.3.4 What if DIRECTV retaliates against me because I sue them?

If DIRECTV retaliates against anyone who becomes a named plaintiff in the Class Action, we will arrange for you to be defended locally (if necessary) at modest expense to you. You will not be permitted to become a named plaintiff in the first place unless you have answered the questions in a manner indicating you are innocent, so DIRECTV will lose that retaliatory action against you as well.

2.3.5 How do I become a named plaintiff?

Just contact this office by email. Make sure that you have answered the questions in section 2.1 and emailed those responses back to us.

2.4 What if my answers to the questions show I am guilty?

We recommend you consult with local counsel. You may want to give serious consideration to settling. If it is later determined the extortion letters were illegal and the court certifies a class, you may still receive some compensation at that time.

2.5 If I am already being sued, how can I make DIRECTV pay for this harassment?

First, make sure you really have been sued. DIRECTV often mails a phony lawsuit as a warning to consumers. The "real" lawsuit should be served in person generally (there are exceptions) and must contain a "summons" from the court in question.

Although you should still provide us the information requested in **2.1**, the Class Action is not going to immediately help you. You should already have hired or should immediately hire an experienced attorney in your local area. Again, we cannot recommend a particular attorney at this time.

However, some attorneys have advised us that they are willing to represent innocent consumers who have already been sued at "affordable rates." These attorneys hope to obtain full compensation for their services in a future malicious prosecution lawsuit against DIRECTV. We will post the contact information for those attorneys below in **2.5.1**.

Your attorney is invited to call this office to coordinate efforts.

If you are innocent, we encourage you to litigate your case until DIRECTV either dismisses the case unconditionally or loses. When DIRECTV'S attorneys recognize that they have filed a loser, they will probably come to you with an offer to drop all charges in exchange for mutual releases. At that point you might want to decline their desperate offer. If you give them a release, then you will not be able to sue for malicious prosecution. Moreover, if you settle after being sued, you may not even be a member of the Class. A court will have to determine that later.

If you win your case, there is a good chance you will be able to sue DIRECTV for **malicious prosecution** and seek reimbursement for your legal fees, your emotional distress damages, and punitive damages. The Lakeshore Law Center intends to bring malicious prosecution lawsuits (on a contingency fee basis) on behalf of anyone who has successfully defended against a DIRECTV lawsuit.

We have heard reports of some consumers settling after being sued. That is certainly wise if you are guilty, but could prove to be quite foolish if you are innocent. If you can hold out and win your case, you may have an excellent chance of collecting tens of thousands in punitive damages from DIRECTV.

2.5.1 Attorneys providing affordable defense against DIRECTV lawsuits for innocent consumers who have been sued

The following attorneys have vowed that they will charge an affordable fee to innocent consumers who have been served a lawsuit by DIRECTV. In exchange, they expect

you to commit to bring a malicious prosecution action against DIRECTV if your case terminates successfully for you. The Lakeshore Law Center will be prosecuting the malicious prosecution lawsuits and will be sharing some of the attorney's fees with the lawyer who successfully defended you. That chance to collect additional fees is what allows your local attorney to keep your fees down.

If you do not see an attorney local to you on this list, then start looking around your community, check the yellow pages, check www.lawyers.com and other search engines. Two likely candidates would be consumer protection and criminal defense attorneys. Federal court experience would be very useful. We strongly recommend you print out this FAQ and give it to the attorney to read. Hopefully, he will agree to keep his fee modest so you can afford to fight the lawsuit. He may also want to have his name and address posted on this list.

Remember, once you have been sued and hired an attorney to defend you, he or she is there to advise you, but ultimately it is up to you to insist on unconditional surrender from DIRECTV, which is your right if you are innocent of signal theft.

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3.0 WHAT ARE THE ALLEGATIONS OF THE CLASS ACTION?

3.1 Who is being sued?

The Class Action names as defendants DIRECTV and its parent companies Hughes Electronics and General Motors, and the Law Firm of Yarmuth Wilsdon Calfo and several of its attorneys. It is possible additional defendants will be added in the future.

3.2 What violations are the defendants accused of committing?

Defendants are accused of breaking at least three California laws. They are the Unfair Competition Law, the Civil Rights Act, and the law against Extortion.

