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LOS ANGELES
SUPERIOR COURT

9 Attorneys for Plaintiffs and the Putative Class

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12 CENTRAL DISTRICT
13 UNLIMITED JURISDICTION

14 AMY IMBURGIA, MARLENE MECCA,
15 and KATHY GREINER, on behalf of
16 themselves and all others similarly situated,

17 Plaintiffs,

18 vs.

19 DIRECTV, INC., a California Corporation;
20 and DOES 1-100, inclusive.

21 Defendants.

CASE NO. BC398295

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
2. Unfair, Deceptive and Misleading Advertising, Cal. Bus. & Prof. Code § 17500;
3. Unlawful, Deceptive and Unfair Business Practices, Cal. Bus. & Prof. Code § 17200;
4. Violation of Cal. Civ. Code § 1671(d);
5. Money Had And Received;
6. Unjust Enrichment; and
7. Declaratory Relief.

JURY TRIAL DEMANDED

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INTRODUCTION

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2 1. Plaintiffs bring this consumer class action against DIRECTV, Inc. and Does 1-
3 100 (collectively "DIRECTV" or "Defendants"), a leading provider of satellite television
4 services in California. DIRECTV engages in a uniform policy and practice of enforcing an
5 alleged contractual obligation against its customers to purchase DIRECTV's services for a
6 specified period of time, typically 18 or 24 months (the "term commitment"), by imposing an
7 early cancellation penalty on its customers who discontinue receiving DIRECTV's services
8 before the expiration of the alleged term commitment, even when, for example, the reason for
9 cancellation is due to a problem with the service.

10 2. These early cancellation penalties are often as high as \$480. DIRECTV
11 withdraws the early cancellation penalties and other amounts allegedly due directly from the
12 customers' bank accounts or credit cards, using account information provided by the customers
13 when they first ordered DIRECTV, without consulting them or otherwise obtaining their consent.
14 The early cancellation penalties bear no relation to the damage, if any, incurred by DIRECTV in
15 connection with an early cancellation of the service. DIRECTV's primary intention in
16 implementing and enforcing the penalty is to force customers to pay for its services for at least
17 18 months (and sometimes longer) and prevent customers from readily changing to another
18 satellite or cable provider, even if they are no longer able to use DIRECTV's service due to
19 faulty equipment or other reasons.

20 3. As set forth below, DIRECTV has no right, contractual or otherwise, to enforce
21 the supposed term commitment or impose an early cancellation penalty against its customers by
22 withdrawing funds directly from the customers' bank accounts or credit cards without their
23 consent or otherwise. Plaintiffs and the Class members seek injunctive relief on behalf of all
24 current and former DIRECTV customers who were charged or may be charged an early
25 cancellation penalty and monetary relief on behalf of current and former DIRECTV customers
26 who paid DIRECTV an early cancellation penalty; the imposition of constructive trusts on all
27 monies by which DIRECTV was unjustly enriched as a result of collecting the early cancellation
28 penalties and as a result of tethering Plaintiffs and the Class members to DIRECTV's arbitrary

1 terms and conditions; and all such other and further relief to which they may be entitled to under
2 the UCL, the CLRA, and common law, including, without limitation, restitution.

3 **PARTIES**

4 4. Plaintiff Amy Imburgia is a resident of Huntington Beach, California. Ms.
5 Imburgia was a DIRECTV customer from approximately the summer of 2006 until October
6 2007.

7 5. Plaintiff Marlene Mecca is a resident of Sacramento, California. Ms. Mecca was
8 a DIRECTV customer from approximately May 2006 until June 2008.

9 6. Plaintiff Kathy Greiner is a resident of Long Beach, California. Ms. Greiner was
10 a DIRECTV customer from approximately June 24, 2002 until February 2008.

11 7. At all relevant times herein, Defendant DIRECTV, Inc. is a California corporation
12 with its principal place of business in El Segundo, California. DIRECTV is the largest direct-to-
13 home satellite television provider in the United States with over 16.8 million customers located
14 throughout the United States. DIRECTV is also the second largest multi-channel video
15 programming provider in the United States.

16 8. At all relevant times herein, Defendant DIRECTV and Does 1-100 did and do
17 business in Los Angeles, California. There existed and exists a unity of interest and ownership
18 between each of them, such that any individuality and separateness between them has ceased,
19 and each such entity is the alter ego of each other entity.

20 9. The names of other Defendants and/or their involvement in Plaintiffs' situation
21 are presently unknown to Plaintiffs, who therefore sue such Defendant in this action by fictitious
22 names, identified as Does 1-100. Each of the Defendants designated as a Doe is legally
23 responsible in some manner for the unlawful acts described above. Plaintiffs will seek leave of
24 the Court to amend this complaint to reflect the true names and capacities of the Defendants
25 designated as Does 1-100 when their identities and/or involvement become known.

26 10. Each Defendant (including Does 1-100) was at all relevant times the co-
27 conspirator, employee, servant, partner, joint venturer, successor, assign, aider and/or abettor of
28 each other Defendant with respect to the wrongful conduct alleged. Each was acting within the

1 course and scope of said conspiracy, agency, employment, unity of interest and/or joint venture
2 and with the permission, knowledge, approval, ratification and consent of each other, and each is
3 responsible and liable in some manner for the damages or injuries sustained or threatened to be
4 sustained by Plaintiffs and the Class.

5 11. Whenever this complaint references acts of any Defendant or one of its unnamed
6 agents or co-conspirators, such allegation shall be deemed to mean the act of all other
7 Defendants, unless the reference is in a particular cause of action, in which case it shall be
8 deemed to mean the act of all other Defendants named in that cause of action, and each of them
9 acting, individually, jointly, and severally.

10 12. Defendants aided and abetted each other in accomplishing the wrongful acts. In
11 doing so, Defendants acted with an awareness of their wrongdoing and realized that their
12 conduct would substantially assist the accomplishment of the wrongful scheme.

13 13. Each Defendant committed, conspired to commit and/or ratified each of the acts
14 and omissions alleged in this Complaint.

15 **THE TRANSACTIONS BETWEEN THE PARTIES**

16 14. DIRECTV typically receives orders for service from new customers and for change
17 in service from existing customers by telephone. When accepting orders for new service,
18 DIRECTV's policy and practice is to not inform customers of the term commitment or early
19 cancellation penalty, and when accepting orders for changes in service, DIRECTV's policy and
20 practice is to not inform customers that it takes the position that an early cancellation penalty will
21 apply to an extended term commitment occasioned by the change in service. It also typically
22 does not inform customers of its asserted right to withdraw the early cancellation penalty directly
23 from the customers' bank accounts or credit cards when the customers provide account
24 information upon ordering service.

25 15. Notwithstanding this lack of information to customers, DIRECTV claims that
26 customers agree to a term commitment and early cancellation penalty when DIRECTV's
27 equipment is installed at the customer's residence and to an extended term commitment when
28 malfunctioning equipment leased from DIRECTV is replaced or when customers change their

1 service. Supposedly this agreement is on the back of a form and is provided by an installer, who
2 typically is not an employee of DIRECTV. The installers are not instructed or authorized to call
3 the customer's attention to the back of the form, let alone explain the terms of the form if
4 customers have any questions.

5 16. DIRECTV also extends the alleged term contract when changes are made to
6 customer accounts. This often happens with an upgrade in service or replacement of
7 malfunctioning equipment. It is unclear how DIRECTV maintains that these customers have
8 agreed to a term commitment or early cancellation penalty.

9 17. The experiences of Plaintiffs Imburgia, Mecca and Greiner are typical of the
10 experiences of the Class members.

11 **MS. IMBURGIA'S DEALINGS WITH DEFENDANTS**

12 18. In the summer of 2006, Ms. Imburgia ordered services from DIRECTV by calling
13 its toll free number and speaking to a DIRECTV customer service representative.

14 19. Shortly thereafter, DIRECTV sent an installer to install the system in Ms.
15 Imburgia's residence.

16 20. In October 2007, Ms. Imburgia moved and contacted DIRECTV to discontinue
17 service. At that time she was told that she would have to pay a \$300 early cancellation penalty.
18 At no time prior to her contact with DIRECTV seeking cancellation did anyone from or
19 representing DIRECTV ever inform Ms. Imburgia about the existence of a term commitment or
20 an early cancellation penalty.

21 21. DIRECTV gave Ms. Imburgia the option of suspending her service for
22 approximately ten months. She agreed rather than pay \$300.

23 22. In July 2008, following expiration of the suspension period, Ms. Imburgia
24 cancelled her service after being informed that her new residence would not allow the system to
25 work properly.

26 23. On July 24, 2008, DIRECTV charged Ms. Imburgia's credit card \$640.95. Ms.
27 Imburgia alleges that this amount included a \$150 early cancellation penalty as well as
28 equipment and service charges.

1 24. Ms. Imburgia suffered injury in fact resulting in the loss of money or property as a
2 result of DIRECTV's unlawful conduct.

3 **MS. MECCA'S DEALINGS WITH DEFENDANTS**

4 25. In approximately June 2006, Ms. Mecca called DIRECTV and ordered service for
5 her residence in Sacramento, California.

6 26. Shortly thereafter, DIRECTV installed two receivers in Ms. Mecca's home.

7 27. In approximately August 2007, Ms. Mecca called DIRECTV and requested a
8 third receiver for her daughter's bedroom. DIRECTV installed a third receiver shortly thereafter.

9 28. Ms. Mecca contacted DIRECTV on or about June 16, 2008 to discontinue her
10 DIRECTV service because she moved into an apartment building that was not compatible with
11 DIRECTV's receiving equipment. DIRECTV informed her that she would be charged an early
12 cancellation penalty of \$175 if she cancelled her service. DIRECTV told Ms. Mecca that when
13 she received the third receiver for her daughter's bedroom in August of 2007, she agreed to a
14 term commitment that would not end until early 2009. At no time prior to her contact with
15 DIRECTV seeking cancellation did anyone from or representing DIRECTV ever inform Ms.
16 Mecca about the existence of a term commitment or an early cancellation penalty.

17 29. DIRECTV informed Ms. Mecca that it would send her a final bill that included
18 the early cancellation penalty. Nine days after this conversation, Ms. Mecca discovered that
19 DIRECTV had withdrawn \$280 directly from her checking account without notifying her or
20 otherwise receiving consent from her to withdraw these funds from her checking account.

21 30. Ms. Mecca suffered injury in fact resulting in the loss of money or property as a
22 result of DIRECTV's unlawful conduct.

