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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION
11

12 ECHOSTAR SATELLITE
13 CORPORATION, ECHOSTAR
14 COMMUNICATIONS
15 CORPORATION, ECHOSTAR
TECHNOLOGIES
CORPORATION, AND
NAGRASTAR L.L.C.

16 Plaintiff,

17 vs.

18 NDS GROUP PLC, NDS
19 AMERICAS INC., JOHN NORRIS,
RUEVEN HASAK, OLIVER
20 KOMMERLING, JOHN
LUYANDO, PLAMEN DONEV,
21 VASELINE NEDELTCHEV,
CHRISTOPHER TARNOVSKY,
ALLEN MENARD, LINDA
22 WILSON, MERVYN MAIN, DAVE
DAWSON, SHAWN QUINN,
23 ANDREI SERGEI, TODD DALE,
STANLEY FROST, GEORGE
24 TARNOVSKY, BRIAN
SOMMERFIELD, ED BRUCE,
25 "BEAVIS," "JAZZERCZ,"
"STUNTGUY," and DOES 1-100.

26 Defendants.
27
28

CASE NO. SA CV 03-950 DOC(ANX)

DEFENDANT ALLEN MENARD'S
NOTICE OF MOTION AND MOTION
TO DISMISS THIRD AMENDED
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES

Date: December 13, 2004

Time: 8:30 a.m.

Place: Courtroom of the
Honorable David O. Carter

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1 TO THE CLERK OF THE ABOVE-TITLED COURT AND TO
2 PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on December 13, 2004, at 8:30 a.m., or as
4 soon thereafter as counsel may be heard, in the Courtroom of the Honorable David
5 O. Carter, United States District Judge, at the Ronald Reagan Courthouse
6 (Courtroom 9-D), 411 West Fourth Street, Santa Ana, California, defendant Allen
7 Menard, by and through his attorneys of record, will and hereby does move to
8 dismiss the claims for relief alleged against him, pursuant to Rule 12(b)(6) of the
9 Federal Rules of Civil Procedure. In the alternative, Menard moves to strike the
10 entire Third Amended Complaint, pursuant to Rule 12(f) of the Federal Rules of
11 Civil Procedure.

12 This Motion is based upon this Notice of Motion and Motion, the attached
13 Memorandum of Points and Authorities, Menard's joinder in the motion to dismiss
14 and motion to strike filed by defendants NDS Group PLC, NDS Americas, Inc. and
15 others, the files and records in this case, and upon such further evidence and
16 argument as this Court accepts at the hearing on this Motion.

17 Dated: September 20, 2004.

18 Respectfully submitted,

19
20 CORBIN & FITZGERALD LLP
21 ROBERT L. CORBIN
22 BART DALTON

23 By: 

24 Bart Dalton

25 Attorneys for Defendants
26 ALLEN MENARD, LINDA WILSON and
27 MERVYN MAIN
28

1 **MEMORANDUM OF POINTS AND AUTHORITY**

2 I.

3 **INTRODUCTION**

4 Plaintiffs have not pleaded a valid complaint against defendant Allen
5 Menard. Menard is one of 23 defendants that plaintiffs claim was under the
6 direction of defendant NDS Americas Inc. to compromise plaintiffs' conditional
7 access system. Plaintiffs allege that NDS, through defendant Chris Tarnovsky,
8 provided Menard with the codes for plaintiffs' conditional access system, which
9 Menard supposedly sold to consumers.

10 Plaintiffs' allegations suffer from several defects, the most glaring of which
11 is the running of the statute of limitations. The date for statute of limitations
12 purposes is February 18, 2004, the date upon which the Second Amended
13 Complaint was lodged and Menard was first named as a defendant. But any
14 actionable conduct plaintiffs specifically attribute to Menard occurred in 2000 and
15 before. Therefore, the majority of claims for relief in the TAC are barred by the
16 applicable statutes of limitation – either two or three years.

