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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

DIRECTV, a Delaware Corporation;
DIRECTV, INC., a California
Corporation,

Defendants.

NO. 09-2-44903-1 SEA

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF UNDER THE
CONSUMER PROTECTION ACT,
CHAPTER 19.86 RCW

COMES NOW PLAINTIFF, State of Washington, by and through its attorneys Robert M. McKenna, Attorney General, and Paula L. Selis, Assistant Attorney General, and brings this action against Defendants named herein, alleging as follows:

I. JURISDICTION AND VENUE

1.1 This Complaint is filed and these proceedings are instituted under the provisions of the Unfair Business Practices – Consumer Protection Act, Chapter 19.86 RCW.

1.2 The violations alleged in this Complaint have been made and are being committed in whole or in part in King County, Washington, by defendants named herein.

1.3 Authority of the Attorney General to commence this action is conferred by RCW 19.86.080 and RCW 19.86.140.

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II. DEFENDANTS

2.1 Defendant DirecTV is incorporated in Delaware, with its principal executive offices located at 2230 East Imperial Highway, El Segundo, California. Defendant DirecTV is engaged in the business of promoting, selling, and/or distributing digital entertainment programming via satellite to residential and commercial subscribers. At all times relevant to this action, DirecTV transacts or has transacted business in King County and elsewhere in the state of Washington.

2.2 Defendant DirecTV, Inc. is a California corporation with its principal place of business located at 2230 East Imperial Highway, El Segundo, California. Defendant DirecTV, Inc. is engaged in the business of promoting, selling, and/or distributing digital entertainment programming via satellite to residential and commercial subscribers. At all times relevant to this action, DirecTV, Inc. transacts or has transacted business in King County and elsewhere in the state of Washington.

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III. NATURE OF TRADE OR COMMERCE

3.1 Defendants, hereinafter collectively referred to as "DirecTV" or "defendants," advertise, market, and sell their satellite television services to residential and commercial consumers in the state of Washington, including, but not limited to, installation, activation, and delivery of DirecTV satellite television equipment, and audio and video programming provided to consumers via direct broadcast satellites.

3.2 DirecTV is the nation's largest provider of "direct to home" digital television services and transmits to over 17.6 million subscribers throughout the United States. DirecTV advertises widely in print and electronic media, often running special promotions that offer such incentives as rebates for services, referral awards for existing customers, "free" installation, "free" trial offers for premium movie channel programming, and "free" equipment upgrades. DirecTV and its third-party retailers and third-party installers advertise, market, sell, and lease DirecTV

1 goods and services in person, through door-to-door solicitation, by direct mail, by telephone,
2 and via the internet. DirecTV advertises through various print and broadcast media.

3 **3.3** DirecTV's customers can choose from various programming packages, which are
4 channels that DirecTV groups together and sells at different price points, such as "the Family
5 package," "the Choice package," or "the Premier package." Other program offerings are
6 seasonal, such as the "NFL Sunday Ticket." The non-promotional prices for its packages range
7 from \$56.99 a month to \$109.99 a month. DirecTV currently commits its customers to a
8 24-month term of service, though it previously has committed them to a 12, 18 or 24-month term
9 of service, depending on the type of equipment ordered to receive the service. Its seasonal
10 offerings vary in price. For example, the "NFL Sunday Ticket" costs \$279.95 for a season
11 subscription.

12 **3.4** In order to receive a DirecTV programming package, the customer must also agree
13 to pay a fee for equipment through which the programming is received, though many customers
14 obtain the equipment promotions in which it is offered for "free." The receiver equipment
15 includes a standard set-top receiver, a high-definition (HD) receiver, a digital video recording
16 (DVR) receiver, or a combination HD/DVR receiver. Depending on the type of receiver
17 obtained, and the promotion through which it is offered, the customer may be required to pay an
18 up-front fee in order to receive it: \$99.00 for a DVR receiver; \$99.00 for an HD receiver; and
19 \$299.00 for an HD/DVR receiver. DirecTV also charges monthly fees for the equipment which
20 vary, depending on the type and amount of equipment leased. For example, customers who lease
21 an HD receiver pay an extra \$10.00 per month, and customers who lease a DVR receiver pay an
22 extra \$6.00 per month. These prices have been subject to change over time and have generally
23 gone up. Customers who lease more than one receiver must pay an additional \$4.99 per month
24 for the second and each additional receiver. Customers may obtain the receivers directly from
25 DirecTV or from one of its authorized resellers or retailers. The customer's receiver is connected
26 to an outdoor antenna which is typically affixed to his or her residence.