23 **MS. GREINER'S DEALINGS WITH DEFENDANTS**

24 31. Ms. Greiner ordered DIRECTV's satellite television services beginning on June
25 24, 2002. In October 2007, Ms. Greiner ordered and received a replacement receiver from
26 DIRECTV because her old receiver stopped working. Ms. Greiner did not receive a copy of the
27 customer agreement at the time she placed her order and did not sign any agreement whatsoever.
28

1 32. In February 2008, Ms. Greiner began to experience technical difficulties with the
2 replacement receiver. Ms. Greiner made approximately six telephone calls to DIRECTV
3 customer service with no resolution of the equipment problem. During one call with DIRECTV
4 customer service, the customer service representative suggested Ms. Greiner climb onto her roof
5 to reset the equipment.

6 33. After nearly six years of being a DIRECTV customer, Ms. Greiner decided to
7 discontinue service based on unusable equipment and poor customer service.

8 34. Ms. Greiner returned the equipment after disconnecting the service to avoid the
9 unreturned equipment penalty. However, she was subsequently billed \$240.00 for an early
10 cancellation penalty.

11 35. Ms. Greiner was not aware that she was subject to a term commitment or early
12 cancellation penalty and was surprised to be charged for canceling her service after being a
13 DIRECTV customer for over six years and returning all leased receiving equipment to
14 DIRECTV. On or about April 1, 2008, without warning or notice, DIRECTV deducted the early
15 cancellation penalty (less a refund for unused prepaid services) directly from Ms. Greiner's bank.

16 36. On or about April 11, 2008, Ms. Greiner reversed the charges through her bank
17 and disputed the early cancellation penalty.

18 37. DIRECTV would not refund the early cancellation penalty and referred Ms.
19 Greiner's account to collections.

20 38. On or about May 27, 2008, Ms. Greiner, through her attorney, sent DIRECTV a
21 billing dispute letter requesting credit for the improperly charged early cancellation penalty. On
22 or about July 2, 2008, DIRECTV's Collection Department responded to the May 27, 2008, letter
23 and informed Ms. Greiner DIRECTV would not refund or credit her account for the early
24 cancellation penalty.

25 39. Ms. Greiner's credit has been negatively impacted by this collection account. Ms.
26 Greiner suffered injury in fact resulting in the loss of money or property as a result of
27 DIRECTV's unfair and/or unlawful conduct.
28

1 **DIRECTV'S UNLAWFUL, UNFAIR AND DECEPTIVE BUSINESS PRACTICES**

2 **IMPOSING EARLY CANCELLATION PENALTIES**

3 40. Plaintiffs are not alone in their complaints concerning DIRECTV's imposition of
4 early cancellation penalties. The Internet contains scores of complaints from customers
5 complaining of DIRECTV's imposition of early cancellation penalties upon cancellation of
6 service that DIRECTV justifies by a standardized and uniform agreement customers supposedly
7 sign upon installation of equipment or receipt of replacement equipment, and additional
8 complaints that DIRECTV has collected on the early cancellation penalties deducted directly
9 from customers' accounts without their consent. Some of them, like Ms. Mecca have demanded
10 copies of the documents they allegedly signed and been told by DIRECTV that it does not have
11 those documents or DIRECTV has simply not responded to such requests. Other customers, like
12 Ms. Greiner, have been told DIRECTV does not require a signature to complete an agreement.

13 41. Plaintiffs are informed and believe and thereon allege that, at all relevant times
14 herein, the provisions containing the term commitment and early cancellation penalty are
15 supposedly found on the back of a document, the front of which consists of an equipment
16 installation checklist showing the equipment actually installed. The back is misleadingly
17 entitled, "DIRECTV EQUIPMENT LEASE ADDENDUM" ("Lease Addendum") and is filled
18 with single spaced terms in small type.

19 42. DIRECTV claims that Class members receive the Lease Addendum when
20 DIRECTV's equipment is installed at the customer's residence and when malfunctioning
21 equipment leased from DIRECTV is replaced or when customers change their service.
22 Supposedly this agreement is on the back of a form that an installer, who typically is not an
23 employee of DIRECTV, provides. Plaintiffs are informed and believe and thereon allege that, at
24 all relevant times herein, the installers are not instructed or authorized to call the customer's
25 attention to the back of the form, let alone explain the terms of the form if customers have any
26 questions.

27 43. The top of the Lease Addendum states that it "MUST BE READ TOGETHER
28 WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO

1 YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM) FOR
2 ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE
3 SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT.” That is the closest
4 DIRECTV typically comes to obtaining customers’ agreement to the terms of the DIRECTV
5 Customer Agreement. DIRECTV does not require a customer to sign the Lease Addendum or the
6 Customer Agreement. It is the unsigned Customer Agreement, not the Lease Addendum, that
7 includes language purportedly allowing DIRECTV to withdraw funds from customers’ accounts
8 without notice or permission. Plaintiffs are informed and believe, and based thereon allege, that
9 DIRECTV, as its custom and practice, does not provide a copy of the Lease Addendum or the
10 Customer Agreement to customers prior to delivery of its equipment and/or activation of its
11 satellite television services.

12 44. The third paragraph of the Lease Addendum contains the term commitment. It
13 provides: “The programming package(s) must be maintained for a period of not less than (a)
14 eighteen (18) consecutive months for accounts with only standard receiver(s), or (b) twenty-four
15 (24) consecutive months for accounts with advanced product(s)/receiver(s) (DVR, HD, or HD
16 DVR, including additional DIRECTV receiver(s)).” The document does not state when the
17 period begins to run, or whether the customer is subject to the 18 or the 24 month period. It also
18 does not state that the period will start over upon a change of equipment or programming.
19 Plaintiffs are further informed and believe, and based thereon allege, that DIRECTV requires this
20 term commitment without regard to how long the customer has continuously received
21 DIRECTV’s services or whether the customer voluntarily upgraded to a new receiver or replaced
22 an outdated or broken receiver. DIRECTV requires its customers to activate and commit to an
23 additional term commitment each time they receive new or refurbished equipment, thereby
24 extending the length of the term commitment. The extension of the term commitment is often
25 done without prior notice to customers, and is contrary to the express terms of the Lease
26 Addendum which says, “After you have fulfilled your agreement to the required programming
27 package(s), you are not obligated to continue your subscription to DIRECTV programming for
28 any specific duration” Ex. A at ¶3.

1 45. The sixth paragraph of the Lease Addendum contains the early cancellation
2 penalty provision. Ex. A at ¶ 6. It provides, “If you fail to maintain your minimum programming
3 commitment of 18 months for standard receivers and 24 months for advanced receivers, you
4 agree that DIRECTV may charge you a prorated penalty of up to \$360 for standard receivers and
5 up to \$480 for advanced products/receivers (e.g. DVR, HD, HD DVR, etc.)” The document
6 does not state whether the basis for proration is number of days, months or years the
7 programming is maintained, amount of usage, number of receivers, or some other basis entirely.
8 It also does not state how partial units, whether measured in days, months, or usage, are to be
9 prorated.

10 46. The terms and conditions of the Customer Agreement state as follows: “Your
11 Cancellation. You may cancel Service by notifying us... In addition to any deactivation or
12 change of service penalties provided in Section 2, if you cancel Service or change your Service
13 package, you may be subject to any early cancellation penalty if you entered into a separate
14 programming commitment with DIRECTV in connection with obtaining Receiving Equipment,
15 and have failed to maintain the required programming package for the required period of time.”
16 (Ex. B at § 5(b).)

17 47. Pursuant to the Customer Agreement, DEFENDANT “reserve[s] the right to
18 change the terms and conditions on which [it] offer[s] Service.” (Ex. B, § 4.)

19 48. In the event DIRECTV makes a change to the terms and conditions of service, a
20 customer may cancel service if he/she does not agree to the changed terms or conditions. *Id.*
21 However, the customer may still be charged the penalty and/or an additional “deactivation
22 penalty”. *Id.*

23 49. At all relevant times herein:

- 24 a. The Lease Addendum and Customer Agreement were conceived and drafted in El
25 Segundo, California. Specifically, DIRECTV’s decision to impose a term
26 commitment and early cancellation penalty on its customers was made in El
27 Segundo, California and direction and oversight of the implementation and
28

1 enforcement of that policy occurs at DIRECTV's corporate headquarters in El
2 Segundo, California.

- 3 b. DIRECTV's policy of withdrawing these early cancellation penalties directly
4 from the customer's credit card or bank account was conceived and implemented
5 in El Segundo, California.
- 6 c. DIRECTV's decision not to have its customers sign the Customer Agreement but
7 instead to post it on its website was made in El Segundo, California.
- 8 d. DIRECTV's decision to have its installers provide customers with an installation
9 checklist with the Lease Addendum in small print on the reverse side, and not to
10 call attention to the term commitment and early cancellation penalty provisions
11 was made in El Segundo, California.
- 12 e. In addition, DIRECTV's decisions as to the instructions to be given its customer
13 service representatives, and devising of the training and oversight to be given its
14 customer service representatives, were made in El Segundo, California.
- 15 f. In short, all of the policies and practices alleged in this Complaint to be improper
16 were conceived of and directed, implemented and/or enforced in El Segundo,
17 California.

18 **CLASS ALLEGATIONS**

19 **A. Definition of the Class**

20 50. Plaintiffs bring this action individually and on behalf of all persons as the Court
21 may determine to be appropriate for class certification, pursuant to Code of Civil Procedure
22 § 382 and Civil Code § 1781. Plaintiffs seek to represent a Class of consumers defined as:

23 **All current and former DIRECTV customers in the State of California who**
24 **were assessed an early cancellation penalty by DIRECTV during the four**
25 **years preceding the filing of the original complaint through resolution of this**
26 **action; and all current DIRECTV Customers in the State of California whose**
27 **service DIRECTV asserts is subject to its policy regarding early cancellation**
28 **penalties.**

1 Excluded from the Class are Defendants and their affiliates, predecessors, successors, officers,
2 directors, agents, servants, or employees, and the immediate family members of such persons.
3 Plaintiffs reserve the right to modify the class definition or propose one or more subclasses if
4 discovery reveals such modifications are appropriate.

5 **B. Numerosity**

6 51. As of December 31, 2007, DIRECTV claims it had 16.8 million current
7 customers. Plaintiffs are informed and believe that a significant portion of the 16.8 million
8 reside in California. Accordingly, the members of the Class are so numerous that joinder is
9 impracticable.