17 Even plaintiffs' claim for relief under California Business and Professions
18 Code section 17200, which carries a four-year statute of limitations, is time-barred
19 because the plaintiffs admit that they first became aware in 1998 that hackers
20 compromised their access system.

21 Plaintiffs attempt to side-step these problems by alleging unspecified conduct
22 within the limitations period. These unsupported allegations of continuing conduct
23 do not fulfill the heightened pleading standard of Rule 9, which is required when a
24 party alleges a unified fraudulent course of conduct amongst defendants. Even
25 under the more liberal pleading standard of Rule 8, this Court need not consider
26 these vague allegations because they contradict more specific allegations of
27 wrongdoing within the limitations period. Plaintiffs also attempt to circumvent the
28 statute of limitations by alleging that Menard "assist[ed] and support[ed] ...satellite

1 pirates around the world ... until approximately June 21, 2001.” (TAC, ¶ 62).

2 Plaintiffs’ allegation does not describe what this assistance and support was, and
3 more importantly, does not allege that Menard harmed plaintiffs in any manner.

4 Plaintiffs’ meek theories of vicarious liability fare no better. Plaintiffs
5 necessarily rely on vague allegations of conspiracy to link Menard to the various
6 claims for relief. But plaintiffs fail to plead a conspiracy with the specificity
7 required under Rule 9. Again, this is a basis for dismissing all of the claims for
8 relief.

9 Similarly, plaintiffs’ conclusory allegations of agency, without sufficient
10 supporting allegations, do not meet the requirements for establishing such a
11 relationship.

12 For the reasons set forth in the motion to dismiss of defendants NDS Group
13 PLC and NDS Americas, Inc., this Court should dismiss the RICO claims because
14 the Third Amended Complaint (“TAC”) fails to allege properly either an
15 “enterprise” or a “pattern of racketeering activity.”

16 Likewise, the state claims must be dismissed. Plaintiffs’ claims for
17 interference with contractual relations and prospective contractual
18 relations/economic advantage (Counts 17 and 18) do not identify the alleged
19 relationships with the required particularity. In addition, plaintiffs’ inability to
20 plead sufficient facts for their underlying claims for relief precludes maintaining an
21 action under California Business and Professions Code section 17200.

22 Therefore, in accordance with Rule 12(b)(6), this Court should dismiss each
23 claim of the TAC against Menard without leave to amend for these reasons:

- 24 • Counts 1-5 are barred by the three-year statute of limitations for
25 actions under the Digital Millennium Copyright Act and the
26 Communications Act.
- 27 • Count 6 is barred by the two-year statute of limitations under the
28 Electronic Communications Privacy Act.

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- Counts 7 and 8 are barred by the three-year statute of limitations under the Lanham Act.
- Counts 9 and 10, brought under RICO, fail to allege an actionable “enterprise” or “pattern of racketeering activity” required under the statute.
- Counts 11-15 are barred by the three-year limitations period under the California Penal Code.
- Count 16 is barred by the four-year statute of limitations period under the California Business and Professions Code because plaintiffs first became aware of their compromised system in 1998.
- Counts 17-20 are barred by the two-year statute of limitations applicable to plaintiffs’ common law claims for tortious interference, unjust enrichment and conversion.
- Count 21 does not involve Menard.
- Count 22, for joint contribution, fails because plaintiffs’ other state law claims are time-barred.
- None of the counts is pled with particularity and there is no sufficient legal basis to lump the defendants together.
- Collectively, plaintiffs attempt to circumvent the TAC’s infirmities by pleading vague theories of vicarious liability. These theories are too vague to attach liability to Menard.

Finally, in the alternative, this Court should strike the entire Third Amended Complaint for the reasons set forth in the motion to strike filed by defendants NDS Group PLC and NDS Americas, Inc. Fed. R. Civ. P. 12(f).