1 of the 24-month term, defendants charge a cancellation fee of up to \$480.00. Additionally, if a
2 customer fails to turn on his or her equipment after it has been installed, defendants charge an
3 extra \$150.00 activation failure fee.

4 **A. Failure to Disclose in Print Advertising**

5 **4.3** While in some instances, defendants make reference to the existence of a
6 cancellation fee associated with early termination of services, their reference is insufficient to
7 adequately inform customers of the full circumstances of their commitment. The inadequacy
8 of the disclosures is demonstrated by what is buried in the miniscule type of their advertising,
9 rather than what is clearly stated. The disclosures fail to adequately inform customers of the
10 full price for services for the term to which they are committing themselves. Rather, they state
11 that the customer will be charged a fee if he or she fails to “maintain your (the customer’s)
12 programming commitment.” See, Figure 1, Print Advertisement:

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1 **4.4** Though there is mention of a “system lease” requirement for 24 months, the
2 consumer’s purported obligation to continue monthly payments for programming for a full
3 24-month period is not made clear. The disclosures also fail to inform consumers that the
4 promotional price they have agreed to pay will be going up significantly after an initial
5 12-month period and that they will be required to pay almost twice as much for the remaining
6 12-month period of their 24-month commitment. The disclosures further fail to specify that if
7 customers cancel at the end of the initial 12-month period they will be charged a cancellation
8 fee of hundreds of dollars, even though they are halfway through the full term of the contract.
9 Further, they fail to disclose that if the customer downgrades his or her programming to a less
10 expensive package, a cancellation fee will be assessed. The disclosures that *are* included are in
11 miniscule type, approximately 5.5 type size, barely readable to the naked eye.

12 **B. Failure to Disclose in Telephone Sales**

13 **4.5** When customers call defendants to order service in response to their
14 advertising, defendants fail to disclose the material facts about commitment periods and
15 cancellation fees. Defendants’ sales representatives tout the features of various packages,
16 assure the customer of the value of the services, and sign the customer up for installation.
17 They obtain the customer’s credit card or other payment method, and process the order through
18 defendants’ internal computer system. Their sales script includes nothing about the terms of
19 service and the significant penalties for failure to comply with them.

20 **C. Failure to Disclose in Customer Agreement**

21 **4.6** Defendants’ Customer Agreement, which purportedly describes “the terms and
22 conditions” of the customer’s contract with DirecTV, compounds the inadequacy of defendants’
23 disclosures. The Customer Agreement is sent along with the customer’s first bill, approximately
24 *one month* after service has been ordered, well after installation has occurred and well into the
25 period during which defendants charge an early cancellation fee. Buried in the Customer
26 Agreement is a provision that states in relevant part “You may cancel Service by notifying us

1 If you cancel your Service package, you may be subject to an early cancellation fee if you entered
2 into a *separate programming commitment* (emphasis added) with DIRECTV in connection with
3 obtaining Receiving Equipment, and have failed to maintain the required programming package
4 for the required period of time.”

5 **D. Inadequacy of Disclosure in Equipment Lease Addendum**

6 **4.7** The “separate programming commitment” referenced in the Customer Agreement
7 is buried in a separate document titled “Equipment Lease Addendum” which is provided by
8 defendants’ installer to the customer after installation of the receiver equipment, approximately
9 one month prior to receipt of the Customer Agreement. The Equipment Lease Addendum is
10 printed on the reverse side of a document titled “Installation/Service Satisfaction Checklist” that
11 appears to be a customer feedback mechanism, rather than an important legal document. The
12 Equipment Lease Addendum is neither presented as an essential document governing the terms of
13 the DirecTV’s provision of service, nor is it accompanied by the Customer Agreement.

