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14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF LOS ANGELES

16 LBM PROPERTIES, LLC ("LBM"), a California
17 Limited Liability Company, POSAMAR, LLC
18 ("Posamar"), a California Limited Liability
19 Company, AMILA, LLC ("Amila"), a California
20 Limited Liability Company, and GEORGE
KEFALAS, an individual, on behalf of themselves
and all others similarly situated,

21 Plaintiffs,

22 v.

23 DIRECTV, Inc., a Delaware corporation, The
24 DIRECTV Group, Inc., a Delaware corporation,
25 DIRECTV HOLDINGS, LLC, a California Limited
Liability Company, and DOES 1 through 100,

26 Defendants.
27
28

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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

MAR 20 2014

Sherri R. Carter, Executive Officer/Clerk
By: Amber Hayes, Deputy

No.

BC540043

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

BY FAX

1 **CLASS ACTION COMPLAINT**

2 Plaintiffs LBM Properties, LLC (“LBM”), Posamar, LLC (“Posamar”), Amila, LLC
3 (“Amila”) and George Kefalas, individually and on behalf of all others similarly situated, upon
4 knowledge as to themselves and upon information and belief as to all other matters, alleges as
5 follows:

6 **I. NATURE OF ACTION**

7 1. Plaintiffs bring this action against Defendants individually, and on behalf of a class
8 of all persons or entities that own residential multiple dwelling unit rental properties (“MDU’s”) in
9 the State of California (the “Landlords”) upon which Defendants or their agents (collectively,
10 “DIRECTV”) have permanently installed DIRECTV Equipment after obtaining Part 2 of a
11 DIRECTV Installation Form.

12 2. As a matter of policy and uniform practice, DIRECTV uses an illegal sham process
13 which enables it to violate the rights of the owners of MDUs in, *inter alia*, the State of California by
14 permanently affixing its satellite dishes and associated equipment to rooftops, external walls and
15 other common or restricted areas without Landlord consent. Plaintiffs bring this action to stop that
16 policy and practice.

17 3. Plaintiffs seek declaratory and injunctive relief and/or damages with regard to
18 DIRECTV’s conduct as set forth below.

19 **II. PARTIES**

20 4. Plaintiffs LBM, Posamar and Amila are limited liability companies organized under
21 the laws of the State of California, with their principal places of business in Los Angeles County,
22 California. Plaintiff George Kefalas is an individual who resides in the State of California.
23 Plaintiffs all own MDUs in Los Angeles County, including without limitation the MDUs listed on
24 Exhibit A to this Complaint (the “Properties”). They lease or rent individual units of the Properties
25 to residential tenants.

26 5. Defendants DIRECTV, Inc. and The DIRECTV Group, Inc. are Delaware
27 corporations with their principal place of business in Los Angeles County, California. Defendant
28

1 DIRECTV Holdings, LLC, is a limited liability company with its principal place of business in Los
2 Angeles County, California.

3 6. DIRECTV is and at all times relevant hereto has been a leading provider of digital
4 television entertainment programming throughout the United States via satellite to residential and
5 commercial subscribers. Plaintiffs are informed and believe and on that basis allege that all of
6 DIRECTV, Inc.'s business operations, including the matters alleged herein, are directed from, and
7 its business decisions are made in, the State of California.

8 7. The true names and capacities (whether individual, corporate, associate or otherwise)
9 of Defendants Does 1 through 100, inclusive, are unknown to Plaintiffs. Therefore, Plaintiffs sue
10 those defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Each fictitious
11 defendant is in some manner responsible for the acts and occurrences alleged herein. Plaintiffs will
12 seek leave of this Court to amend this complaint to state the real names and capacities of said
13 fictitiously named defendants when the same have been ascertained.

14 8. Plaintiffs are informed and believes, and thereon allege, that each of the Defendants
15 named herein, including those defendants named as Doe Defendants, acted as the agent, employee,
16 representative partner, joint venture, or co-conspirators of each of the other Defendants named herein
17 in the commission of the acts and omissions to act alleged herein, and acted within the course and
18 scope of his, her, or its duty as such agent, employee, representative, partner, joint venture, or co-
19 conspirator. The acts of each such Defendant were authorized and/or ratified by each other
20 Defendant, and together constitute a single and continuing course of conduct.