3.2.1 What are the Unfair Competition Law issues?

The Demand Letters violate Business and Professions Code section 17200 for several reasons including the following:

- (1) Unlawful because they constitute extortion within the meaning of California and federal law.
- (2) Deceptive because they contain many factual misrepresentations and are capable of deceiving the unsophisticated recipient.
- (3) Unfair because DIRECTV'S claimed need to stop satellite piracy is not justified by this "carpet-bombing" type approach.

3.2.2 What are the Civil Rights Law issues?

California Civil Code section 52.1 protects all persons from coercive interference with their civil rights. Basically, the plaintiffs contend the Demand Letters are an attempt to interfere with the class members' civil rights to be free of extortion and defamation of character, etc.

3.2.3 What are the Extortion Law issues?

Extortion is not only a crime under the law of California as well as the law of most if not all other states, but it is also a civil "tort" (violation). In California, the tort of Extortion is committed when one person makes false threats or threatens to bring a false claim against another person unless money is paid and the money is actually paid. The tort is not "complete" until the money is paid or something of value given away.

3.3 What relief is being sought?

Depending upon the particular violation, we are seeking all of the following:

- a) An injunction that DIRECTV stop sending the Demand Letters.
- b) DIRECTV must repay to all people any money paid in response to the Demand Letters. This is believed to be well over \$10 million by now.
- c) DIRECTV must pay \$4,000 or \$25,000 per letter to the recipient.
- d) DIRECTV must pay punitive damages of an undetermined amount.

3.4 I heard there are two different "groups" in this lawsuit, what is that all about?

This one lawsuit addresses the situations of two different groups of people--those who have paid money to DIRECTV and those who have not. As noted in 3.2.3, the tort of Extortion is not committed until something of value is paid.

3.5 What is so improper about the Demand Letters?

The Demand Letters typically contain the following improper threats or allegations.

- Repeated accusations that the recipient has committed "illegal" and "unlawful" activities and "theft," backed up with several references to federal laws, which make it illegal to engage in certain conduct attributed to the recipient. The implication of the Letters is that the recipient could face civil and criminal prosecution as a result of this conduct. However, at the time DIRECTV sent the letters, DIRECTV possessed no business records or other evidence indicating that the recipient had viewed unauthorized DIRECTV satellite programming and was committing theft or had attempted to commit theft.
- A purported factual assertion that the sender possessed business records that established the recipient had purchased or acquired illegal signal theft equipment. However, the Letters do not specifically describe or identify what equipment the recipient possesses which is supposedly illegal signal theft equipment. In fact, none of the actual pieces of equipment, which are the subject of these Demand Letters, are contraband or illegal items. At most, they are pieces of hardware that have many innocent uses, but which under certain circumstances and if certain other conditions are met, could (in knowledgeable hands) be used to receive unauthorized satellite transmissions. Moreover, the business records are comprised of mailing lists and shipping records seized under hostile and unreliable conditions from third parties which, at the time defendants sent the letters, had not been corroborated or authenticated in any way.
- A purported factual assertion that the recipient had purchased or acquired the signal theft equipment to gain unauthorized access to DIRECTV'S programming. However, the Letters do not specify whether the recipient is or was a DIRECTV subscriber. In fact, the Letters were sent to many recipients who never owned a DIRECTV system and, therefore, could not possibly have received unauthorized transmissions even with the "signal theft equipment" DIRECTV accused them of purchasing. The items in question would have been as useless to a recipient who lacked a satellite dish as a shoe to a man without a matching foot.
- A purported factual assertion that the recipient had modified devices to illegally gain access to DIRECTV'S programming. However, at the time DIRECTV sent the letters, they did not actually know whether the recipients had modified the devices or not as they had never seen the devices in question and knew nothing about the capabilities of the recipients to make such modifications.
- A list of demands which either must be met in timely fashion, or a lawsuit would be filed against the recipient within 14 days or some other specified short period of time. The Letters flatly state that after this period of time, DIRECTV will "initiate legal proceedings in the federal district court" and "abandon its attempts to negotiate." The list of demands includes payment of an unspecified sum of money, forfeiture of property and a promise never to acquire similar property in the future.
- The threat that if the recipient does not settle, DIRECTV will seek and be entitled to recover monetary damages of \$100,000 or more from the recipient, and implication that the recipient could be criminally prosecuted since the statutes cited are criminal laws.