14 **4.8** Buried in the fine print of the Equipment Lease Addendum is a provision which
15 states in relevant part, “The programming package(s) must be maintained for a period of not less
16 than twenty-four (24) consecutive months. For a current DIRECTV customer, the programming
17 package(s) must be maintained for a period of not less than (a) twelve (12) consecutive months for
18 accounts with only standard receiver(s), or (b) twenty-four (24) consecutive months for accounts
19 with advanced product(s)/receiver(s) (DVR, HD, or HD DVR, including additional DIRECTV
20 receiver(s)).” The document goes on to state that the “consequences of (the customer’s) failure to
21 activate programming or satisfy (the) programming commitment are fees of \$150.00 per non-
22 activated receiver and up to \$480.00 for failure to satisfy the programming commitment.” The
23 only time that the customer is explicitly and unambiguously informed that he or she is committed
24 to a 24-month term of service is in the fine print on the back side of a document that is provided
25 after installation has occurred. Yet even in this context, the customer is not told his or her
26 monthly fee will roughly double mid-way through the term of commitment.

1 **5.3** Defendants advertise their promotional packages in print advertising, including
2 their lowest price package, at a monthly rate. In conjunction with their offers, defendants fail
3 to adequately disclose that the monthly charge is only good for 12 months of an 18 to
4 24- month required term of service and that after 12 months, the customer's monthly price for
5 service automatically goes up to the prevailing price for the package. For example, their
6 lowest price package for a package advertised in the Seattle Times on February 22, 2009, was
7 \$29.99. Defendants failed to disclose that after 12 months, the full price of \$52.99 would be
8 applied to the remaining 12 months of the period of service. The customer's cost for the second
9 half of the contractual term would be 77% higher than the first half.

10 **5.4** Defendants' online advertising also fails to disclose that after 12 months, the
11 customer's monthly price for service automatically goes up to the prevailing rate for the
12 service, and that this full price is applied to the remaining 12 month period of the required 24-
13 month service. The packages currently advertised online include Premier at \$59.99 per month;
14 Family at \$29.99 per month; Choice at \$34.99 per month; and Choice Xtra at \$39.99 per
15 month. The Choice Xtra package is also available with additional channels for up to \$54.99
16 per month. www.directv.com, August 12, 2009.

17 **5.5** Defendants' online advertising fails to disclose that after 12 months, the prices
18 for all packages except the Family package will go up significantly. For example, the Choice
19 \$34.99 package will go up to \$56.99 and the Choice Xtra \$39.99 package will go up to \$60.99.
20 If the customer decides to cancel at the 12-month mark, once he or she realizes that the price of
21 service has gone up roughly 53% to 63%, a significant cancellation fee will be assessed by
22 defendants.

23 **5.6** Defendants' lowest price package is advertised at the seemingly low rate of
24 \$29.99 per month. In conjunction with this offer, defendants fail to disclose that financing
25 conditions apply to the availability of the \$29.99 package, including the fact that only those
26 customers who agree to pay by automatic charges or debits are able to receive it; and that

1 substantial additional charges of hundreds of dollars apply to customers who either refuse a
2 credit check or whose credit is deemed insufficient to qualify for the low price package.
3 Defendants also fail to disclose that those who do not agree to automatic billing will be
4 required to pay an additional \$5.00 monthly surcharge.

5 **5.7** Defendants use the term “free” to advertise their products and services but fail
6 to disclose that there are actual costs associated with those products or services. For example,
7 defendants advertise “free” professional installation with “no equipment to buy! No start-up
8 costs!” In fact, depending upon the type of receiver ordered, the customer may be required to
9 pay an ongoing monthly service fee of between \$6.00 and \$10.00, beginning with the first
10 month of service. In some instances, also depending on the type and number of receivers
11 ordered, the customer may be required to pay an up-front fee for the equipment. Additionally,
12 customers who do not qualify under DirecTV’s credit requirements are required to deposit
13 \$200.00 to \$300.00 before they are able to obtain service.

14 **5.8** The conduct described in paragraphs 5.1 through 5.7 constitutes unfair and
15 deceptive acts and practices in trade or commerce and unfair methods of competition in
16 violation of RCW 19.86, the Consumer Protection Act.

17 **VI. THIRD CAUSE OF ACTION—FAILURE TO DISCLOSE REBATE TERMS**

18 **6.1** Plaintiff realleges paragraphs 1.1 through 5.8 and incorporates them as if fully
19 set forth herein.