21 **III. DIRECTV'S ACTIONABLE CONDUCT**

22 9. DIRECTV delivers its satellite television service to subscribers who reside in MDUs
23 by means of satellite dishes and associated equipment (collectively, "Equipment") that it installs in,
24 on or near the MDUs. Because the DIRECTV system requires unrestricted "line of sight" access to
25 a satellite, the Equipment is typically affixed permanently to the exterior of the MDU in which the
26 subscriber resides and in which the subscriber's television is to be used. DIRECTV installs the
27

1 Equipment by drilling holes in the MDU and bolting or otherwise permanently affixing the
2 Equipment to the MDU.

3 10. DIRECTV uses professional installers, who may either be DIRECTV employees or
4 third-parties with whom DIRECTV contracts. DIRECTV causes those installers to permanently
5 affix DIRECTV's Equipment to common or restricted areas of MDUs, including exterior walls or
6 rooftops, according to policies and procedures dictated by DIRECTV.

7 11. DIRECTV knows that it is – and at all times relevant hereto, was – improper and
8 illegal to permanently affix its Equipment to common or restricted areas of an MDU, such as the
9 MDU's exterior walls or rooftop, without first obtaining the authorization of the Landlord. In the
10 mid-1990s, DIRECTV actively participated in a rulemaking proceeding before the Federal
11 Communications Commission (the "FCC") which concerned a proposed rule concerning
12 restrictions that impair the ability of viewers to receive video programming through over-the-air
13 broadcasts. The end-product of the proceeding was a regulation (the "Regulation") that, *inter alia*,
14 limited restrictions by Landlords on the attachment of devices such as DIRECTV's Equipment to,
15 or its use on, property "***within the exclusive use or control of***" a tenant (47 C.F.R § 1.4000), but did
16 not diminish the ability of Landlords of MDU's to prohibit the installation or use of such
17 Equipment in common or restricted access areas that are not within the tenant's exclusive use or
18 control. Although some participants in the rulemaking proceeding advocated restrictions on a
19 landlord's authority over areas not within the exclusive use or control of tenants, the FCC declined
20 to impose such restrictions, concluding that requiring Landlords to permit the use of devices such as
21 the Equipment in that way, or limiting their rights to restrict or prohibit such use, would constitute a
22 *per se* taking of property under the Fifth Amendment:

23
24 While by virtue of a lease a landlord invites a tenant to take possession of
25 property within the leasehold, the landlord does not invite the tenant to
26 take possession of common and restricted access property. If the
27 Commission were to extend the Section 207 rules to permit a tenant to
28 have exclusive possession of a portion of the common or restricted access
property where a lease has not invited a tenant to do so, the tenant would
possess that property as an "interloper with a government license"

1 thereby presenting facts analogous to those presented in *Loretto* [*Loretto*
2 *v. TelePrompster Manhattan CATV Corp.*, 458 U.S. 419 (1982)]

3 . . . [W]e agree with those commenters that argue that the permanent
4 physical occupation found to constitute a per se taking in *Loretto* appears
5 comparable to the physical occupation of the common and restricted
6 areas at issue here. In *Loretto*, the physical occupation of the landlord’s
7 property consisted of the direct attachment of cable television equipment
8 to the landlord’s property, occupying the space immediately above and
9 upon the roof and along the building’s exterior. Likewise, the physical
10 occupation here would involve the direct attachment of video reception
11 devices to common areas such as hallways or recreation areas, or to
12 restricted areas such as building rooftops.

13 *Loretto* is not distinguishable on the grounds asserted by the commenters.
14 First, we disagree that the potential occupation in this instance would be
15 temporary, not permanent. In *Loretto*, the Court found that the cable
16 operator’s occupation was “permanent” because so long as the property
17 remained residential and a cable company wished to retain the
18 installation, the landlord must permit it. The occupation here would be
19 similarly “permanent” because so long as an individual viewer wished to
20 receive on of the services covered by Section 207, the property owner
21 would be forced to accept the installation of the of the necessary
22 reception equipment.