1 II.

2 ARGUMENT

3 A. This Court Should Dismiss the TAC for Failure to State a Claim.

4 Plaintiffs' TAC fails to state a proper claim for relief against Menard. A
5 court should dismiss a claim under Rule 12(b)(6) where either there is a "lack of
6 cognizable legal theory" or "the absence of sufficient facts alleged under a
7 cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
8 (9th Cir. 1990). While a court must accept all well-pleaded facts as true,
9 "conclusory allegations without more are insufficient to defeat a motion to dismiss
10 for failure to state a claim." *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 810 (9th
11 Cir. 1988) (dismissing action after plaintiffs could not allege elements of antitrust
12 claims). The court need not "assume the truth of legal conclusions merely because
13 they are in the form of factual allegations." *Western Mining Council v. Watt*, 643
14 F.2d 618, 624 (9th Cir. 1981) (case dismissed when plaintiffs did not plead facts
15 demonstrating standing to bring suit).

16 Menard joins in the arguments of defendants NDS Group PLC, NDS
17 Americas, Inc., Christopher Tarnovsky, George Tarnovsky, Stanley Frost, John
18 Norris, Linda Wilson and Mervyn Main expressed in their respective motions to
19 dismiss under Rule 12(b)(6) for failure to state a claim upon which relief can be
20 granted. Menard specifically raises the arguments that pertain to him and applies
21 the authorities and arguments in those motions to his own facts.

22 1. **The Allegations in the TAC are not Pled With Particularity.**

23 The TAC is scattered with allegations that defendants engaged in a unified
24 fraudulent course of conduct to compromise plaintiffs' conditional access system.
25 (See TAC, ¶¶ 20-21, 135). When a party alleges a "unified fraudulent course of
26 conduct", the complaint is considered "grounded in fraud." *Vess v. Ciba-Geigy*
27 *Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (holding that complaint not
28 sufficient under Rule 9). In these situations, Rule 9 requires that plaintiffs allege

1 “the particulars of when, where, or how the alleged conspiracy occurred.” *Id.* at
2 1106-07. Plaintiffs have not done so. Indeed, as will be shown, the plaintiffs’
3 pleading is so defective that they do not even meet the more liberal standards of
4 Rule 8.

5 **2. Allegations of the Conduct of Others Cannot Impute Liability to**
6 **Menard.**

7 In the SAC, plaintiffs simply lumped all defendants together. As set forth in
8 NDS’ motion to strike, the cosmetic improvements in the TAC are still insufficient.
9 The ongoing flaws discussed in the motion to strike also prevent the TAC from
10 stating a claim under Rule 12(b)(6). Each defendant is not alleged to have
11 personally committed conduct giving rise to a claim for relief; rather, it is the
12 concert of action between the individual defendants and NDS that supposedly
13 supports the TAC. This purported concert of action also underlies the allegations
14 that some conduct falls with the limitations periods.

15 Therefore, in the absence of properly-pled ties between defendants, there can
16 be no valid complaint. The TAC still does not properly allege liability based on the
17 conduct of other defendants, based on either agency or conspiracy. Therefore, the
18 TAC must be dismissed.

19 **a. Menard Cannot Be Held Liable Under an Agency Theory.**

20 To find defendants liable through theories of agency, this Court ordered
21 plaintiffs to plead facts that would lead to the conclusion that agency exists. (Rule
22 12(e) Order at 4).

23 Plaintiffs struggle to establish an agency relationship between Menard and
24 NDS. Even if plaintiffs could demonstrate an agency relationship, Menard cannot
25 be held liable for the actions of NDS. There is simply no such thing as “reverse
26 respondeat superior.” *See Hernandez v. Gates*, 100 F. Supp. 2d 1209, 1218 n.13
27 (C.D. Cal. 2000) (“reverse’ respondeat superior liability is not cognizable”).
28

1 Plaintiffs also allege that Menard “solicited” a group of agents to assist him
2 in his operations. (See TAC, ¶ 92(a)). From this, plaintiffs conclude that these
3 individuals are “agents” of Menard. That is a faulty conclusion. An allegation that
4 one party is an agent of another is a legal conclusion and must be supported by
5 sufficient facts. Rule 12(e) Order, p. 4; *see also Adams v. NVR Homes, Inc.*, 193
6 F.R.D. 243, 250-52 (D. Md. 2000) (pleadings must indicate with particularity the
7 factual predicate for the agency relationship).