10 **C. Commonality**

11 52. There is a well-defined community of interest in the relevant questions of law and
12 fact affecting putative Class members. Common questions of law and fact predominate over any
13 individual questions affecting Class members, including, but not limited to the following:

- 14 a. Must any alleged contract, including any alleged extension of the contract when
15 replacement or enhanced equipment is installed or new services are initiated,
16 between DIRECTV and each Class member be in a writing signed by the Class
17 member to be valid?
- 18 b. Does DIRECTV have the burden of proof to show that such a signed writing
19 exists?
- 20 c. Are the term commitment and the early cancellation penalty provisions in the
21 form Lease Addendum and the provision in the "Customer Agreement" that
22 purportedly allows DIRECTV to withdraw funds from customers' accounts
23 without warning or permission enforceable?
- 24 d. Have DIRECTV and Class members entered into binding agreements when one
25 set of terms are contained on the back of a form and the other is contained in a
26 form that the customer does not sign, neither has been presented to the customer
27 before the customer orally agrees to receive and pay for programming services,
28

1 and the customer does not receive any consideration at the time, if ever, that the
2 two forms are presented to the customer?

- 3 e. Have Class members made binding promises as to term commitments and early
4 cancellation penalties when the language of DIRECTV's form, if it is presented to
5 the customers, does not contain a start date for the term, does not state clearly the
6 length of the term, and does not state how the early cancellation penalty is to be
7 calculated?
- 8 f. Are certain provisions of DIRECTV's Customer Agreement unconscionable, in
9 violation of public policy or otherwise unenforceable, including but not limited to
10 the term commitment, early cancellation penalty and any provision that
11 purportedly allows DIRECTV to withdraw funds from customers' account
12 without notice or permission as discussed above?
- 13 g. Has DIRECTV violated the Consumer Legal Remedies Act, Civil Code
14 § 1750, *et seq.*, in its imposition and enforcement of term commitments,
15 early cancellation penalties and/or the provision that purportedly allows
16 DIRECTV to withdraw funds from customers' accounts without notice or
17 permission?
- 18 h. Has DIRECTV engaged in false and misleading advertising in violation of
19 Business & Professions Code § 17500?
- 20 i. Has DIRECTV committed illegal, unfair, deceptive and/or fraudulent
21 business practices in violation of Business & Professions Code § 17200 in
22 its imposition and enforcement of term commitments, early cancellation
23 penalties and/or the provision that purportedly allows DIRECTV to withdraw
24 funds from customers' accounts without notice or permission?
- 25 j. Is DIRECTV's early cancellation penalty provision an illegal liquidated
26 damages clause voidable pursuant to Civil Code § 1671(d)?
- 27 k. Has DIRECTV breached its obligations of good faith to Plaintiffs and the
28 Class members?

- 1 l. Has DIRECTV been unjustly enriched?
- 2 m. Are Plaintiffs and the Class Members entitled to restitution of all amounts
- 3 acquired by DIRECTV by enforcing the early cancellation penalty provisions?
- 4 n. Is injunctive relief appropriate?
- 5 o. What is the proper measure of damages incurred by Plaintiffs and the Class
- 6 members?

7 **D. Typicality**

8 53. Plaintiffs have the same interests in this matter as all the other members of the

9 Class, and their claims are typical of all members of the Class. If brought and prosecuted

10 individually, the claims of each Class member would require proof of many of the same material

11 and substantive facts, rely upon the same remedial theories and seek the same relief.

12 54. The claims of Plaintiffs and the other Class members have a common origin and

13 share a common basis. The claims originate from the same illegal, unfair, deceptive and

14 fraudulent practices on the part of DIRECTV and its acts in furtherance thereof.

15 55. All Class members have suffered injury in fact resulting in the loss of money or

16 property by reason of DIRECTV's unlawful course of conduct in that they have paid, or are

17 subject to, early cancellation penalties.

18 **E. Adequacy of Representation**

19 56. Plaintiffs' claims are sufficiently aligned with the interests of the absent members

20 of the Class to ensure that the Class claims will be prosecuted with diligence and care by

21 Plaintiffs as representatives of the Class. Plaintiffs will fairly and adequately represent the

22 interests of the Class and do not have interests adverse to the Class.

23 57. Plaintiffs have retained the services of counsel, who are experienced in complex

24 class action litigation, and in particular class actions involving consumer protection matters.

25 Plaintiffs' counsel will adequately prosecute this action and will otherwise protect and fairly and

26 adequately represent Plaintiffs and all absent Class members.

27 **F. Class Treatment Is the Superior Method of Adjudication**

28

1 58. The prosecution of separate actions by individual Class members would create a
2 risk of inconsistent or varying adjudications which would establish incompatible standards of
3 conduct for the parties opposing the Class. Such incompatible standards of conduct and varying
4 adjudications on the same essential facts, proof and legal theories would also create and allow
5 the existence of inconsistent and incompatible rights within the Class.

6 59. Moreover, a class action is superior to other methods for the fair and efficient
7 adjudication of the controversies raised in this Complaint because:

- 8 a. Individual claims by the Class members would be impracticable as the costs of
9 pursuit would far exceed what any one Class member has at stake;
- 10 b. Very little individual litigation has been commenced over the controversies
11 alleged in this Complaint and individual Class members are unlikely to have an
12 interest in separately prosecuting and controlling individual actions;
- 13 c. The concentration of litigation of these claims in one forum will achieve
14 efficiency and promote judicial economy; and
- 15 d. The proposed class action is manageable.

16 60. Therefore, class treatment of Plaintiffs' claims is appropriate and necessary.

17 **JURISDICTION AND VENUE**

18 61. This Court has jurisdiction under Code of Civil Procedure § 410.10. Plaintiffs'
19 damages exceed the jurisdictional minimum of this Court. Venue is proper in the County of Los
20 Angeles because a substantial amount of Defendants' conduct complained of herein took place in
21 the County of Los Angeles.

22 62. Venue is also proper in this County under Business & Professions Code § 17204
23 and Civil Code § 1780(c) because Defendants are located and/or are doing business in this
24 County and throughout the State of California, and the practices being challenged by this action
25 were, on information and belief, conceived and/or created in this County. Further, greater than
26 two-thirds of the members of the proposed Class in the aggregate are citizens of the State of
27 California.

28 **CAUSE OF ACTION I**

1 **VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**

2 **CAL. CIV. CODE § 1750, et seq.**

3 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

4 63. Plaintiffs reallege and incorporate by reference all allegations contained in the
5 Complaint as if set forth separately in this Cause of Action.

6 64. This cause of action is brought pursuant to the California Consumer Legal
7 Remedies Act ("CLRA"), Civil Code § 1750, et seq. Plaintiffs bring this action on their own
8 behalf and on behalf of the Class members, all of whom are similarly situated consumers within
9 the meaning of Civil Code § 1781.

10 65. DIRECTV has violated the CLRA, Civil Code §§ 1770(a)(9), (a)(14) and (a)(19)
11 by:

- 12 a. Failing to disclose and/or failing to adequately disclose to Class members the
13 supposed term commitment associated with DIRECTV programming service;
- 14 b. Failing to disclose and/or failing to adequately disclose to Class members that
15 they would be charged an early cancellation penalty if they did not continue to
16 receive DIRECTV's programming services for the alleged term commitment;
- 17 c. Failing to disclose and/or failing to adequately disclose to Class members that
18 early cancellation penalties would be deducted directly from Class members'
19 bank or credit card accounts;
- 20 d. Including unconscionable and unenforceable terms and conditions in the Lease
21 Addendum and Customer Agreement;
- 22 e. Enforcing unconscionable and unenforceable terms and conditions against Class
23 members, including terms and conditions that Class members never accepted or
24 otherwise agreed to;
- 25 f. Collecting early cancellation penalties from Class members and charging such
26 penalties directly to Class members' bank account or credit card; and
- 27 g. Advertising goods or services with the intent not to sell them as advertised.

28 66. As a result of such actions, Plaintiffs and Class members have been damaged.

1 67. Plaintiffs have suffered as a result of Defendants' unlawful conduct because they
2 paid penalties, or were assessed such penalties, based on Defendants' representation that the
3 transaction involved an obligation to do so when, in fact, there was no obligation to pay early
4 cancellation penalties following cancellation of DIRECTV's services. Moreover, Plaintiffs have
5 also suffered as a result of being subject to the unconscionable provisions requiring payments of
6 early cancellation penalties following cancellation of DIRECTV's services.

7 68. Defendants misrepresented and concealed from Plaintiffs that Defendants did not
8 have the right to require payments following cancellation of DIRECTV's services.

9 69. Defendants' misrepresentations and omissions described in the preceding
10 paragraphs were intentional, or alternatively, made without the use of reasonable procedures
11 adopted to avoid such an error.

12 70. Defendants, directly or indirectly, have engaged in substantially similar conduct
13 to Plaintiffs and to each member of the Class.

14 71. Such wrongful actions and conduct are ongoing and continuing. Unless
15 Defendants are enjoined from continuing to engage in such wrongful actions and conduct,
16 members of the consuming public will continue to be damaged by Defendants' conduct.

17 72. Defendants, and each of them, aided and abetted, encouraged and rendered
18 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
19 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
20 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
21 each of the defendants acted with an awareness of his/her/its primary wrongdoing and realized
22 that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,
23 wrongful goals, and wrongdoing.

24 73. Plaintiffs and the Class are entitled to an injunction, pursuant to Civil Code
25 § 1780(a)(1)-(3), prohibiting DIRECTV from continuing to engage in the above-described
26 violations of the CLRA; actual damages for Plaintiffs and Class members; restitution of
27 property; punitive damages; and any other relief the court deems proper, including special
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1 statutory damages permitted by the CLRA. Plaintiffs further seek reasonable attorney's fees
2 under Civil Code § 1780(d).

3 74. Pursuant to Civil Code § 1782, Plaintiffs Imburgia, Mecca and Greiner notified
4 DIRECTV in writing, of the particular violations of Civil Code § 1770 alleged in this complaint
5 and demanded that DIRECTV rectify the problems associated with the practices and policies as
6 set forth herein. Those notices were sent by certified mail, return receipt requested, at least 30
7 days prior to the filing of their original complaints. DIRECTV failed to provide the relief
8 demanded in Plaintiffs' notices within 30 days. Therefore, Plaintiffs intend to seek restitution
9 and damages.