23 *Second Report and Order in In the Matter of Implementation of Section 207 of the*
24 *Telecommunications Act of 1996, Restrictions on Over-the-Air Reception Devices* [“OTARDS”]:
25 *Television Broadcast, Multichannel Multipoint Distribution and Direct Broadcast Satellite*
26 *Services*, CS Docket No. 96-83, F.C.C. Comm'n Order No. 98-273, 63 Fed. Reg. 71027, 71032,
27 1998 WL 888546, 13 FCC Rcd 23874 (1998) (the “*OTARD Second Report and Order*”).

28 Accordingly, under the *OTARD Second Report and Order*, a lease may not prohibit installation of
temporary antennae such as “rabbit ears,” the installation of which would cause only ordinary wear
and tear such as marks or scratches. 63 Fed. Reg. at 71030-01. However, as the FCC explicitly
recognized, a tenant does not have direct or indirect control over the exterior walls or roof of an
MDU, which are common or restricted areas, and therefore the Regulation does not authorize
installation of Equipment in those areas without consent of the Landlord. *Id.* at 71030-02. In
particular, the *OTARD Second Report and Order* makes clear that DIRECTV cannot drill holes in

1 an exterior wall or roof of an MDU without consent of the Landlord. *Id.* at 71031. DIRECTV
2 therefore knows that it cannot permanently attach its Equipment to the exterior wall or roof of an
3 MDU without Landlord consent. Yet, DIRECTV’s policy and procedure for obtaining
4 “authorization” for such attachments fails to take proper account of the Landlords’ rights.

5 12. Before installing the Equipment, DIRECTV should seek the Landlord’s permission
6 directly. But instead, DIRECTV requests its *subscribers* to submit to DIRECTV a written
7 authorization form (the “Installation Form” or “Form”). The Installation Form acknowledges that
8 installation of the Equipment is improper without prior approval of the Landlord, and purports to
9 release DIRECTV from any liability arising from the installation of the Equipment. The
10 Installation Form gives MDU tenants two alternatives: either (i) obtain the Landlord’s written
11 authorization for the installation of the Equipment by getting the Landlord to sign and return Part 1
12 of the Installation Form to DIRECTV; or (ii) simply sign the Form themselves and return to
13 DIRECTV Part 2 of the Installation Form (“Part 2”), which states:

14 Landlord approval of a DIRECTV System installation at _____
15 (address) has been verbally approved by my landlord (or is not required
16 pursuant to my lease or rental agreement).

17 _____
18 Signature of DIRECTV customer

19 _____
20 Date

21 This Form is available to be downloaded from DIRECTV’s website for use by any prospective
22 MDU tenant subscriber no matter where that subscriber lives within the United States (a copy is
23 attached to this Complaint as Exhibit B). On information and belief, DIRECTV requires the same
24 Installation Form for all prospective subscribers it permanently installs Equipment to serve.

25 13. Just as DIRECTV has a financial incentive to obtain as many subscribers as possible,
26 tenants who are attempting to obtain DIRECTV service have an interest in obtaining service.
27 Indeed, the authorization process typically, or even exclusively, arises when a tenant has contacted
28 DIRECTV and asked it to provide satellite TV service to him or her. Moreover, MDU tenants have
little interest in obtaining their Landlord’s written permission when offered the simple alternative of
providing DIRECTV with Installation Form Part 2, which they could easily complete without

1 actually obtaining any permission at all, knowing that DIRECTV will accept their representation
2 that the Landlord has given “verbal” permission. If they just complete the Form, they will obtain
3 the satellite TV service they want. If they ask the Landlord, the Landlord might say no.

4 14. DIRECTV’s purpose in allowing customers to obtain “consent” through part 2 of the
5 Form is to help it circumvent the requirement that it obtain the required Landlord consent, thereby
6 enabling DIRECTV to sell its services to prospective customers. Part 2 of the Form enables
7 DIRECTV to document and perpetuate the fiction that it has obtained the required Landlord consent
8 when it knows that it has not.