8 To establish an agency relationship, the principal must in some manner
9 indicate that the agent is to act for him, and the agent must act or agree to act on the
10 principal’s behalf and subject to his control. Restatement (Second) Agency § 1,
11 Comment a. Further, the law in California presumes that a person is acting for
12 himself and not as the agent for another. *Armato v. Baden*, 71 Cal. App. 4th 885,
13 898-99, 84 Cal. Rptr. 2d 294 (1999) (names on appointment cards and prescription
14 pads did not create agency relationship between doctors). The TAC does not allege
15 any supporting facts to its claim of agency between Menard and his supposed
16 “agents.” Plaintiffs do not allege that Menard indicated that the individuals would
17 be his agents, that the individuals agreed to act on Menard’s behalf, or that Menard
18 controlled these individuals in any manner; plaintiffs only allege an agreement to
19 assist. (See TAC, pp. at 36-37). Therefore, liability cannot be imputed to Menard
20 under a theory of agency.

21 **b. *Conspiracy Allegations do not Impute Liability to Menard.***

22 As an alternative theory of secondary liability, plaintiffs allege that Menard
23 was a co-conspirator with NDS and other defendants in compromising plaintiffs’
24 security system. (TAC, pp. 37-38). But plaintiffs may not impute liability to
25 Menard based merely on allegations that Menard was a co-conspirator with alleged
26 wrongdoers. More is required.

1 As set forth in other motions, the conspiracy allegations are in fact
2 insufficient under either Rule 9 or Rule 8, and merely resting on a bald allegation of
3 a "conspiracy" without alleging any supporting factual allegations will not avoid
4 dismissal. *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1152 (9th Cir. 1998)
5 (dismissing complaint where conspiracy claim not plead with requisite
6 particularity); *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998) (affirming
7 dismissal of § 1983 claim because "mere conclusory allegations of a conspiracy are
8 insufficient to survive a motion to dismiss"); *Arsenaux v. Roberts*, 726 F.2d 1022,
9 1024 (5th Cir. 1982) (mere conclusory allegations of conspiracy between lawyer
10 and state trial judge could not survive motion to dismiss absent reference to
11 material facts). The allegation of conspiracy is a legal conclusion, not a factual
12 assertion. *First Nat'l Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 259, 288-90, 88
13 S. Ct. 1575, 20 L. Ed. 2d 569 (1968); *Young v. Kann*, 926 F.2d 1396, 1405 n.16 (3d
14 Cir.1991) (mere averment of conspiracy without facts is a conclusion of law and
15 insufficient to state a claim).

16 Plaintiffs fail to allege facts supporting their allegations that Menard agreed
17 to participate in the alleged conspiracy with NDS and the other defendants. To
18 plead a conspiracy, plaintiffs must allege facts that demonstrate "both an agreement
19 to participate in an unlawful act, and an injury caused by an unlawful overt act
20 performed in furtherance of the agreement." *Alfus v. Pyramid Tech. Corp.*, 745 F.
21 Supp. 1511, 1520 (N.D. Cal. 1990) (rejecting allegations of conspiracy). Plaintiffs
22 plead neither agreement nor injury in the TAC; the TAC only concludes that a
23 conspiracy existed. There is no allegation of what was agreed to, when it was
24 agreed to, or how it was agreed to. Absent these facts, plaintiffs' conspiracy theory
25 of liability is insufficient to state a claim against Menard. *See Berry v. Baca*, 2002
26 WL 356763 at *3 (C.D. Cal. 2002) (dismissing conspiracy count where allegations
27 failed to state "(1) who agreed to engage in the conspiracy; (2) what was agreed to;
28 (3) when it was agreed to; or (4) how it was agreed to.").