20 **6.2** Defendants advertise their program packages at promotional rates that appear
21 relatively reasonable. Based on defendants’ advertising representations, customers believe that
22 they will be billed the amount advertised for the package they have ordered. Defendants fail to
23 adequately disclose that in order to obtain the package at the promotional rates advertised, they
24 must comply with the terms of a rebate program that requires a customer to send a form to
25 defendants. Defendants fail to disclose that the promotional price reflects the price *after*
26 defendants have applied the rebate to the package and that the customer may be charged the

1 full price for the package (i.e. \$55.99 rather than \$34.99 for the Choice package) for up to two
2 months if the rebate form is sent to defendants after installation of the equipment. In fact,
3 numerous consumers have complained that when they are first billed for defendants' services,
4 they find that the billing amount is much higher than anticipated. Defendants also fail to
5 disclose that if the customer fails to send in the rebate form within 60 days of the order, he or
6 she will never be able to obtain the promotional price for the package and will be obligated to
7 pay the full price for 24 months. Additionally, defendants fail to disclose that if the customer
8 becomes delinquent in paying his or her bill, the rebate will be voided and not applied to
9 outstanding charges.

10 **6.3** The conduct described in paragraphs 6.1 and 6.2 constitutes unfair and
11 deceptive acts and practices in trade or commerce and unfair methods of competition in
12 violation of RCW 19.86, the Consumer Protection Act.

13 **VII. FOURTH CAUSE OF ACTION—FAILURE TO DISCLOSE TRIGGERING OF**
14 **NEW COMMITMENT TERM AND UNFAIR IMPOSITION OF NEW**
15 **COMMITMENT TERM**

16 **7.1** Plaintiff realleges paragraphs 1.1 through 6.3 and incorporates them as if fully
17 set forth herein.

18 **7.2** When defendants obtain their customers, they have obligated them to a term of
19 service varying from 18 to 24 months. As described above, defendants assess their customers
20 a significant fee if they cancel their services prior to the end of the term of commitment.
21 Defendants not only purport to obligate their customers to extended terms of service at the
22 beginning of service, they also attempt at various points to *extend* those terms of enforced
23 commitment even further during the 18 or 24-month term of initial commitment. For example,
24 during their terms of service, customers may contact defendants about malfunctioning
25 equipment. In such instances, defendants will repair or replace the equipment. When they do
26 so, in some instances, defendants will “commit” the customer to an additional term of service
of up to 24 months. Additionally, when a customer adds an additional receiver to a home that

1 Protection Plan, and that if cancellation is obtained during that period of service, the “early
2 cancellation fee” will be applied to the customer’s bill.

3 **8.4** The conduct described in paragraphs 8.1 through 8.3 constitutes unfair and
4 deceptive acts and practices in trade or commerce and unfair methods of competition in
5 violation of RCW 19.86, the Consumer Protection Act.

6 **IX. SIXTH CAUSE OF ACTION—FAILURE TO DISCLOSE AUTOMATIC
7 RENEWAL**

8 **9.1** Plaintiff realleges paragraphs 1.1 through 8.4 and incorporates them as if fully
9 set forth herein.

10 **9.2** Defendants offer their products and services with various time commitments.
11 Their programming package commitments are currently for 24 months. Their Protection
12 Package commitment is for one year. Their sports subscriptions are for one season.
13 Defendants fail to adequately disclose that if customers do not cancel their services within the
14 term of the service itself, the term will automatically renew. When the term automatically
15 renews, if the customer decides to cancel during the new term of service, he or she will be
16 assessed an early cancellation fee or in some instances, be committed to pay for the entire term
17 of service.

18 **9.3** For instance, when a customer subscribes to the “NFL Sunday Ticket” at
19 \$279.95 for a season subscription, he or she will be automatically subscribed for the same
20 subscription the following year. Once the season is over, if the customer fails to cancel before the
21 beginning of the next season, he or she will be billed the full rate for a new subscription. Because
22 the customer is unlikely to notice the lack of service after the season is over, it is only at the
23 beginning of the next season that it becomes apparent that the “season ticket” has been
24 automatically renewed. At that point, defendants do not permit cancellations. When the
25 customers find a charge for the new “season ticket” on his or her bill, it is already too late to avoid
26 the charge.

1 **9.4** The conduct described in paragraphs 9.1 through 9.3 constitutes unfair and
2 deceptive acts and practices in trade or commerce and unfair methods of competition in
3 violation of RCW 19.86, the Consumer Protection Act.

4 **X. EIGHTH CAUSE OF ACTION—NEGATIVE OPTION BILLING**

5 **10.1** Plaintiff realleges paragraphs 1.1 through 9.4 and incorporates them as if fully
6 set forth herein.