9 15. DIRECTV has and adheres to, and at all relevant times has had and adhered to, a
10 uniform sham practice and policy designed to evidence the fiction that it has obtained consent from
11 the Landlord and thereby justify the wrongful installation of the Equipment – a practice and policy
12 that was conceived by, is directed by, and is implemented under the direction of, the executives and
13 other corporate decision-makers in DIRECTV’s Los Angeles County corporate headquarters.

14 16. DIRECTV’s main competitor in the market for the transmission of digital television
15 entertainment programming throughout the United States via satellite is the “dishNetwork Service
16 LLC” (“dishNetwork”). Unlike DIRECTV, dishNetwork, on information and belief, does not have
17 a policy of accepting a tenant’s “word” that the Landlord has consented. A copy of the
18 dishNetwork’s application form for MDU tenants is attached as Exhibit C.

19 17. As alleged above, DIRECTV knows that it is illegal to place permanent attachments
20 in or on common or restricted areas of a Landlord’s property without permission. DIRECTV has a
21 duty to avoid actions which are likely to breach this legal duty and injure a foreseeable class of
22 persons such as Landlords. It is reasonable for companies to obtain actual permission from
23 Landlords prior to permanently installing their equipment on a Landlord’s MDU, and it is
24 unreasonable to have a policy of making installations without Landlord permission. Rather than
25 meet this reasonable standard of care, DIRECTV instead authorized installation of its Equipment
26 based on nothing more than the representations of tenants by accepting Part 2 of the Installation
27 Form.
28

1 24. The questions of law and fact common to the class members predominate over
2 questions affecting only individual class members, and include, but are not limited, to the
3 following:

- 4 a) Whether DIRECTV's use of Part 2 of the DIRECTV Installation Form constitutes
5 negligent conduct;
- 6 b) Whether DIRECTV's use of Part 2 of the DIRECTV Installation Form violates the
7 Unfair Competition Law, California Business and Professions Code §§17200 *et seq.* (the
8 "UCL");
- 9 c) Whether DIRECTV should be enjoined from continuing its unfair and negligent
10 business practices; and
- 11 d) Whether DIRECTV is liable for damages arising from its negligence, and, if so, the
12 proper measure of damages.

13 25. Individual issues will not predominate. The definition of the Class is limited to only
14 those owners of MDUs where the Equipment has been permanently installed upon DIRECTV's
15 receipt of a document (i.e., Part 2 of the DIRECTV Installation Form) that does not contain written
16 authorization by the Landlord to install the Equipment.

17 26. Plaintiffs' claims are typical of the claims of the class members. Plaintiffs were
18 subjected to the same conduct of DIRECTV as each class member, were harmed in the same way
19 and have claims for relief under the same legal theories as each class member.

20 27. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have
21 common interests with all members of the class and will vigorously protect the interest of the class
22 through qualified counsel experienced in handling class action litigation. Neither Plaintiffs nor
23 their counsel have any interests that would conflict with the interests of the class members.

24 28. Given the common questions to be resolved, class litigation is the superior method of
25 resolving these legal challenges in one proceeding, thus avoiding a multiplicity of parallel suits. A
26 class action will avoid the possibility of inconsistent adjudications of the same legal and factual
27 issues.

1 29. Plaintiffs bring this action under California law. California law applies to the claims
2 of Plaintiffs and all class members. DIRECTV has its principal place of business in California. On
3 information and belief, all decisions, policies, and procedures relating to the conduct alleged herein
4 and below are conceived in, and directed and implemented from, California. The MDUs owned by
5 Plaintiffs and the class members that are affected by the DIRECTV policies and procedures
6 challenged herein are all located in the State of California.

7 30. Plaintiffs and the members of the class are entitled to an award of attorneys' fees and
8 costs against DIRECTV.

9 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for
10 judgment as set forth below.

11 **COUNT I – VIOLATION OF UNFAIR COMPETITION LAW (CALIFORNIA BUSINESS
12 AND PROFESSIONS CODE § 17200 ET SEQ.)**

13 31. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully
14 set forth herein.