1 **3. The Applicable Statutes of Limitations Bar the Claims for**
2 **Relief.**

3 Plaintiffs allege that Menard operated a website where plaintiffs' conditional
4 access codes were published over the internet. (TAC, ¶ 62). Plaintiffs contend that
5 NDS provided Christopher Tarnovsky with these codes, and he in turn provided
6 them to Menard.

7 The date for the statute of limitations is February 18, 2004, the date the
8 Second Amended Complaint was lodged. This is when plaintiffs first named
9 Menard as a defendant in this case. *See* Fed. R. Civ. P. 15(c)(3).

10 The majority of the claims alleged in the TAC are governed by two- or three-
11 year statute of limitations (Counts 1-8, 11-20 and 22). The TAC contains
12 voluminous references to specific and largely irrelevant facts. According to the
13 TAC, the last date that Menard allegedly engaged in any specific conduct was
14 December 24, 2000, the date that plaintiffs' code was allegedly posted on Menard's
15 website. This date blocks plaintiffs from sustaining their claims for relief under
16 Counts 1-8 and 11-20 -- those claims with two-and three-year limitations periods.

17 To bypass this problem, plaintiffs allege that Menard engaged in unspecified
18 conspiratorial conduct involving his website until June 21, 2001. (*See* TAC, ¶ 62).
19 However, plaintiffs do not even allege that Menard's activities until the date
20 harmed them in any way, only that he provided "assistance and support to satellite
21 pirates around the world in furtherance of NDS's objectives." *Id.* Any statement
22 that this harm was directed at plaintiffs would be contradicted by other allegations
23 in the TAC that after December 2000, "satellite pirates were able to break free from
24 their dependence on NDS, Tarnovsky, and Menard, among others, for obtaining
25 reprogrammed EchoStar Access cards." (TAC , ¶ 21, 178, 294).

26 Plaintiffs also allege that Menard and other defendants are "actively
27 engaged" in unspecified conspiratorial wrongdoing. (TAC, ¶¶ 224, 223, 309, 310,
28 312, 313, 319 and 344). But these unsupported allegations do not satisfy the

1 particularity requirements of Rule 9. *DiLeo v. Ernst & Young*, 901 F.2d 624, 627
2 (7th Cir. 1990) (plaintiff must plead the “who, what, when, where, and how”).
3 Mere allegations of fraud, corruption or conspiracy are too conclusionary to satisfy
4 the particularity requirement of Rule 9. *Hayduk v. Lanna*, 775 F.2d 441, 444 (1st
5 Cir. 1985) (dismissing an action for conspiracy to defraud after plaintiffs failed to
6 meet the particularity requirements of Rule 9). Plaintiffs’ factually wanting claims
7 of conduct after December 2000 are a basis to dismiss the TAC.

8 These unspecified allegations of continuing wrongdoing do not even satisfy
9 the more liberal standards of Rule 8. The TAC alleges detailed facts that occurred
10 in December 2000 or earlier. The conduct alleged after December 2000 is limited
11 to unspecified continuing wrongdoing. As set forth by the other defendants, this
12 Court is not obliged to accept these allegations (as would ordinarily be true under
13 Rule 12(b)(6)) because it goes against other specific allegations in the TAC, all of
14 which point to discrete conduct for a finite period of time. *See, e.g.*, TAC, ¶¶ 39,
15 49, 134-135; *See Brian Clewer, Inc. v. Pan American World Airways, Inc.*, 674
16 F.Supp. 782, 785 (C.D. Cal. 1986); *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th
17 Cir. 1992).

18 Plaintiffs claim under California Business and Professions Code § 17200
19 (Count 16), which has a four-year statute of limitation, is also time-barred. As set
20 forth in NDS’s motion to dismiss, plaintiffs allege that they were first informed that
21 their access system had been hacked on November 3, 1998. For accrual purposes,
22 the relevant date is the alleged act of misappropriating plaintiffs’ security system.
23 *See Nesovic v. United States*, 71 F.3d 776, 778-79 (9th Cir. 1995) (holding that
24 faulty tax assessment was the single wrongful act and other injuries were merely the
25 effects of the original violation). Thus, the date of accrual for plaintiffs’ claim
26 under section 17200 is November 3, 1998. This is more than four years before
27 plaintiffs brought this action against Menard. Therefore, the statute has run.