10 **CAUSE OF ACTION II**

11 **VIOLATIONS OF THE CALIFORNIA FALSE ADVERTISING LAW**

12 **CAL. BUS. & PROF. CODE § 17500**

13 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

14 75. Plaintiffs reallege and incorporate by reference all allegations contained in the
15 Complaint as if set forth separately in this Cause of Action.

16 76. DIRECTV violated California's False Advertising Law, Business & Professions
17 Code § 17500 by:

- 18 a. Failing to disclose and/or failing to adequately disclose to Class members the
19 supposed term commitment associated with DIRECTV programming service;
- 20 b. Failing to disclose and/or failing to adequately disclose to Class members that
21 they would be charged an early cancellation penalty if they did not continue to
22 subscribe to DIRECTV's programming services for the alleged term commitment;
23 and
- 24 c. Failing to disclose and/or failing to adequately disclose to Class members that
25 early cancellation penalties would be deducted directly from Class members'
26 bank or credit card accounts.

27 77. These representations and/or omissions have deceived and are likely to deceive
28 Plaintiffs, the Class and the public in connection with their decision to subscribe to DIRECTV's

1 programming without being apprised of Defendants' term commitments, early cancellation
2 penalty provisions and/or any provision that purportedly allows DIRECTV to withdraw funds
3 from customers' account without notice or permission. DIRECTV's representations also have
4 deceived and are likely to deceive Plaintiffs, the Class and the public with respect to their
5 supposed obligation to pay DIRECTV's early cancellation penalties. Thus, Plaintiffs and Class
6 members were deprived of their monies and property as a result of DIRECTV's acts and
7 practices. Had Plaintiffs and Class members known the actual facts, they would not have paid
8 DIRECTV's early cancellation penalties.

9 78. Defendants, directly or indirectly, have engaged in substantially similar conduct
10 to each Plaintiff and to each member of the Class.

11 79. Defendants, and each of them, aided and abetted, encouraged and rendered
12 substantial assistance in accomplishing the wrongful conduct and their wrongful goals and other
13 wrongdoing complained of herein. In taking action, as particularized herein, to aid and abet and
14 substantially assist the commission of these wrongful acts and other wrongdoings complained of,
15 each of the defendants acted with an awareness of his/her/its primary wrongdoing and realized
16 that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,
17 wrongful goals, and wrongdoing.

18 80. Plaintiffs and Class members have been damaged by DIRECTV's violation of §
19 17500.

20 81. As a result of the conduct described above, Defendants have been and will be
21 unjustly enriched at the expense of Plaintiffs and Class members. Specifically, Defendants have
22 been unjustly enriched by receiving substantial monies in the form of early cancellation penalties
23 deducted directly fro Plaintiffs and Class members' bank or credit card accounts.

24 82. So as not to be unjustly enriched by their own wrongful actions and conduct,
25 Defendants should be required to disgorge and restore to Plaintiffs and Class members all monies
26 wrongfully obtained by Defendants as a result of their false and misleading advertising, together
27 with interest.

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1 and that early cancellation penalties would be deducted directly from Class
2 members' bank or credit card accounts in violation of Civil Code §§ 1572, 1709
3 and 1710.

4 86. Defendants engage in a systematic scheme to charge and collect early cancellation
5 penalties from Plaintiffs and Class members in violation of state law and the fundamental
6 policies delineated in statutory provisions. DIRECTV's early cancellation penalty practices also
7 violate the unfair prong of the UCL because the practice is oppressive, unscrupulous or
8 substantially injurious to consumers and the competitive process when consumers are effectively
9 locked into continuing their service with DIRECTV by a charge that is out of proportion to the
10 harm, if any, suffered by the provider as a result of the cancellation of services and does not
11 represent a reasonable calculation of the damages, if any, caused by such cancellation. Such
12 penalties prevent Plaintiffs and the Class members from freely choosing a satellite or cable
13 television provider by imposing unnecessary costs to switch providers and impede free
14 competition between providers on price, coverage, service, quality, terms of service, technology
15 and ease of use. As a result, Defendants engage in unfair business practices prohibited by
16 Business & Professions Code § 17200, *et seq.*

17 87. Business & Professions Code § 17200 also prohibits any "fraudulent ... business
18 act or practice." As detailed in the preceding paragraphs, Defendants' conduct did deceive and is
19 likely to deceive Plaintiffs, the Class and the public by, *inter alia*, engaging in the following
20 deceptive business practices:

- 21 a. Failing to disclose and/or failing to adequately disclose to Class members the
22 supposed term commitment associated with DIRECTV programming service;
- 23 b. Failing to disclose and/or failing to adequately disclose to Class members that
24 they would be charged an early cancellation penalty if they did not continue to
25 subscribe to DIRECTV's programming services for the alleged term commitment;
- 26 c. Failing to disclose and/or failing to adequately disclose to Class members that
27 early cancellation penalties would be deducted directly from Class members'
28 bank or credit card accounts;

1 d. Including unconscionable and unenforceable terms and conditions in the Lease
2 Addendum and Customer Agreement; and

3 e. Enforcing unconscionable and unenforceable terms and conditions against Class
4 members, including terms and conditions that Class members never accepted or
5 otherwise agreed to.

6 88. As a result of such actions, Plaintiffs and Class members suffered damages.

7 89. Such wrongful actions and conduct are ongoing and continuing. Unless
8 Defendants are enjoined from continuing to engage in such wrongful actions and conduct,
9 members of the consuming public will continue to be damaged by Defendants' conduct.

10 90. Pursuant to Business & Professions Code § 17203, Plaintiffs and Class members
11 seek an order requiring Defendants to immediately cease such unlawful, unfair and deceptive
12 business practices and requiring them to return the full amount of money improperly collected
13 from Plaintiffs and Class members – including, but not limited to, early cancellation penalties,
14 plus interest and attorneys' fees, and take all steps necessary to remove any adverse indication on
15 Plaintiffs and Class members' credit report(s) in relation to the early cancellation penalties.

16 **CAUSE OF ACTION IV**

17 **VIOLATION OF CIVIL CODE § 1671(d)**

18 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

19 91. Plaintiffs reallege and incorporate by reference all allegations contained in the
20 Complaint as if set forth separately in this Cause of Action.

21 92. Plaintiffs allege, in the alternative, that the early cancellation penalties imposed
22 by DIRECTV are unlawful liquidated damages because they are not designed to compensate
23 DIRECTV for any damages arising from Plaintiffs' and the Class Members' cancellation, but
24 rather are designed to lock in Plaintiffs and the Class members and serve as a disincentive to
25 prevent Plaintiffs and the Class members from switching to competing services in the event they
26 become dissatisfied with the service provided by DIRECTV or can no longer access DIRECTV's
27 service. To the extent that DIRECTV suffers any damage upon cancellation of service and
28 return of equipment by Plaintiffs and the Class members, it would not be impracticable or

1 extremely difficult to fix the actual damages in the event a consumer prematurely terminated
2 their service with DIRECTV.

3 93. The early cancellation penalties imposed by DIRECTV are also unlawful
4 liquidated damages because the parties did not agree on an amount to be the presumed damages,
5 and DIRECTV did not make a reasonable effort to set the liquidated damages at the average
6 amount of damages upon premature termination of service.

7 94. Plaintiffs and Class members have been damaged by DIRECTV's imposition and
8 collection of early cancellation penalties as invalid liquidated damages under Civil Code §
9 1671(d).

10 95. Such wrongful actions and conduct are ongoing and continuing. Unless
11 Defendants are enjoined from continuing to engage in such wrongful actions and conduct,
12 members of the consuming public will continue to be damaged by Defendants' conduct.

13 CAUSE OF ACTION V

14 **COMMON COUNT FOR MONEY HAD AND RECEIVED**

15 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

16 96. Plaintiffs reallege and incorporate by reference all allegations contained in the
17 Complaint as if set forth separately in this Cause of Action.

18 97. Within the last four years at El Segundo, California, DIRECTV unlawfully
19 collected early cancellation penalties in varying sums ranging in excess of \$1.00 to \$480.00 from
20 former customers. These amounts were collected from Plaintiffs and the Class members by
21 DIRECTV as unlawful early cancellation penalties.

22 98. DIRECTV collected early cancellation penalties from Plaintiffs and the Class
23 members by enforcing terms included in the Lease Addendum and Customer Agreement which
24 are unconscionable and voidable based on the lack of contractual formation and mutual assent.

25 99. Plaintiffs have repeatedly demanded payment from DIRECTV placing telephone
26 calls to DIRECTV customer service and/or collection centers and sending dispute letters and/or
27 Consumer Legal Remedies Act notice letters requesting reimbursement for these unlawfully
28 charged and collected penalties.

1 100. As a result of DIRECTV's failure to repay the amount owed, Plaintiffs and the
2 Class members have been damaged in a sum certain to be determined according to proof,
3 together with accrued interest on that sum, and all attorney's fees and costs incurred in collecting
4 this amount.

5 101. Such wrongful actions and conduct are ongoing and continuing. Unless
6 Defendants are enjoined from continuing to engage in such wrongful actions and conduct,
7 members of the consuming public will continue to be damaged by Defendants' conduct.

8 **CAUSE OF ACTION VI**

9 **UNJUST ENRICHMENT**

10 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

11 102. Plaintiffs reallege and incorporate by reference all allegations contained in the
12 Complaint as if set forth separately in this Cause of Action.

13 103. DIRECTV has been unjustly enriched by obtaining and retaining the property of
14 its customers that it was not entitled to. The early cancellation penalties DIRECTV collected
15 from its customers are unlawful and unenforceable because DIRECTV did not adequately inform
16 Class members of the term commitment, early cancellation penalties and the provision that
17 purportedly allows DIRECTV to withdraw funds from customers' account without notice or
18 permission. These provisions are unconscionable, and the early cancellation penalties are
19 unlawful liquidated damages.

20 104. It would be inequitable for Defendant to continue to retain the money of Plaintiffs
21 and the Class members.

22 **CAUSE OF ACTION VII**

23 **DECLARATORY RELIEF**

24 **(Brought by Plaintiffs and the Class Against Defendant DIRECTV and Does 1-100)**

25 105. Plaintiffs reallege and incorporate by reference all allegations contained in the
26 Complaint as if set forth separately in this Cause of Action.