15 32. Under the UCL, "unfair competition" is defined as: 1) an unlawful, unfair or
16 fraudulent business act or practice; 2) unfair, deceptive, untrue or misleading advertising; and/or 3)
17 an act prohibited by Chapter I (commencing with § 17500) of Part 3 of Division 7 of the Business
18 and Professions Code.

19 33. DIRECTV has violated the UCL by adopting and implementing policies and
20 procedures with the purpose and effect of enabling the illegal and/or unfair installation of the
21 Equipment in and on the MDUs of Plaintiffs and the members of the Plaintiff Class, including the
22 Properties listed on Exhibit A hereto, in contravention of its legal duty not to enter into, or cause its
23 agents to enter into, common or restricted areas of MDUs without permission for installation of
24 DIRECTV's Equipment. Specifically, DIRECTV's policy of installing the Equipment upon receipt
25 of Part 2 of the DIRECTV Installation Form is unfair, as the Tenant is neither the Landlord, nor the
26 agent of the Landlord, nor do the Tenant and the Landlord have a unity of interests with respect to
27 the permanent installation of the Equipment.

1 (b) Granting appropriate preliminary and permanent injunctive relief, including without
2 limitation enjoining DIRECTV from using the Installation Form Part 2 policy and procedure to
3 obtain access to common or restricted areas of the Properties and of MDUs owned by members of
4 the class;

5 (c) Granting declaratory relief, including a declaratory judgment that use of the
6 Installation Form Part 2 policy and procedure is improper.

7 (d) With respect to Count III of the Complaint only, awarding damages and pre-
8 judgment interest on all other amounts awarded;

9 (e) Awarding attorneys' fees, costs and expenses to the extent authorized by law;

10 (f) Granting such other and further relief as may be deemed just and proper in the
11 premises.

12 **JURY TRIAL DEMANDED**

13 Plaintiffs, individually and on behalf of all others similarly situated, hereby demand a trial
14 by jury as to all issues in the above matter that are properly so triable.

15 DATED: March 20, 2014

16 BRAMSON, PLUTZIK, MAHLER & BIRKHAUSER,
17 LLP

18 

19 BY: _____
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Attorneys for Plaintiffs, Individually and
On Behalf of All Others Similarly Situated

EXHIBIT A

Attachment

LBM Properties, LLC

1624-1630 E. Washington, Pasadena, CA 91107
1241 E. Harvard, Glendale, CA 91205

George Kefalas

61-69 Suffolk, Sierra Madre, CA 91024
6825 Rosemead Blvd., San Gabriel, CA
116-120 Violet, Monrovia, CA 91016
302-312 E. Palm, Monrovia, CA 91016
305-311 S. Magnolia, Monrovia, CA 91016
371 Anita St., Laguna Beach, CA 92651

Posamar, LLC

937-945 Mariposa, Altadena, CA 91001

Amila, LLC

110 N. Lima, Sierra Madre, CA 91024

EXHIBIT B

DEAR PROSPECTIVE DIRECTV CUSTOMER,

Congratulations on your decision to sign up for DIRECTV® service! You have made the best choice in digital television entertainment and we are confident you will be thrilled with the service. To ensure you have a smooth installation experience, if you do not own the building in which you intend to install your DIRECTV® System, we ask that you obtain landlord approval prior to any installation if necessary.

Installation of a DIRECTV System may involve modifications to the building/office. While these modifications are often minor, standard professional installation many times includes the drilling of holes in order to run cable and attaching a dish securely to the outside of the structure. Any such type of modification may be forbidden pursuant to the terms of your lease/rental agreement or may require pre-approval by the landlord. Please be advised that landlord approval is often the case with multi-tenant office buildings.

You should carefully review your lease agreement to determine if you have the right to make such modifications. If landlord approval is required, please request that the landlord, or its authorized representative, sign the bottom of this form to acknowledge authorization for the installation and provide this signed form to the DIRECTV technician at the time of installation. In the alternative, if landlord verbally gives you permission (or if landlord approval is not required pursuant to your lease or rental agreement), please indicate that below and sign as well.