7 **10.2** Defendants offer several of their services through trial offers in which the
8 service is provided at no charge during the trial period. After the trial period, if the customer
9 fails to cancel, he or she will automatically be charged. For example, defendants have offered
10 a “free” 3-month trial of HBO, Starzz and Showtime premium channels, which it advertises as
11 a “\$198.00 value.” If the customer does not contact defendants to affirmatively cancel the
12 service prior to the expiration of the 3 months, he or she will be automatically billed at the
13 “then-prevailing rate,” currently \$44.00 per month.

14 **10.3** The customer is not clearly informed that the “free trial” will turn into a paid
15 subscription, and that failure to cancel within the prescribed period will result in an additional
16 significant ongoing charge of approximately \$44.00. At no point does the customer
17 specifically request or accept the terms of the service. Rather, defendants presume the
18 customer’s acceptance and interpret his or her silence at the end of the “free trial” as an
19 agreement to pay for it.

20 **10.4** RCW 19.56.020, the Unsolicited Goods Act, provides that unless a good or
21 service has been specifically requested in an affirmative manner, it is deemed “unsolicited” and
22 may be deemed a “gift” by the recipient. Despite the fact that some of defendants’ services are
23 unsolicited, defendants bill for these services. Pursuant to RCW 19.56.030, a violation of
24 RCW 19.56.020 constitutes an unfair or deceptive act or practice in trade or commerce and a
25 violation of RCW 19.86, the Consumer Protection Act.

1 **10.5** The conduct described in paragraphs 10.1 through 10.4 constitutes unfair and
2 deceptive acts and practices in trade or commerce and unfair methods of competition in
3 violation of RCW 19.86, the Consumer Protection Act.

4 **XI. NINTH CAUSE OF ACTION—MISREPRESENTATIONS**

5 **11.1** Plaintiff realleges paragraphs 1.1 through 10.5 and incorporates them as if fully
6 set forth herein.

7 **11.2** In the context of its marketing and sale of services, defendants make a number
8 of misrepresentations, including but not limited to the following:

- 9 1. Defendants advertise a “free” HD or DVR receiver upgrade, but in fact assess
10 an extra \$6.00 to \$10.00 monthly charge for these receivers;
- 11 2. Defendants advertise “free” professional installation with “no equipment to
12 buy! No start-up costs!” In fact, depending upon the type of receiver ordered,
13 the customer may be required to pay an ongoing monthly fee of between \$6.00
14 and \$10.00, beginning with the first month of service. In some instances, also
15 depending on the type and number of receivers ordered, the customer may be
16 required to pay an up-front fee for the equipment. Additionally, customers who
17 do not qualify under DirecTV’s credit requirements are required to deposit
18 \$200.00 before they are able to obtain service;
- 19 3. Defendants advertises a “free” portable DVD player, but in fact charge a
20 “system lease” fee of \$34.99 for the DVD player, plus a shipping and handling
21 fee;
- 22 4. Defendants advertise a referral program for existing customers who will “get
23 \$50” if they refer new customers to defendants. In fact, these consumers do not
24 “get \$50.00.” Rather, they receive a \$10.00 credit on five monthly bills if they
25 refer new customers to defendants. Similarly, defendants advertise a “\$200.00
26 New Movers Cash Back” offer that does not provide cash back to the customer.

1 Rather, the customer is given a \$10.00 monthly credit on his or her bill for
2 defendants' services. In another similar program, defendants promote a
3 "National \$100 Cash Back Offer" consists of a \$10.00 monthly credit on the
4 customer's bill. In none of these promotions do defendants actually provide
5 "cash" to the customer;

6 5. Defendants advertise "free" installation. In fact, depending on the individual
7 requirements of the customer's home or office, and the number of rooms
8 involved, defendants may charge for installation. Additionally, in some
9 instances, defendants charge a \$19.99 fee for "handling and delivery" of
10 equipment.

11 **11.3** The conduct described in paragraphs 11.1 through 11.2 constitutes unfair and
12 deceptive acts and practices in trade or commerce and unfair methods of competition in
13 violation of RCW 19.86, the Consumer Protection Act.

14 **XII. TENTH CAUSE OF ACTION—FAILURE TO DISCLOSE LEASE EXISTENCE**
15 **OR MATERIAL TERMS OF LEASE**

16 **12.1** Plaintiff realleges paragraphs 1.1 through 11.3 and incorporates them as if fully
17 set forth herein.