28

1 Plaintiffs claim for joint contribution (Count 22) also fails because plaintiffs
2 other state law claims are time-barred.

3 Plaintiffs have not asserted any facts that Menard has engaged in actionable
4 conduct within the two and three-year statute of limitations or the four-year statute
5 of limitations for California Business and Professions Code § 17200. Accordingly,
6 Counts 1-8, 11-20 and 22 should be dismissed against Menard.

7 **4. Plaintiffs' RICO Claims Should be Dismissed.**

8 *Plaintiffs' Claims under § 1962(c) and § 1962(d) should be*
9 *Dismissed for the Reasons Set Forth in NDS's Motion to*
10 *Dismiss.*

11 Menard hereby joins defendant NDS in the arguments expressed in its
12 motion to dismiss with respect to Plaintiffs' RICO claims under 18 U.S.C. §
13 1962(c) and 18 U.S.C. § 1962(d) (Counts 9-10). Particularly, plaintiffs fail
14 properly to allege a criminal RICO "enterprise" necessary to support their § 1962(c)
15 claim and the corollary conspiracy claim under § 1962(d). The TAC does not
16 allege a mechanism for controlling and directing the affairs of the group necessary
17 for a claim under RICO. Also, the TAC fails to allege facts that distinguish the
18 purported Menard/Tarnovsky relationship as more than a common
19 recipient/supplier relationship.

20 In addition, NDS's motion to dismiss demonstrates that the TAC fails to
21 allege the necessary predicate acts for a RICO claim and thus fails to allege the
22 required "pattern" of racketeering activity. *Id.* at 17-20. Furthermore, plaintiffs'
23 claim for a RICO conspiracy under §1962(d) fails because they have not properly
24 alleged violations of §1962(c), which is required under the RICO statute. This
25 Court should therefore dismiss plaintiffs' claims under RICO (Counts 9-10).

1 **5. Additional Independent Reasons Support the Dismissal of**
2 **Plaintiffs' State Law Claims.**

3 **a. This Court Should Dismiss Plaintiffs' Speculative Interference**
4 **Claims for the Reasons Given in NDS's Motion to Dismiss.**

5 Menard joins in the arguments provided by NDS in its motion to dismiss
6 with respect to plaintiffs' claims for interference with contractual relations and
7 prospective contractual relations/economic advantage (Counts 17 and 18). This
8 Court should dismiss these claims because they do not identify the alleged
9 relationships with the required particularity.

10 **b. Plaintiffs' § 17200 Claim Should be Dismissed.**

11 Menard joins in the arguments by NDS in its motion to dismiss concerning
12 Plaintiffs' claims under section 17200 of the California Business & Professions
13 Code. Specifically, plaintiffs' inability to plead sufficient facts for their other
14 claims for relief precludes maintaining an action under section 17200. *See Daly v.*
15 *Viacom, Inc.*, 238 F. Supp. 2d 1118, 1126 (N.D. Cal. 2002) (dismissing section
16 17200 claims because claims underlying the section 17200 claim failed).

17 **c. The Claims under the California Penal Code do not**
18 **Pertain to Menard.**

19 Plaintiffs bring Counts 11-15 under provisions of the California Penal Code
20 that prohibit the sale of signal theft devices or the unauthorized interception of
21 satellite signals. But the statutes underlying these counts do not purport to affect
22 the whole world, and would not apply to Menard, a Canadian citizen. There is no
23 allegation, nor pursuant to Rule 11 would plaintiffs dare to make one, that Menard
24 possessed anything in California.

25 **6. The TAC Should Be Dismissed Without Leave to Amend.**

26 Plaintiffs have failed to state a claim for relief against Menard. Plaintiffs
27 have not supported their theories of agency or conspiracy. Virtually all of the
28 claims contained in the TAC are barred by the statute of limitations. Plaintiffs have

1 had four opportunities to plead a valid complaint, and they have failed each time.
2 Even with the Court pointing out these deficiencies and guiding plaintiffs on how to
3 cure them, the TAC fails. Four tries is enough. Therefore, this Court should
4 dismiss the TAC without leave to amend.