1 106. An actual controversy has arisen and now exists between Plaintiffs and
2 Defendants concerning their respective rights and duties in that Plaintiffs contend, and
3 Defendants deny, that:

4 a. DIRECTV's Customer Agreement and Lease Addendum (collectively
5 "Agreements") with Plaintiffs and all Class members, including its term
6 commitment, early cancellation penalty and the provision that purportedly allows
7 DIRECTV to withdraw funds from customers' accounts without notice or
8 permission, are subject to rescission pursuant to Civil Code § 1689, for multiple
9 reasons, including but not limited to:

10 i. DIRECTV did not obtain (or maintain) writings signed by
11 Plaintiffs and Class members agreeing to these terms;

12 ii. DIRECTV did not adequately set forth these terms, either orally or
13 in writing, to make them enforceable; and

14 iii. Plaintiffs and Class members did not accept the terms and
15 conditions of the Lease Addendum and Customer Agreement;

16 b. In the alternative, the terms and conditions of the Agreements are illegal under
17 Civil Code § 1671(d);

18 c. In the alternative, the early cancellation penalties and related provisions of the
19 Agreements are unconscionable pursuant to § 1670.5, *et seq.*; and

20 d. In the alternative, the Agreements are procedurally and substantively
21 unconscionable.

22 i. The Agreements are preprinted, standardized contracts of adhesion
23 that are not subject to modification or negotiation and are
24 presented to customers after the delivery and activation of
25 equipment on a take it or leave it basis. DIRECTV did not provide
26 Plaintiffs and Class members copies of the Agreements prior to
27 activation of service and did not require Plaintiffs and Class
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members to sign the Agreements indicating consent to be bound by their terms and conditions.

ii. DIRECTV ties the lease of equipment for which it provides no warranty to a term commitment of up to 24 months and a corresponding early cancellation penalty for canceling service. This is above and beyond the requirement that all equipment must be returned to DIRECTV and separate penalties DIRECTV charges for deactivation, failure to return equipment, and failure to activate service.

iii. Acceptance of DIRECTV's terms and conditions lacks a modicum of bilaterality. DIRECTV's terms and conditions provide that it may change the terms and conditions on which it offers service at any time, but does not allow customers to change the terms and conditions either before or after leasing equipment and purchasing services from DIRECTV, and if Plaintiffs or Class members cancel service, even because of such a change, DIRECTV charges them a penalty. Plaintiffs and Class members were presented with DIRECTV's terms and conditions on a take it or leave it basis with no ability to negotiate. As such, Plaintiffs and Class members had unequal bargaining power, no real negotiation, and an absence of meaningful choice.

iv. The penalty imposed by DIRECTV is not based on the estimated or actual damage DIRECTV would incur as a result of a cancellation of service and return of receiving equipment, especially since DIRECTV has received the leased equipment back and can reissue the equipment to a different customer.

v. Since the Agreements are both procedurally and substantively unconscionable, they are unenforceable as a matter of law.

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vi. DIRECTV has enforced these unconscionable and unenforceable terms and conditions against Plaintiffs and Class members by charging Plaintiffs and Class members early cancellation penalties and by collecting these early cancellation penalties and other amounts allegedly due directly from customer's bank or credit card accounts.

vii. Plaintiffs and Class members have been damaged by DIRECTV's practice of imposing unconscionable and unenforceable contract terms and conditions against them.

viii. Such wrongful actions and conduct are ongoing and continuing. Unless Defendants are enjoined from continuing to engage in such wrongful actions and conduct, members of the consuming public will continue to be damaged by Defendants' conduct.

107. Plaintiffs desire a judicial determination of their and Class members' rights and duties arising from DIRECTV's Agreements.

108. A judicial declaration is necessary and appropriate so that the parties may ascertain their rights and duties arising from the aforementioned transactions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the proposed Class, pray for judgment as follows:

A. Certification of the proposed Class pursuant to Code Of Civil Procedure § 382 and Civ. Code § 1780, *et seq.*;

B. Designation of Plaintiffs as representative of the proposed Class and designation of their counsel as Class counsel;

C. Judgment in favor of Plaintiffs and the Class members and against DIRECTV;

D. Award Plaintiffs and the Class members restitution, disgorgement, actual, statutory and punitive damages, and attorneys' fees and costs, including pre-judgment and post-judgment interest thereon;

1 E. Temporary, preliminary and permanent order for injunctive relief enjoining
2 DIRECTV from continuing to engage in the business practices complained of herein;

3 F. Such further relief as the Court deems just and proper.
4
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6 **JURY DEMAND**

7 Plaintiffs hereby demand a trial by jury.

8
9 Dated: March ^{13th}, 2009

Respectfully submitted,

10 ~~WATERS KRAUS & PAUL, DLP~~

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Attorneys for Plaintiffs

* *Pro Hac Vice* applications to be submitted.

EXHIBIT A



INSTALLATION/SERVICE SATISFACTION CHECKLIST

Welcome to DIRECTV! We want to ensure we meet your service and installation expectations. Please take a moment to examine the items below and place your initials in the space provided to indicate that each item has been satisfied. If you find an item in the DIRECTV System Education Checklist that has not been explained, please prompt the installer to provide a thorough explanation. Enter "N/A" (not applicable) for any items that are not relevant to your installation/service call.

Please check one: Installation _____ Service Call _____ Upgrade _____
To be completed by technician: Job #: _____ Tech ID #: _____

DIRECTV Installation/Service Checklist

The installer who completed my installation/service call:

- _____ Called to confirm my appointment the day before the scheduled installation/service call
- _____ Called the day of the installation/service call to advise he was en route to my home
- _____ Was on time (arrived within scheduled appointment window)
- _____ Had proper identification and uniform
- _____ Performed a site survey with me, indicating where the satellite dish would be positioned
- _____ Explained the installation process prior to starting any work
- _____ Explained any additional installation/service call changes before starting work
- _____ Called a DIRECTV representative and confirmed that programming was active
- _____ Explained the importance of the telephone hook-up and that I must maintain a working telephone line connected to all my DIRECTV System receivers
- _____ Entered installation or service area was clean and orderly upon completion of work
- _____ Resolved all problems related to service call issue
- _____ Provided company name and telephone number to contact if there are any problems with the installation/service call
- _____ Left a copy of the owner's manual and/or Welcome Kit and explained what it covers
- _____ Conducted a final walk-through showing where all devices/equipment are located

DIRECTV System Education Checklist

The installer thoroughly explained how to operate my DIRECTV System and remote control including how to:

- _____ Access and to locate Customer Education channels and local channels
- _____ Turn the DIRECTV System, television and co-located devices on and off using the remote control
- _____ Change channels and turn the volume up and down on the DIRECTV System and the remote control
- _____ Set up parental controls ("Locks and Limits") and favorite channels lists
- _____ Access and navigate the on-screen programming guide and how to check on-screen signal strength
- _____ Purchase Pay Per View programming with the remote control
- _____ Switch between my DIRECTV programming and off-air satellite channels (if applicable)
- _____ Record DIRECTV programming with the VCR and record and use the DVR features (if applicable)
- _____ Reset the DIRECTV receiver
- _____ Use the input settings for all devices now connected to the TV
- _____ Compare the picture quality and settings for SD and HD channels (if HD installed)
- _____ Navigate and use interactive features (if applicable)

Were you completely satisfied with your installation/service call (Please initial one)? YES _____ NO _____

Thank you for taking the time to complete this checklist. This information is essential for DIRECTV to monitor our customers' installation/service call experience and enables us to continually improve the quality of

DIRECTV EQUIPMENT LEASE ADDENDUM



Check here if you are a new DIRECTV customer.
 Check here if you are a current DIRECTV customer obtaining one or more additional DIRECTV receiver(s).
 Check here if this is a Service Call. Note: Lease Addendum is not applicable for Service Calls.

Thank you for choosing DIRECTV. By signing this Equipment Lease Addendum, you agree to abide by the following terms and conditions. You warrant to lease from DIRECTV and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, receiver(s) collectively referred to as the "equipment," and DIRECTV is willing to lease to you, one or more DIRECTV new or reconditioned receivers, receiver(s) collectively referred to as the "equipment." DIRECTV's equipment does not include the set-top box. THIS EQUIPMENT LEASE ADDENDUM CONTAINS THE TERMS AND CONDITIONS FOR THE LEASE BY DIRECTV OF THE EQUIPMENT TO YOU. BUT MUST BE READ TOGETHER WITH THE DIRECTV CUSTOMER AGREEMENT (A COPY OF WHICH IS PROVIDED TO YOU WITH YOUR FIRST BILL AND IS AVAILABLE AT WWW.DIRECTV.COM) FOR ALL OF THE TERMS AND CONDITIONS REGARDING THE PROVISION OF THE SERVICES AND YOUR RIGHT TO USE THE DIRECTV EQUIPMENT. YOU UNDERSTAND AND AGREE THAT YOU HAVE NOT PURCHASED THE DIRECTV EQUIPMENT. YOU DO NOT OWN THE DIRECTV EQUIPMENT AND THE DIRECTV EQUIPMENT MUST BE USED AND RETURNED TO DIRECTV STRICTLY IN ACCORDANCE WITH THE TERMS OF THIS EQUIPMENT LEASE ADDENDUM AND THE DIRECTV CUSTOMER AGREEMENT. PROGRAMMING AGREEMENT. Within 30 days of provision of DIRECTV equipment to you, or on the date that the professional installer has installed or is prepared to install your DIRECTV equipment, whichever is sooner, you agree to activate each and every DIRECTV Receiver identified by you or provided to you with any DIRECTV base programming package (valued at \$29.99 per mo. or above), Jadenword or any qualifying international service bundle, which bundle shall include either the DIRECTV BASIC programming package (valued at \$39.99 per mo.) or the DIRECTV PREFERRED CHOICE programming package (valued at \$32.99 per mo.) together with any WorldDirect International-language service. DVR service activation (\$5.99/mo.) required for DVR leases; HD Access fee (\$3.99/mo.) required for HD receiver leases; and, both DVR service and HD Access fee payment required for HD DVR leases.

PROGRAMMING COMMITMENT. The programming package(s) must be qualified for a period of not less than (a) eighteen (18) consecutive months for accounts with only standard receiver(s), or (b) twenty-four (24) consecutive months for accounts with advanced product(s) receiver(s) (DVR, HD, or HD DVR, including additional DIRECTV receiver(s)). After you have fulfilled your agreement to the required programming package(s), you are not obligated to continue your subscription to DIRECTV programming for any specific duration. Certain DIRECTV customers may activate additional receivers with their existing DIRECTV programming package. THIS PROGRAMMING COMMITMENT IS SEPARATE AND DIFFERENT FROM ANY OTHER PROGRAMMING COMMITMENT YOU MAY HAVE MADE WITH DIRECTV AND IS FULLY ENFORCEABLE UNDER THESE TERMS.