18 **12.2** In addition to providing its receivers directly to customers, defendants also sell
19 them through a number of national online retailers such as Costco and Best Buy. The cost of
20 these receivers varies from approximately \$99.00 to \$199.99. See
21 <http://www.bestbuy.com/site/olspage.jsp?id=abcat0105003&type=category> (May 12, 2009).
22 The circumstances of the purchase are indistinguishable from any other online purchase. The
23 customer is given a number of options for receiver equipment, a choice is made, a credit card
24 number is entered, and no disclosures are made that would alert the customer to the fact that
25 the transaction is anything other than a purchase. After purchasing the receiver, the customer
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1 must then contact defendants to install and activate it in order to receive programming.
2 Defendants require the customer to sign up for one of their programming packages.

3 **12.3** After activating the DirecTV receiver, the customer discovers that the
4 “purchase” of the receiver was not a purchase at all, according to defendants. Rather,
5 defendants consider the purchase transaction a “lease” of the equipment. After the receiver is
6 activated, defendants start charging a monthly “lease fee” of \$5.99 or \$9.99, depending on the
7 type of receiver obtained. Additionally, if the customer decides to cancel his or her
8 “programming commitment” before the expiration of the 24-month term of service, he or she is
9 required to give the equipment back to defendants in order to avoid a significant early
10 cancellation fee. Finally, at the end of the “lease term,” the customer must return the
11 equipment in working condition, or he or she may be charged hundreds of dollars in penalties.

12 **12.4** Customers who do not purchase online, but rather at retailers’ brick-and-mortar
13 facilities, are sold their receivers in a manner indistinguishable from any other purchase.
14 While the retailer may provide a sales receipt *after* the purchase has already been made that
15 contains several disclosures regarding the so-called “lease,” the disclosures are not provided at
16 a meaningful time, or in a comprehensible format. The customer is given a long and narrow
17 cash register receipt covered with crowded print and multiple abbreviations. All the indicia of
18 purchase suggest that the equipment has been sold, rather than leased to the customer.

19 **12.5** In the context of these transactions, both online and in the brick-and-mortar
20 context, defendants fail to adequately disclose the following:

- 21 a. That the customer is entering into a lease rather than purchasing receiver
22 equipment;
- 23 b. That in many instances the terms of the lease require a monthly payment
24 for the equipment;
- 25 c. That the customer must return the equipment; and
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1 d. That the customer will be assessed a significant penalty of up to \$480.00
2 if he or she does not return the equipment in working condition to
3 defendants at the end of the lease.

4 **12.6** The conduct described in paragraphs 12.1 through 12.5 constitutes unfair and
5 deceptive acts and practices in trade or commerce and unfair methods of competition in
6 violation of RCW 19.86, the Consumer Protection Act.

7 **XIII. ELEVENTH CAUSE OF ACTION—UNFAIR RETENTION OF “DEPOSIT”**

8 **13.1** Plaintiff realleges paragraphs 1.1 through 12.6 and incorporates them as if fully
9 set forth herein.

10 **13.2** Before selling programming services to a customer, defendants ask for the
11 customer’s Social Security Number in order to perform a credit check. If the customer refuses
12 to provide the Social Security Number, or if the customer is deemed insufficiently
13 creditworthy, defendants require the customer to put down a \$200.00 or \$300.00 deposit in
14 order to obtain services. This amount is credited back to the customer on a \$5.00 per month
15 basis. When, however, the customer cancels his or her programming commitment prior to the
16 end of its term, the customer forfeits whatever remains of his or her deposit. Defendants retain
17 the remainder of the deposit in addition to charging for any other fees it deems appropriate.

18 **13.3** Defendants fail to disclose their policy with regard to retention of “deposits.”
19 Further, defendants misrepresent that the fee will be “returned” in monthly credits, when, in
20 fact, only a portion of it may be.

21 **13.4** The conduct described in paragraphs 13.1 through 13.3 constitutes unfair and
22 deceptive acts and practices in trade or commerce and unfair methods of competition in
23 violation of RCW 19.86, the Consumer Protection Act.

1 **XIV. TWELFTH CAUSE OF ACTION— UNCONSCIONABLE ENFORCEMENT OF**
2 **CONTRACT TO WHICH THERE HAS BEEN NO MUTUAL ASSENT**

3 **14.1** Plaintiff realleges paragraphs 1.1 through 13.4 and incorporates them as if fully
4 set forth herein.