4.0 ANALYSIS OF DIRECTV'S LAWSUIT.

According to their Demand Letters and "draft complaint," DIRECTV is relying upon three federal statutes that address wiretapping or electronic surveillance. What follows is our analysis of these statutes. This is not intended to be a complete and thorough analysis, but is just a general discussion of some perceived weaknesses. This does not constitute the giving of legal advice.

4.1 What about 47 USC Section 605 cited by DIRECTV?

47 USC Section 605 prohibits the unauthorized receipt of encrypted satellite signals. It carries a penalty of up to \$10,000. Unless DIRECTV has evidence you actually watched unauthorized channels, this would seem to be a losing allegation. DIRECTV is arguing that a presumption of unauthorized viewing arises from the mere possession of the hardware that allows you to do it. They cite a case--Community Television Systems, Inc. v. Caruso (2d. Cir. 2002) 284 F.3d 430--which exposes a major flaw in their own reasoning.

In that case, a company selling cable box descramblers was raided and cooperated with the authorities by turning over the names and addresses of the customers who bought the boxes. The business records indicated the consumers had purchased "cable television descramblers" and the business owner testified he installed the units on the televisions, tuned to the proper channel to receive the cable transmissions. From those facts, the court indicated a rebuttable presumption arose that both husband and wife at the residence were liable, but this could be rebutted (the wife could say she had no idea what hubby was up to). Unfortunately, for DIRECTV, it does not appear they have any witness to testify he came into your house and showed you how to use your smart card reader or unlooper to steal satellite programming. So the case is not helpful to DIRECTV.

47 USC Section 605 also contains a section which carries a penalty of up to \$100,000, which DIRECTV likes to use to scare people. This penalizes those who manufacturer, sell, modify, export, import, distribute, etc. devices knowing or having reason to know that the device or equipment is primarily of assistance in the unauthorized decryption of satellite cable programming. Putting aside the knowledge requirement, this section also does not apply to simple possession. That is why DIRECTV accuses you of "modifying" a device. Excuse me, but they have never seen the device (unless you give it to them), so how do they know if you modified it?

4.2 What about 18 USC section 2511 and 2512 cited by DIRECTV?

DIRECTV also relies upon 18 USC Section 2511 and 18 USC Section 2512 which are criminal statutes. The first statute punishes unauthorized viewing so it has the same problems discussed above. The second one is their best bet because it punishes possession of a device if you know or have reason to know

1) It's primarily useful to receive unauthorized satellite programming, and

2) It came in the mail (easy enough to prove)

Now DIRECTV cannot win this case by bringing in an expert who says he knows an unlooper's primary use is to steal programming. Instead, DIRECTV must show you should have known this primary function from the design of the item (i.e., its appearance, the diagrams or instructions that came with it, anything on the web page from which you ordered it, etc.) You can see that simply showing you possessed a particular item is not sufficient.

Technically, violations of 2511 and 2512 are punishable criminally. But DIRECTV is claiming it has a right to recover civil damages under Section 2520. That section does allow civil damages against a consumer who intercepts, discloses or uses the DIRECTV signal. The penalties can include \$10,000 in statutory damages plus the possibility of punitive damages and attorney's fees and costs. Some attorneys argue the above penalty is not available unless the consumer has actually viewed the unauthorized satellite programming. We suggest you take a look at the following cases:

Flowers v. Tandy Corporation (4th Cir. 1985) 773 F.2d 585.

Oceanic Cablevision, Inc. v. M.D. Electronics (D. Neb. 1991) 771 F.Supp. 1019.

Ages Group L.P. v. Raytheon Aircraft Co., Inc. (M.D. Ala. 1998) 22 F.Supp.2d 1310

Directv, Inc. v. EQ Stuff, Inc. (C.D. Cal. 2002) 207 F.Supp.2d 1077.

If you are sued, your attorney should file a motion to dismiss the claim under section 2512. If successful, this will make it impossible for DIRECTV to win its lawsuit against you without proving you intercepted or used the satellite signal without authorization. But how is DIRECTV going to prove that you used their signal? I know they will allege it in your letter, but where is the proof?

5.0 WHAT IS THE CONTACT INFORMATION FOR THE LAKESHORE LAW CENTER?

Remember, all initial contact by consumer **must** be by email. We are still getting several calls a day from consumers and cannot promise a timely response to such calls. Please be patient as it may take a few days to respond to emails on high volume days.

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