MONTHLY LEASE FEE. For a new DIRECTV equipment, you will be charged a monthly lease fee in the amount of \$4.99 per 2nd and each additional receiver leased by you in your household. For a current customer, you will be charged a monthly fee in the amount of \$4.99 for each receiver leased by you in your household, unless you replace all of your owned equipment with leased equipment, in which case, the monthly lease fee will be waived for the 1st receiver. Applicable taxes will apply. LEASE FEE SUBJECT TO CHANGE AT ANY TIME.

CARE OF EQUIPMENT. You are responsible for the loss of or any damage to the DIRECTV equipment that you have leased from DIRECTV. You shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocate, alter or tamper with the DIRECTV equipment at any time. DIRECTV PROVIDES YOU THE DIRECTV EQUIPMENT AS IS, AND MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, REGARDING THE MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED. DIRECTV IS NOT RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES RELATING TO THE DIRECTV EQUIPMENT PROVIDED TO YOU. In the event the DIRECTV equipment you have leased from DIRECTV does not operate, contact DIRECTV at 1-800-531-5000.

CONSEQUENCES OF YOUR FAILURE TO ACTIVATE PROGRAMMING OR SATISFY YOUR PROGRAMMING COMMITMENT. If you fail to activate all of your DIRECTV equipment in accordance with the Equipment Lease Addendum, you agree that DIRECTV or an authorized DIRECTV Retailer may charge you a fee, as liquidated damages, of \$150 for each receiver that is not activated. If you fail to maintain your minimum programming commitment of 18 months for standard receivers and 24 months for advanced receivers, you agree that DIRECTV may charge you a prorated fee of up to \$360 for standard receivers and up to \$480 for advanced product/receivers (e.g., DVR, HD, HD DVR, etc.).

RETURN OF DIRECTV EQUIPMENT. If you cease to be DIRECTV's customer for any reason (whether voluntarily or involuntarily) or if you decide to discontinue/terminate your DVR service or HD Access fee (if you are leasing a DVR or HD Receiver, respectively), or if you call DIRECTV within seven (7) days after the termination of your DIRECTV programming service, DVR service or HD Access fee, as applicable, to obtain information from DIRECTV necessary to arrange for a ground or air freight service to pick up and deliver all of your DIRECTV equipment, including the DIRECTV equipment necessary to arrange for a ground or air freight service to pick up and deliver all of your DIRECTV equipment, you must insert into each receiver, must be returned to DIRECTV in good working order, normal wear and tear excepted. In the event that all of the DIRECTV equipment is not returned to DIRECTV within thirty (30) days of the termination of your DIRECTV programming services or is damaged, you agree to pay DIRECTV the sum of \$65 per each DIRECTV standard receiver; \$200 for each DIRECTV receiver that is not returned to DIRECTV or that is damaged when it is returned to DIRECTV as compensation for a portion of the expenses incurred by DIRECTV in establishing your account and providing you the DIRECTV equipment for your use. Visit WWW.DIRECTV.COM or call 1-800-531-5000 for details.

ARBITRATION. You and DIRECTV agree that both parties will resolve any dispute arising under this Equipment Lease Addendum, the DIRECTV Customer Agreement or any other addendum thereto, or regarding your DIRECTV programming service, through binding arbitration as fully set forth in the DIRECTV Customer Agreement.

BY SIGNING BELOW, I HEREBY AUTHORIZE AND AGREE THAT DIRECTV MAY, AT ITS SOLE OPTION, CHARGE THE FEES DESCRIBED HEREIN, I WARRANT THAT I AM 18 YEARS OLD OR OLDER AND THAT ALL INFORMATION SUPPLIED BY OR ABOUT ME IS ACCURATE. I HAVE READ AND AGREE TO THE ABOVE TERMS AND CONDITIONS.

EXHIBIT B



CUSTOMER AGREEMENT

Effective as of April 24, 2007, until replaced

THIS DOCUMENT DESCRIBES THE TERMS AND CONDITIONS OF YOUR RECEIPT AND PAYMENT OF DIRECTV SERVICE AND IS SUBJECT TO ABSTRACTION (SECTION 9). IF YOU DO NOT ACCEPT THESE TERMS, PLEASE NOTIFY US IMMEDIATELY AND WE WILL CANCEL YOUR SERVICE. IF YOU INSTEAD DECIDE TO RECEIVE OUR SERVICE, IT WILL MEAN THAT YOU ACCEPT THESE TERMS AND THEY WILL BE LEGALLY BINDING. TO VIEW THIS AGREEMENT IN SPANISH VISIT DIRECTV.COM/ACUENDO OR CALL 1-888-388-6622 TO REQUEST A PRINTED COPY. (VISITE A DIRECTV.COM/ACUENDO O LLAME AL 1-888-388-6622 PARA SOLICITAR ESTE DOCUMENTO.)

CONTACTING DIRECTV:

You may contact us 24 hours a day, any day of the year by sending us an e-mail at directv.com@email or by writing to:

DIRECTV, Inc.
Customer Service
P.O. Box 28079
Glendale, CA 91209-9079

You can also call us at 1-800-531-5000 and speak your request into our Automated Phone System, e.g., for technical issues - say "technical" for on-screen messages - say the extension or message you see on your TV screen to pay your bill - say "pay my bill"; for programming questions - say the name of the package or service, etc.

If your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information provided on your bill for any questions about your DIRECTV Service.

Thank you for choosing DIRECTV. DIRECTV provides digital satellite entertainment programming and services (referred to collectively as "Service") to residents of the United States. We do not provide Service to addresses outside of the United States.

CUSTOMER AGREEMENT

1. OUR SERVICE

These are the terms on which we will provide you Service:

- (a) Program Choices. You must subscribe to a base package in order to receive additional services such as premium movie services or sports subscriptions. All programming selections have their own rates, terms and conditions. Information about programming is at directv.com.
- (b) Ordering Pay Per View. You may order Pay Per View Services by using your on-screen guide and remote control, by ordering at directv.com, by calling us and speaking the name of your event into our Automated

Phone System, or by ordering through an agent. If you call an agent to order, the maximum fee may apply (described in section 2). A reduced fee is available for Pay Per View orders placed at directv.com or through the Automated Phone System. To use your remote control to order, your receiver must be continuously connected to a land-based telephone line. Your order is transmitted via the telephone line, and during the short transmission period, you may not be able to use the line for other purposes. Repeated cancellation of previously ordered Pay Per View Services may result in cancellation of your account, restrictions on your ability to order Pay Per View Services, or imposition of additional fees for Pay Per View Services.

(c) Your Programming Changes. You may change your programming selection by notifying us. A fee may apply to such changes (described in Sections 2 & 5(b)). Some programming may be purchased in minimum blocks of one month or multiples of one month.

(d) Our Programming Changes. Many changing considerations affect the availability, cost and quality of programming and customer demand for it. Accordingly, we must reserve the unrestricted right to change, rearrange, add or delete our programming packages, the selections in those packages, our prices, and any other Service we offer, at any time. We will endeavor to notify you of any change that is within our reasonable control and its effective date. In most cases, this notice will be about one month in advance. You always have the right to cancel your Service, in whole or in part, if you do not accept the change (see Section 5). If you cancel your Service, a deactivation fee (described in Sections 2 & 5(b)) or other charges may apply. Credits, if any, to your account will be posted as described in Section 5. If you do not cancel, your continued receipt of our Service will constitute acceptance.

(e) Access Card. You have received a conditional access card (referred to as the "Access Card") and License Agreement governing your use of the Access Card while you are receiving our Service. Access Cards are non-transferable and are the exclusive property of DIRECTV. If you tell us that the original Access Card was lost, damaged, defaced or stolen, we will replace it, as long as there is no evidence of unauthorized tampering with or modification of the Access Card and your account is in good standing. A replacement fee may apply (described in Section 2). Tampering with or other unauthorized modification of the Access Card is strictly prohibited and may result in criminal or civil action. Tampering with or inserting any device into your receiver other than an authorized unmodified Access Card is prohibited. DIRECTV reserves the right to cancel or replace the Access Card. Upon request, the card must be returned to DIRECTV. If you do not return the Access Card to DIRECTV when you cancel your Service, you may be charged a fee as described in Section 2. Requiring Access Cards on behalf of other persons or for purposes other than lawful viewing of DIRECTV Service is prohibited.

(f) Phone Connections. For optimal performance of your Receiving Equipment, including ordering with your remote control or reaching certain Services, each of your receivers must be directly connected to the same land-based telephone line. If you add Service on additional TVs, you may purchase a separate subscription for each additional TV, or, if all your receivers are continuously connected to the same land-based telephone line, we can "mirror" programming to your additional base and change you only the fee amount described in Section 2. You agree to provide true and accurate information about the location of your receivers. If we detect that any receiver is not regularly connected to a land-based telephone line, we may investigate and, if it is determined that the receiver is not at the location identified on your account, we may disconnect the receiver or change you the full programming subscription price for the receiver.

(g) Mobile Units. We provide Service to Receiving Equipment installed in mobile units such as campers, boats and other recreational vehicles. However, this Receiving Equipment is not eligible for the additional TV authorization discount described in (f).

(h) Private Viewing. We provide Service only for your private, non-commercial use, enjoyment and home viewing. The programming may not be viewed in areas open to the public or in commercial establishments. You may not rebroadcast, transmit or perform the programming, charge admission for the viewing or transmit or distribute running accounts of it. You may not use any of our trademarks. Notwithstanding the provisions of Section 9, we or any programming provider may prosecute violations of the foregoing against you and other responsible parties in any court of competent jurisdiction, under the rules and regulations of the Federal Communications Commission and other applicable laws.

(i) Blackouts. Certain programming, including sports events, may be blacked out in your local reception area. Blackout restrictions are decided by the sports league and the other entities that own the local broadcast rights. You may visit directv.com for more blackout information. If you discuss or attempt to circumvent any of these blackouts, you may be subject to legal action.