5 **14.2** Defendants provide material information to customers in different formats and
6 at different times. The various terms and conditions of its contracts may be found 1) on the
7 back of the sales receipt or register receipt, if the customer “leases” equipment from a retailer;
8 2) verbally, over the phone, if the customer is signed up via inbound or outbound
9 telemarketing; 3) on the back of the work order checklist provided by the third-party installer
10 at time of installation; 4) on defendants’ website; 5) by confirmation letters that are sent to
11 consumers after signing up for service but prior to installation; and 6) in the customer’s first
12 monthly bill. At no point prior to, during, or after purchase, is the customer given a single
13 form that contains all applicable terms and conditions. A customer may never know when he
14 or she has received all relevant information. For example, the Customer Agreement provided
15 with the first bill, several weeks after the initial order, provides that the customer “may incur
16 early cancellation fees and/or equipment non-return fees as specified in any lease,
17 programming, or other service agreement you entered into in connection with obtaining
18 Receiving Equipment.” The “agreements” the customer supposedly “entered into,” are not
19 ones where there was any affirmative agreement. Rather, they were buried several pages deep
20 in defendants’ web site or inconspicuously posted on the back of an installation checklist. The
21 customer was not asked to review them before agreeing to the contract.

22 **14.3** To compound the problem for online purchasers, as the customer is researching
23 or signing up for packages on defendants’ web site, a “calculator” is displayed on the right side
24 of the screen, purporting to show what the customer’s cost will be for each package. This
25 display omits many additional fees and costs, effectively misleading customers who do not
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1 take it upon themselves to read the various terms spread through the Agreement, Equipment
2 Lease Addendum, and other pages on the web site, to find out which fees will actually apply.

3 **14.4** Despite the fact that the customer is not informed of, and does not accept all of
4 the broad-reaching terms of defendants' contract at any given point, defendants insist that the
5 customer is bound by what it terms a "multi-layered" approach to contracting. Each of
6 defendants' "layers" of contracting contains partial information about the full contract—none
7 of them contains a full disclosure in one place, and the confusing use of cross-referencing does
8 nothing to clarify the contract's terms.

9 **14.5** In some instances, the documents point to each other, yet they are provided at
10 different times and in different contexts. For example, the Customer Agreement, which
11 purports to cover the "terms and conditions" of defendants' contract with customers, cross-
12 references a "programming agreement" described in a separate document found on the reverse
13 side of an installation checklist, which was provided to the customer one month earlier at
14 installation. That "programming agreement" states it "contains the terms and conditions for the
15 lease of equipment, but must be read together with the DirecTV Customer Agreement," resulting
16 in a cross-reference to a document that arrives one month later with the customer's first bill and
17 after installation of the equipment.

18 **14.6** Defendants' failure to obtain actual assent to the terms of its contract is made
19 most apparent from its customers' confusion regarding cancellation fees. There is no one place
20 that unequivocally states that the customer has 1) contracted for a special price offer that will
21 expire after 12 months, after which the price will go up to a specific, identified amount (nearly
22 double the introductory price) for an additional 12 months, and 2) that the customer must agree
23 to pay the greater amount, or incur a cancellation fee of an identified amount. Rather, the
24 customer must piece this material set of facts together on his or her own. And by the time the
25 customer receives the final "layer" of the "multi-layered" contract (i.e., the Customer
26 Agreement) and may be able to piece together the material terms of the contract, he or she will

1 be assessed a significant fee for early cancellation. The terms of the contract cannot be
2 rejected at that point without incurring a penalty. Accordingly, when customers seek to cancel
3 their service, they often complain that they did not understand that they would be assessed a
4 significant unexpected penalty for early cancellation.

5 **14.7** Defendants' enforcement of a contract to which there has been no mutual assent
6 constitutes an unfair and deceptive business practice and an unfair method of competition in
7 violation of RCW 19.86, The Consumer Protection Act.

8 **14.8** Defendants fail to give customers a reasonable opportunity to understand the
9 terms of their contract, thus unconscionably depriving them of a meaningful choice in entering
10 into its terms. The formation of defendants' contract with customers is procedurally
11 unconscionable, and thus constitutes an unfair and deceptive business practice and an unfair
12 method of competition in violation of RCW 19.86, the Consumer Protection Act.

