

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
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FINAL JUDGMENT

RECEIVED
ATTORNEY GENERAL OF OHIO

March 26, 2020

FRANK H. EASTERBROOK, Circuit Judge

DEC 08 2020

Before:

MICHAEL S. KANNE, Circuit Judge

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

MICHAEL B. BRENNAN, Circuit Judge

No. 17-3111	UNITED STATES OF AMERICA, et. al., Plaintiffs - Appellees v. DISH NETWORK L.L.C., Defendant - Appellant
Originating Case Information:	
District Court No: 3:09-cv-03073-SEM-TSH Central District of Illinois District Judge Sue E. Myerscough	

The judgment of the district court is **AFFIRMED**, except for its holding that DISH is liable for "substantially assisting" Star Satellite and its measure of damages. With respect to those matters, the judgment is **VACATED**, and the case is **REMANDED** for further proceedings consistent with the opinion.

The above is in accordance with the decision of this court entered on this date. No costs are awarded.

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA and the
STATES OF CALIFORNIA, ILLINOIS,
NORTH CAROLINA, and OHIO,

Plaintiffs,

v.

DISH NETWORK L.L.C.,

Defendant.

Case No. 3:09-cv-03073-SEM-TSH

**STIPULATED ORDER FOR
MONETARY JUDGMENT**

RECEIVED
ATTORNEY GENERAL OF OHIO

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or the "Commission"), and Plaintiffs the States of California, Illinois, North Carolina, and Ohio ("State Co-Plaintiffs") filed their initial Complaint in 2009 and the Third Amended Complaint (the "Complaint") in 2015. The United States' claims were brought pursuant to the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105; and the Telemarketing Sales Rule, 16 C.F.R. Part 310. The State Co-Plaintiffs' claims were brought pursuant to the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 and its related rules, 47 C.F.R. § 64.1200, California Business and Professions Codes Sections 17592 and 17200, Illinois Automatic Telephone Dialers Act 815 ILCS 305/1 *et seq.*, North Carolina General Statutes Sections 75-101, 75-102 and 75-104, and Ohio Consumer Sales Practices Act, Revised Code Section 1345.01 *et seq.*

After a six-week bench trial in 2016, in June 2017, this Court issued a final judgment finding DISH Network L.L.C. liable for millions of telemarketing call violations, imposing injunctive relief in the form of compliance and reporting measures, and awarding the Plaintiffs a total of \$280 million: \$168,000,000 for the United States, \$53,256,000 for the State of California, \$17,388,000 for the State of Illinois, \$18,648,000 for the State of North Carolina, and \$22,708,000 million for the State of Ohio. *United States v. Dish Network LLC*, 3:09-cv-03073-SEM-TSH, at Dkt. No. 797 (C.D. Ill. Jun. 5, 2017), reported at 256 F. Supp. 3d 810 (C.D. Ill. 2017). DISH Network L.L.C. appealed the judgment to the United States Court of Appeals for the Seventh Circuit, which vacated the \$280 million award and remanded back to this Court “for further proceedings consistent with this opinion” that the analysis for the monetary award should “start from harm rather than wealth.” *United States v. Dish Network LLC*, 954 F.3d 970, 980 (7th Cir. 2020).

The parties now seek to settle only the monetary relief portion of this case. The injunctive relief ordered by this Court remains in place and unaffected by this settlement. The Plaintiffs and DISH Network L.L.C. therefore stipulate to the entry of this Stipulated Order for Monetary Judgment (“Order”) to resolve all disputes regarding the monetary relief to be awarded to Plaintiffs in this case.

THEREFORE, it is ORDERED as follows:

I. FINDINGS

- A. This Court has jurisdiction over this matter.
- B. The Complaint alleges that Defendant participated in acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule, the

TCPA and its related rules, and various state laws by making telemarketing calls to numbers on the National Do Not Call Registry, abandoning calls, using automated voice telemarketing, and assisting others in these violations.

C. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order. Each party agrees to bear its own costs and attorneys' fees.

D. The parties waive all rights to appeal or otherwise challenge or contest the validity of this Order.

E. Entry of this Order is in the public interest.

II. MONETARY JUDGMENT

A. Judgment in the amount of \$126 million (\$126,000,000.00) is entered in favor of Plaintiff the United States against DISH Network L.L.C. as a civil penalty pursuant to the FTC Act.

B. Judgment in the amount of \$39,942,000.00 is entered in favor of Plaintiff the State of California against DISH Network L.L.C. as a payment in accordance with the TCPA. This entire amount shall be deposited in the Public Rights Law Enforcement Special Fund established by Section 12530 of the California Government Code and used in accordance with that section to support the investigation and prosecution of matters within the authority of the Department of Justice's Public Rights Division.

C. Judgment in the amount of \$13,041,000.00 is entered in favor of Plaintiff the State of Illinois against DISH Network L.L.C. as a payment in accordance with the TCPA.