(j) Loss of Receiving Equipment. You should notify us immediately if your receiver, remote control or receiving antenna dish (referred to collectively as "Receiving Equipment") is lost or stolen. If you notify us within 5 days, we will not charge you for unauthorized use. In any case, we will not charge you for unauthorized use occurring after we receive your notice. For leased Receiving Equipment, non-return fees as specified in the Equipment Lease Addendum will apply.

(k) Transfer of Receiving Equipment. We consider you to be responsible for, and the recipient of programming on, any Receiving Equipment you own. You are liable for charges incurred in the use of your Receiving Equipment by others until you notify us of a transfer. Leased Receiving Equipment may not be transferred.

(l) Your Viewing Restrictions. It is your responsibility to impose any viewing restrictions on other family members or guests, as you think appropriate. We are not responsible to you or anyone else based on the content of our programming. Please visit directv.com for information on parental controls, locks and limits and password protection on your account.

(m) Change of Address. You must notify us immediately of any change in your name, mailing address, residence address or telephone number.

2. PAYMENT

In return for receiving our Service, you promise to pay us as follows:

(a) Programming. You will pay in advance, at our rates in effect at the time, for all Service ordered by you or anyone who uses your Receiving Equipment, with or without your permission, until the Service is canceled. The outstanding balance is due in full each month. We may, in our discretion, accept partial payments which will be applied to the oldest outstanding statement. No "payment in full" notation or other restrictive endorsement written on your payments will restrict our ability to collect all amounts owing to us. We may reduce your service to a minimum service level, at our rates, in effect at the time, or deactivate your Service if you do not pay your statements on time, after any applicable grace period.

(b) Taxes. You will pay all taxes or other governmental fees and charges, if any, which are assessed.

(c) Administrative Fees. In order to control the basic charges, which apply to all customers, we charge fees that arise in specific circumstances

only to those customers responsible for them. This list is not exclusive, and DIRECTV reserves the right to modify these fees or charge additional fees. Accordingly, you will pay the following fees when they are applicable:

- (1) **Account Activation Fee:** We may charge you a fee of (i) up to \$100.00; or (ii) the maximum amount permitted under applicable law prior to or upon activation of your Service account, whichever is less.
- (2) **Access Card Replacement Fee:** If you do not return the Access Card when requested to do so, or if we have to replace the Access Card, we may charge you a replacement fee of up to \$300.00. If you return the old Access Card to us, you may receive partial credit to your account. If you request overnight delivery of the replacement Access Card, you must pay a shipping and handling fee of up to \$18.50.
- (3) **Additional TV Authorization Fee:** If you meet the qualifications described in Section 1(f), we may charge you a monthly fee of up to \$4.99 for separate Services on each additional TV, rather than a full subscription fee for Services on each additional TV. This reduced rate is available only if all receivers are located at your residence.
- (4) **Administrative Late Fee:** If we do not receive your payment by the due date on your bill, we may charge you an administrative late fee of (i) \$5.00; or (ii) the maximum amount permitted under and subject to applicable law per month or partial month until the delinquent amount is paid in full. This late fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature. You acknowledge that this fee is reasonably related to the actual expense we incur due to late payment and may be subject to limitations set forth by law in your state.
- (5) **Change of Service Fee:** If you change your Service package to a lower-priced package, we may charge you a fee the lesser of (i) up to \$10.00; or (ii) the maximum amount permitted by applicable law.
- (6) **Phone Payment Fee:** If you elect to pay any outstanding balance over the telephone with an agent, we may charge you the lesser of (i) up to \$10.00; or (ii) the maximum amount permitted by applicable law. To avoid this fee, you can pay your bill through our Automated Phone System by saying "Pay My Bill," or at directv.com.
- (7) **Deposit:** We may require that you provide a deposit prior to or after activation of your Service, which we may apply against any unpaid amounts at any time. Deposits will appear on your bills as credits, from which we will deduct our charges. Deposits will not earn interest.
- (8) **Order Assistance Fee:** If you order a Pay Per View Service by calling and speaking with an agent, we may charge you a fee of up to \$5.00, or up to \$1.00 if you order via our Automated Phone System, for each separate movie, event or other program so ordered, when it is later cancelled. There is no order assistance fee for orders placed at directv.com.
- (9) **Deactivation Fee:** If you cancel your Service or the deactivate your Service because of your failure to pay or for some other reason on your part, we may charge you a fee the lesser of (i) up to \$15.00; or (ii) the maximum amount permitted by applicable law.
- (10) **Duplicate Statement Fee:** If you request a duplicate statement, we may charge you a fee the lesser of (i) up to \$1.75; or (ii) the maximum amount permitted by applicable law, for each statement copy.

(11) **Ledger Request Fee:** If you request a payment ledger itemizing past payments on your account, we may charge you a fee the lesser of (i) up to \$2.75; or (ii) the maximum amount permitted by applicable law.

- (12) **Returned Payment Fee:** If any bank or other financial institution refuses to honor any payment, draft or instrument submitted for payment to your account, we may charge you a fee the lesser of (i) up to \$20.00; or (ii) the maximum amount permitted by applicable law. You acknowledge that this fee is not an interest charge, finance charge, time price differential or other such charge or payment of a similar nature and it is reasonably related to the actual expense we incur due to unassisted payment.
- (c) **Billing Statements:** We will send you a statement for each billing cycle (usually once every 30 days) unless you have a zero or nominal balance due, or a nominal credit balance, on your account at the end of a billing cycle. Statements will show: (1) payments, credits, purchases and any other charges to your account; (2) the amount you owe us and (3) the payment due date. If you elect to make automatic credit or debit card payments, you will not receive monthly statements unless you request that they be sent.
- (e) **Questions About Your Statement:** If you think your statement is incorrect or if you need more information about it, contact us immediately. We will try to resolve any complaints you have as promptly as we can. Undisputed portions of the statement must be paid by the due date to avoid a late fee and possible reduction or deactivation of Service.
- Remember, if your bill for DIRECTV Service comes from a party other than DIRECTV, please use the contact information on your bill.
- (f) **Consumer Background Check:** In order to establish an account with us, you authorize us to inquire into your creditworthiness (subject to Section 8), by checking with credit reporting agencies. If you are delinquent in any payment to us, you also authorize us to report any late payment or nonpayment to credit reporting agencies. Due to the subjective nature of creditworthiness, we reserve the right to require prepayment for any Service via cashier's check, money order or credit card, notwithstanding your credit rating, past history or practice.
- (g) **Collection Costs:** To the extent permitted by law, you will pay us any costs and fees we reasonably incur to collect amounts you owe us.
3. **CUSTOMER INFORMATION**
 - (a) **Resemblances:** You represent that you are at least 18 years of age and a resident of the United States.
 - (b) **Contact Information:** You agree to provide true, accurate, current and complete contact information about yourself, and maintain and promptly update your contact information to keep it true, accurate and complete.
 - (c) **Online Access:** You are responsible for maintaining the confidentiality of the password and account username used for online billing and account maintenance at directv.com, and are fully responsible for all activities that occur under your password and account. You agree to: (i) keep your username and password confidential and not share them with anyone else; (ii) immediately notify DIRECTV of any unauthorized use of your password and account or other breach of security; and (iii) use only your username and password to log into directv.com.
4. **CHANGES IN CONTRACT TERMS**

We reserve the right to change the terms and conditions on which we offer Service. If we make any such changes, we will send you a copy of our new Customer Agreement containing its effective date. You always have the right

to cancel your Service, in whole or in part at any time and you may do so if you do not accept any such changed terms or conditions. If you do cancel, you may be charged an early cancellation fee if you entered into a separate programming commitment or a deactivation fee. You will be issued a credit, if any, in accordance with Section 5, if you elect not to cancel your Service after receiving a new Customer Agreement, your continued receipt of Service from us will constitute acceptance of the changed terms and conditions. If you notify us that you do not accept such terms and conditions, then we may cancel your Service as provided in Section 5, as we cannot offer Service to different customers on different terms, among other reasons.

5. CANCELLATION

- (a) **Term:** The term of this Agreement is indefinite and Service will continue until canceled as provided herein, UNLESS YOU NOTIFY US THAT YOU WISH TO CANCEL IT. WE WILL AUTOMATICALLY RENEW SERVICE THAT YOU SUBSCRIBE TO ON A PERIODIC BASIS INCLUDING ANY MONTHLY OR ANNUAL SUBSCRIPTIONS AND SEASONAL SPORTS SUBSCRIPTIONS, AS LONG AS WE CONTINUE TO CARRY THE SERVICE.
- (b) **Your Cancellation:** You may cancel Service by notifying us. You may be charged a deactivation fee as described in Section 2 and issued a credit as described below. Your notice is effective on the day we receive it. You will still be responsible for payment of all outstanding balances accrued through that effective date. In addition to any deactivation or change of service fees provided in Section 2, if you cancel Service or change your Service package, you may be subject to an early cancellation fee if you entered into a separate programming commitment with DIRECTV in connection with obtaining Receiving Equipment, and have failed to maintain the required programming package for the required period of time.

For Services sold only in blocks of one month or multiples of one month, if you cancel such Service, we will credit you only for full months not used. For example, if you subscribe for a year of such Service from January through December but cancel on March 10, we will credit you for the subscription fees for April through December. However, we will not credit any fees for January through March. Additionally, we will not credit seasonal sports subscriptions after the season starts.
- (c) **Our Cancellation:** We may cancel your Service at any time if you fail to pay amounting owing to us when due, subject to any grace periods, breach any other material provision of this Agreement, or act adversely toward our staff. In such case, you will still be responsible for payment of all outstanding balances accrued through that effective date, including the deactivation fee described in Section 2. In addition, we may cancel your Service if you elect not to accept any changed terms described to you, as provided in Section 4.
- (d) **Credit Balances:** If you have a credit balance after the close of your account and issuance of the final bill, we will automatically issue you a refund. However, if your credit balance is less than \$1.00, we will not issue you a refund unless you make a written request for the refund. If you do not make such a written request for the refund within one year of the close of your account, you forfeit any credit balance remaining on your account and your account balance will be reset to zero.
- (e) **Payment Upon Cancellation:** You acknowledge that you have provided your credit or debit card account information to us. You understand that you will incur fees and charges as a result of your receipt and use of Service under Receiving Equipment, and may incur early cancellation fees and/or equipment non-return fees (as specified in any lease, programming or other service commitment agreement you entered into in connection with obtaining Receiving Equipment). By giving us your

credit or debit card account information, you authorize us to apply this method of payment, in accordance with applicable law, to satisfy any and all amounts due upon cancellation. You further acknowledge that you are required to maintain current credit or debit card information with us and agree to notify us whenever there is a change in such information, such as a change in the card number or the expiration date.