13 **XV. THIRTEENTH CAUSE OF ACTION—SUBSTANTIVE**
14 **UNCONSCIONABILITY**

15 **15.1** Plaintiff realleges paragraphs 1.1 through 14.8 and incorporates them as if fully
16 set forth herein.

17 **15.2** The terms of defendants' contracts with customers are so one-sided as to grossly
18 favor defendants. The contracts limit the customer's rights and remedies and impose
19 numerous, sometimes undisclosed fees, while at the same time maintaining defendants'
20 flexibility to alter any terms and conditions upon which they offer services. Defendants
21 include provisions in their contracts which permit them to change any of their services as well
22 as their prices, at any time, during the term of the contract; to charge the customer a fee to
23 replace their own defective equipment; to unilaterally modify the contract to add fees or
24 increase the current fees, with no opportunity for the customer to cancel; and to charge a
25 deactivation fee if the customer cancels for *any* reason, including changed terms and conditions
26 or poor service. Numerous other provisions in defendants' contracts contribute to their one-

1 sidedness in defendants' favor, including but not limited to those relating to administrative
2 fees, binding arbitration, notification requirements, restrictions on class action lawsuits, and
3 limitations on remedies. Accordingly, those contracts are substantively unconscionable.

4 **15.3** Defendants' use of substantially unconscionable contracts constitutes unfair and
5 deceptive practices and unfair methods of competition in violation of RCW 19.86, The
6 Consumer Protection Act.

7 **XVI. FOURTEENTH CAUSE OF ACTION—IMPOSING INVALID LIQUIDATED**
8 **DAMAGES PROVISIONS**

9 **16.1** Plaintiff realleges paragraphs 1.1 through 15.3 and incorporates them as if fully
10 set forth herein.

11 **16.2** Defendants impose a long-term commitment of 24 months on their customers
12 and a significant early cancellation fee of up to \$480.00 for those who cancel service during
13 the commitment period. This assures that customers will be penalized if they switch providers,
14 and acts as an effective deterrent against doing so.

15 **16.3** Defendants' imposition of cancellations fees is not limited to early cancellation
16 fees for programming packages. It permeates defendants' business model, and in some cases,
17 constitutes a penalty, rather than an assessment of liquidated damages. For example, when a
18 customer cancels his or her \$5.99 per month "Protection Plan," a \$10.00 cancellation penalty is
19 charged. When a customer fails to activate receiver equipment, a charge of \$150.00 per
20 receiver is charged. When a customer downgrades his or her programming package, a \$10.00
21 fee may be charged. When a customer's service is deactivated at cancellation or for failure to
22 pay charges, defendants may charge a "deactivation fee" of up to \$15.00. These fees are not
23 liquidated damages. They do not represent the actual costs incurred by defendants occasioned
24 by the events covered, nor do they reflect the costs avoided or amounts saved by defendants as
25 a result of the event.
26

1 **17.3** Defendants' failure to honor promotional offers as represented constitutes unfair
2 and deceptive acts and practices, and unfair methods of competition in violation of
3 RCW 19.86, the Consumer Protection Act.

4 **XVIII. SIXTEENTH CAUSE OF ACTION—IMPOSING CHARGES WHEN**
5 **SERVICE IS NOT PROVIDED**

6 **18.1** Plaintiff realleges paragraphs 1.1 through 17.3 and incorporates them as if fully
7 set forth herein.

8 **18.2** In some instances, defendants fail to provide the services for which their
9 customers have contracted. In some instances, the equipment installed by defendants is
10 defective or the installation is inadequately performed. In other instances, reception is not
11 possible for a variety of technical reasons. Despite the fact that the affected consumers are
12 unable to obtain service, they are charged for it. When these consumers have attempted to
13 cancel, defendants charge them a cancellation fee, even though it is defendants' fault that
14 service was not provided.

15 **18.3** Defendants' imposition of charges when service is not provided constitutes
16 unfair and deceptive acts and practices, and unfair methods of competition in violation of
17 RCW 19.86, the Consumer Protection Act.

18 **XIX. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, STATE OF WASHINGTON, prays that this Court grant the
20 following relief:

21 **19.1** That the Court adjudge and decree that defendants has engaged in the conduct
22 complained of herein.

23 **19.2** That the Court adjudge and decree that the conduct complained of in
24 Paragraphs 4.1 through 18.3 constitutes unfair or deceptive acts or practices and unfair
25 methods of competition in violation of the Consumer Protection Act, Chapter 19.86 RCW.
26