By providing this signed form to your professional installer, you are granting DIRECTV permission to install your new DIRECTV System and are releasing DIRECTV from obligation to remove your system after it is installed. The signed installation permission form releases DIRECTV (including any installation technician) from any liability related to damages your landlord may claim as a result of an alleged violation of your lease/rental agreement as it relates to the installation of your new DIRECTV System.

Should your landlord only approve the DIRECTV System installation subject to special requirements that makes the actual install more expensive (or exceeds what DIRECTV offers within its standard professional installation), you will be asked to pay a corresponding charge, to be agreed upon by you and your installer, for the additional services. In addition, please remember that technical issues may still prevent installation of your DIRECTV System. Though this is rare, challenges such as a poor line-of-sight to the satellite, or inadequate grounding availability can prevent installation of the DIRECTV System in which case your money will be refunded.

Please complete either 1 or 2, below:

Please Print:

1. I, _____ (landlord/authorized landlord representative of DIRECTV customer) hereby authorize _____ (name of tenant/DIRECTV customer) to install a DIRECTV System at _____ (tenant address).

Signature of landlord/authorized landlord representative Date

2. Landlord approval of a DIRECTV System installation at _____ (address) has been verbally approved by my landlord (or is not required pursuant to my lease or rental agreement).

Signature of DIRECTV customer Date

EXHIBIT C



Your Rights to have DISH Network and Landlord Permission Form

We value your right to watch the best in television entertainment and we want you to be informed of your legal right to receive DISH Network service, whether you rent or own your home.

The Federal Communications Commission (FCC) passed rules in 1996 regarding the installation of satellite dishes for residents of apartments, condos, town homes or covenant-controlled communities managed by a Homeowners Association.

The FCC ruled that a resident has the right to have a satellite dish that is less than one meter (39.37 inches) in diameter. The dish may be installed within the renter's or owner's exclusive area, such as inside a balcony, yard or patio. However, the landlord or the Homeowners Association can enforce restrictions on common areas, such as the exterior of the building or the roof.

The FCC ruling also covers unreasonable installation or maintenance costs as well as unreasonable delays in dish installation, maintenance or use. This means that a landlord or Homeowners Association cannot ask you to pay unreasonable extra costs or create undue delays for you to use or install a satellite dish, nor can they prevent you from installing a dish within the guidelines.

For any questions or to receive the complete FCC rules, please visit www.fcc.gov. For questions about DISH Network service, please visit www.dishnetwork.com. Thank you for being a DISH Network customer.



Landlord/Homeowners Association
LETTER OF PERMISSION
FOR PROPERTY MODIFICATION

CUSTOMER INFORMATION

Date: _____

Tenant/Resident Name: _____

Street Address: _____ Unit #: _____

City: _____ State: _____ Zip: _____

Community or Apartment Name: _____

Telephone #: _____ Alternate Telephone #: _____

As the Manager/Landlord/Homeowners Association Representative/Owner of the above mentioned property, I (we) represent that I (we) have the authority to sign this Letter of Permission and hereby do authorize installation of a DISH Network Satellite antenna and system at the above-mentioned address by DISH Network Service L.L.C., or their authorized service provider. I (we) have reviewed the site survey, and approve the modifications to the property listed on the site survey.

MANAGEMENT/HOMEOWNERS ASSOCIATION/LANDLORD'S INFORMATION

Property name (if applicable): _____

Management/Homeowners Association Representative/Landlord's Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Telephone #: _____ Alternate Telephone #: _____

Signature: _____

Date: _____

Title: _____

Modifications approved: _____



Landlords or Homeowners Associations may prohibit placement on:

- ❶ Common areas
- ❷ Rooftops
- ❸ Outside walls
- ❹ Window sills



(Unless permission is granted from landlord or Homeowners Association.)

Landlords or Homeowners Associations may NOT prohibit placement on:

- Ⓐ Balconies
- Ⓑ Patios
- Ⓒ Gardens
- Ⓓ Areas totally within the exclusive use of the resident