D. Judgment in the amount of \$13,986,000.00 is entered in favor of Plaintiff the State of North Carolina against DISH Network L.L.C. as a payment in accordance with the TCPA.

E. Judgment in the amount of \$17,031,000.00 is entered in favor of Plaintiff the State of Ohio – Office of the Attorney General against DISH Network L.L.C. as a payment in accordance with the TCPA.

F. Such payment must be made within 30 days of entry of this Order in accordance with instructions previously provided by Plaintiffs' representatives:

1. Make the following payment to the United States:
 - a. A payment of \$126,000,000.00 in the form of a wire transfer to the Treasurer of the United States; and
 - b. The written confirmation of the wire transfer shall be delivered via email to: Lisa K. Hsiao, Assistant Director, Consumer Protection Branch, U.S. Department of Justice, 450 5th Street, N.W. Suite 6400-South, Washington, DC 20530, Lisa.K.Hsiao@usdoj.gov. The wire transfer transmittal shall include the title of this litigation and a reference to DJ #102-3417.
2. Make the following payment to the State of California:
 - a. A payment of \$39,942,000.00 payable by wire transfer to the California Attorney General's Office pursuant to instructions provided by the California Attorney General's Office. DISH Network is responsible for any bank charges

it may incur for processing wire transfers. This payment shall be deposited in the Public Rights Law Enforcement Special Fund.

3. Make the following payment to the State of Illinois:
 - a. A payment of \$6,520,500.00 in the form of a wire transfer or certified or cashier's check made payable to or deposited into the "Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund" for subsequent expenditure as authorized by the Attorney General; and
 - b. A payment of \$6,520,500.00 in the form of a wire transfer or certified cashier's check made payable to or deposited into the "Attorney General's State Projects and Court Ordered Distribution Fund" for subsequent expenditure as authorized by the Attorney General; and
 - c. The check or written confirmation of the wire transfer shall be provided via email to:

Elizabeth Blackston
Chief, Consumer Fraud Bureau
Office of the Attorney General
elizabeth.blackston@ag.state.il.us

4. Make the following payment to the State of North Carolina:
 - a. A payment of \$13,986,000.00 by wire transfer to the North Carolina Department of Justice; and
 - b. Written confirmation of the wire transfer shall be provided via email to:

Kevin Anderson
Senior Deputy Attorney General
Consumer Protection Division
N.C. Department of Justice
kander@ncdoj.gov

5. Make the following payment to the State of Ohio – Office of the Attorney General:

- a. A payment of \$17,031,000.00 in the form of a wire transfer payable to the State of Ohio Office of the Attorney General. Said payment shall be used for reimbursement of attorney fees and other costs of investigation; distribution or application to any applicable consumer protection enforcement funds, including future consumer protection enforcement, consumer education, litigation or local consumer aid, or revolving funds; defraying the costs of the inquiry leading hereto; or any other lawful purpose, at the sole discretion of the Ohio Attorney General.
- b. The written confirmation of the wire transfer shall be delivered via email to:

Erin B. Leahy
Senior Assistant Attorney General
Consumer Protection Section
Ohio Attorney General's Office
30 East Broad St., 14th Floor
Columbus, OH 43215

Erin B. Leahy, Senior Assistant Attorney General

III. ADDITIONAL PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. In any subsequent civil litigation by or on behalf of any Plaintiff to enforce its rights to any payment or monetary judgment pursuant to this Order, Defendant will not contest the factual and liability findings in this Court's opinion set forth in *United States v. Dish Network LLC*, 3:09-cv-03073-SEM-TSH, at Dkt. No. 797 (C.D. Ill. Jan. 5, 2017), *reported at* 256 F. Supp. 3d 810 (C.D. Ill. 2017), and those findings will be taken as true, without further proof.

C. Defendant acknowledges that its Taxpayer Identification Number, which Defendant must submit to Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

D. DISH Network and the State Co-Plaintiffs agree that the entirety of the monetary judgment paid by DISH Network to the State Co-Plaintiffs constitutes a payment in accordance with the TCPA, as well as that it represents a compromise between DISH Network and the State Co-Plaintiffs that is based on the Court's original monetary awards to the State Co-Plaintiffs, and does not include a multiplier or constitute common-law punitive damages.

IV. DEFAULT PROVISIONS

IT IS FURTHER ORDERED that, in the event of default on the payments required to be made by this Order, the entire unpaid civil penalty and/or other judgment

payments, together with interest computed under 28 U.S.C. § 1961 – accrued from the date of default until the date of payment – shall be immediately due and payable. DISH Network shall cooperate fully with Plaintiffs and their agents in all attempts to collect the amount due pursuant to this Paragraph if DISH Network fails to pay fully the amount due at the time specified herein.

V. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification and enforcement of this Order.

SO ORDERED this 4th day of December, 2020.

s/ Sue E. Myerscough

Hon. Sue E. Myerscough
United States District Judge

SO STIPULATED AND AGREED:

PLAINTIFFS:

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