6. PERSONAL DATA

We collect Personally Identifiable Information about our customers ("Personal Data"). The use and disclosure of this Personal Data is governed by our Privacy Policy and, to the extent not inconsistent with the Privacy Policy, by this Agreement. A copy of our Privacy Policy is available at directv.com. We will also send you a copy if you send your written request to this address: DIRECTV Privacy Policy, P.O. Box 29079, Glendale, CA 91209-9079.

7. DIRECTV DVR SERVICE

DIRECTV DVR Service is a separately sold service, at our rates in effect at the time available to customers with DVR-enabled receiving equipment. DIRECTV DVR Service gives you the ability to see and record televised programs ("Third Party Content"). You understand that DIRECTV does not guarantee the access to or recording of any particular program, or the length of time any particular recorded program may remain available for your viewing. You also understand that Third Party Content is the copyrighted material of the third party that supplies it, is protected by copyright and other applicable laws, and may not be reproduced, published, broadcast, rewritten or redistributed without the written permission of the third party that supplied it, except to the extent allowed under the "fair use" provisions of the U.S. copyright laws or comparable provisions of foreign laws. You agree that DIRECTV will have no liability to you, or anyone else who uses your DIRECTV DVR Service, with regard to any Third Party Content. DIRECTV may, at its discretion, from time to time change, add or remove features of the DIRECTV DVR Service, or change the service fee for DIRECTV DVR Service.

We generally use local telephone calls to provide the DIRECTV DVR Service. You are responsible for such telephone charges and acknowledge and agree that you shall be solely responsible for all disputes with any telephone company related to the same.

If you paid a "lifetime services fee," you will not be charged a fee for your DIRECTV DVR Service as long as you maintain television programming services from DIRECTV on the same account. If you disconnect your DIRECTV television programming service and later reconnected on the same account, your DIRECTV DVR Service will be reconnected and you will not be charged a fee for DIRECTV DVR Service.

By receiving the DIRECTV DVR Service, you agree to the following license. The term "Software" shall include any updates, modified versions, additions and copies of certain software for the DIRECTV DVR Service (or your Receiving Equipment) that may be provided by DIRECTV from time to time. The term "End User Documentation" shall mean the documentation and related explanatory written materials provided to you in connection with licensing by you of any Software. DIRECTV grants to you a non-exclusive license to use the Software, provided that you agree to the following:

(a) License Grant. You may use the Software solely in receiving video content and solely in conjunction with the use of your Receiving Equipment.

(b) Restrictions. You may not copy, modify, transfer, disseminate or publish the Software, or any copy thereof, in whole or in part. You may not reverse engineer, decompile, disassemble, or translate the Software, or otherwise attempt to derive the source code of the Software, except to the extent allowed under any applicable law. Any attempt to transfer any of the rights, duties or obligations of this license agreement is void. You may not rent,

lease, loan, resell for profit or distribute the Software, or any part thereof.

(c) Ownership. The Software is licensed, not sold, to you solely for your use under the terms of this license agreement, and DIRECTV and the suppliers reserve all rights not expressly granted to you. You shall own the media, if any, on which Software or End User Documentation is recorded, but DIRECTV and its suppliers retain ownership of all copies of the Software itself.

(d) Reservation of Rights. Except as stated above, this license agreement does not grant to you any intellectual property rights in the Software.

(e) Term. If you breach any term or condition of this license agreement, this license agreement will terminate immediately upon notice to you.

(f) Warranty. **DISCLAIMER. NEITHER DIRECTV NOR ANY OF ITS REPRESENTATIVES MAKES OR PASSES ON TO YOU OR OTHER THIRD PARTIES ANY WARRANTY OR REPRESENTATION ON BEHALF OF DIRECTV OR ITS SUPPLIERS (INCLUDING TIVO) WITH RESPECT TO THE SOFTWARE INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.**

(g) Limitation of Liability. IN NO EVENT WILL DIRECTV OR ITS SUPPLIERS BE LIABLE TO YOU WITH RESPECT TO THE SOFTWARE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, INCLUDING LOST PROFITS OR LOST SAVINGS, EVEN IF DIRECTV OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. Some states or jurisdictions do not allow the exclusion or limitation of incidental, consequential or special damages, so the above limitations may not apply to you.

(h) Third-Party Beneficiary. DIRECTV and you expressly acknowledge and agree that TIVO, Inc., a Danvers corporation with its principal place of business at 2180 Gold Street, Arden, CA 95022, is an intended third-party beneficiary of this license agreement as it relates to TIVO software that may be contained in the Receiving Equipment. These license provisions are made expressly for the benefit of TIVO and are enforceable by TIVO in addition to DIRECTV.

8. LIMITS ON OUR RESPONSIBILITY

(a) Service Interruptions. Service may be interrupted from time to time for a variety of reasons. We are not responsible for any interruptions of Service that occur due to acts of God, power failure or any other cause beyond our reasonable control. However, because we value our customers, for an interruption of a significant length of time that is within our reasonable control, upon your request we will provide what we reasonably determine to be a fair and equitable adjustment to your account to make up for such Service interruption. THIS WILL BE YOUR SOLE REMEDY AND OUR SOLE DUTY IN SUCH CASES.

(b) Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WE MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING ANY SERVICE OR YOUR RECEIVING EQUIPMENT. ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE DISCLAIMED.

(c) Limitation of Liability. WE ARE NOT RESPONSIBLE FOR ANY CONSEQUENTIAL DAMAGES OR LOSSES RELATING TO THE RECEIVING EQUIPMENT OR ANY SERVICE, WHETHER BASED ON NEGLIGENCE OR OTHERWISE, REGARDLESS OF THE CAUSE, OUR TOTAL LIABILITY FOR DAMAGES OR LOSSES TO YOU AND ANY OTHER PERSONS RECEIVING OUR SERVICE WILL IN NO EVENT EXCEED THE AMOUNT THAT YOU HAVE PAID TO US FOR THE SERVICE THAT YOU RECEIVED DURING

THE SIX (6) MONTH PERIOD IMMEDIATELY PRIOR TO THE SPECIFIC EVENT THAT GAVE RISE TO THE APPLICABLE DAMAGE OR LOSS. THIS ALLOCATION OF RISK IS REFLECTED IN OUR PRICES. You may have greater rights than described above, under your state's laws. You should consult them.

(d) Warranty Services. You agree that this Agreement does not provide for, and the Service does not include, any warranty services or other services that we might provide separately, including, without limitation, any fee-based or other warranty program.

9. RESOLVING DISPUTES

In order to expedite and control the cost of disputes, you and we agree that any legal or equitable claim relating to this Agreement, any addendum, or your Service (referred to as a "Claim"), will be resolved as follows:

(a) Informal Resolution. We will first try to resolve any Claim informally. Accordingly, neither of us may start formal proceedings (except for Claims described in Section 9(d) below) for at least 60 days after the date of the other of a Claim in writing. You will send your notice to the address on the first page of this Agreement, and we will send our notice to your billing address.

(b) Formal Resolution. Except as provided in Section 9(c), if we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated (referred to as the "JAMS Rules") and under the rules set forth in this Agreement. If there is a conflict between JAMS Rules and the rules set forth in this Agreement, the rules set forth in the Agreement will govern. **ARBITRATION MEANS THAT YOU WAIVE YOUR RIGHT TO A JURY TRIAL.** You may, in arbitration, seek any and all remedies otherwise available to you pursuant to your state's law. If you decide to initiate arbitration, you agree to tell us in writing the amount that you would pay to the lawyer against us in the appropriate court of law in your state. Unless we agree to pay your fee for you, you only need to pay an arbitration initiation fee equal to such court filing fee, not to exceed \$125; we agree to pay any additional fee or deposit required by JAMS to initiate your arbitration. We also agree to pay the costs of the arbitration proceeding. Other fees, such as attorney's fees and expenses of travel to the arbitration will be paid in accordance with JAMS Rules. The arbitration will be held at a location in your hometown area unless you and we both agree to another location or telephone arbitration. To start an arbitration, you or we must do the following things:

- (1) Write a Demand for Arbitration. The demand must include a description of the Claim and the amount or damages sought to be recovered. You can find a copy of a Demand for Arbitration at jamsadr.com.
- (2) Send three copies of the Demand for Arbitration, plus the appropriate filing fee to:

JAMS
500 North State College Blvd., Suite 600
Orange, CA 92668
1-800-352-6257

(3) Send one copy of the demand for arbitration to the other party.

(c) Special Rules. (i) In the arbitration proceeding, the arbitrator has no authority to make errors of law, and any award may be challenged if the arbitrator does so. Otherwise, the arbitrator's decision is final and binding on all parties and may be enforced in any federal or state court that has jurisdiction. (ii) Neither you nor we shall be entitled to

John or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration. If, however, the law of your state would find the agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.

(d) **Exceptions.** Notwithstanding the foregoing: (i) any claim based on Section 10 above, and (ii) any dispute involving a violation of the Communications Act of 1934, 47 U.S.C. § 805, the Digital Millennium Copyright Act, 17 U.S.C. § 1201, the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 or any other statement of law governing theft of service, may be decided only by a court of competent jurisdiction.

10. MISCELLANEOUS

(a) **Notice.** Notices to you will be deemed given when personally delivered, addressed to you at your last known address and deposited in the U.S. Mail (which may include inclusion in your billing statement), or sent via internet to the e-mail address you provided us or sent via satellite to your receiver or delivered when a voice message is left at the telephone number on your account. Your notices to us will be deemed given when we receive them at the address or telephone number on the first page of this Agreement.

(b) **Applicable Law.** The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

(c) **Assignment of Account.** We may assign your account or this Agreement and all rights and/or obligations hereunder to any third party, without notice for any purpose, including, without limitation, collection of unpaid amounts, or in the event of an acquisition, corporate reorganization, merger or sale of substantially all of the party's assets to another entity. You hereby consent to such assignment. You must continue making all required payments to us in accordance with your billing statement, unless notified otherwise.

(d) **Other.** This Agreement and any lease, activation, programming, or other service commitment agreement that you entered into in connection with obtaining Receiving Equipment constitute our entire agreement. No salesperson or other representative is authorized to change it. If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable. The terms of this Agreement that expressly or by their nature survive termination shall continue thereafter until fully performed.

THANK YOU!