5 **B. In the Alternative, this Court Should Strike the Entire Third**
6 **Amended Complaint.**

7 Menard joins in the motion to strike the TAC filed by defendants NDS Group
8 PLC and NDS Americas, Inc., etc. Fed. R. Civ. P. 12(f).

9 **III.**

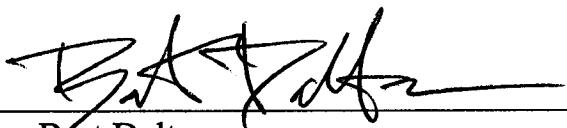
10 **CONCLUSION**

11 For the foregoing reasons, this Court should dismiss the TAC without leave
12 to amend for failure to state a claim or should strike the TAC in its entirety.

13 Dated: September 20, 2004

14 Respectfully submitted,

15
16 CORBIN & FITZGERALD LLP
17 ROBERT L. CORBIN
18 MICHAEL W. FITZGERALD
19 BART DALTON

20 By: 
21 Bart Dalton

22 Attorneys for Defendants
23 LINDA WILSON, ALLEN MENARD,
24 and MERVYN MAIN
25
26
27
28

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am employed in the County of Los Angeles, State of California. I am
5 over the age of 18 and not a party to the within action; my business address is 601
6 West Fifth Street, Suite 1150, Los Angeles, California 90071-2025.

7 On September 20, 2004, I served the foregoing document described as
8 DEFENDANT ALLEN MENARD'S NOTICE OF MOTION AND MOTION TO
9 DISMISS THIRD AMENDED COMPLAINT; MEMORANDUM OF POINTS
10 AND AUTHORITIES on the interested parties in this action by placing a true
11 copy thereof enclosed in a sealed envelope addressed as follows:

12 **SEE ATTACHED MAILING LIST**

13 [] Via U.S. Mail I caused such envelope with postage thereon fully
14 prepaid to be placed in the United States mail at Los
15 Angeles, California. I am "readily familiar" with the
16 firm's practice of collection and processing
17 correspondence for mailing. It is deposited with U.S.
18 postal service on that same day in the ordinary course of
19 business. I am aware that on motion of party served,
20 service is presumed invalid if postal cancellation date or
21 postage meter date is more than one day after date of
22 deposit for mailing in affidavit.

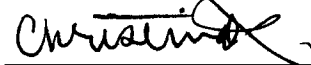
23 [] Via Facsimile I am familiar with the office practice of Corbin &
24 Fitzgerald, LLP for collecting, processing and
25 transmitting documents via facsimile. Under that
26 practice, I faxed the above-described document to the
27 facsimile number(s) referenced herein. The facsimile of
28 the above-described document was transmitted to the
following parties from Los Angeles, California on
September 20, 2004 at the times noted on the attached
confirmation sheet(s).

[xx] Personal Service I personally delivered such envelope to the offices of the
addressee listed and noted on the attached mailing list.

Executed on September 20, 2004, at Los Angeles, California.

[] (State) I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

[xx] (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.



Christina Kim

1 **EchoStar Satellite Corporation et al. V. NDS Group, PLC, et al.**
2 Case No. SA CV 03-950 DOC(ANX)

3 **Attorneys for Plaintiffs, EHOSTAR**
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21 postage meter date is more than one day after date of
22 deposit for mailing in affidavit.

23 [xx] Overnight Delivery I caused such envelope(s) to be deposited in an
24 overnight courier drop-box at Los Angeles, California
25 for next business day delivery.

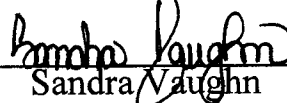
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following parties from Los Angeles, California on
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[] Personal Service I caused such envelope to be delivered by hand to the
offices of the addressee listed and noted on the attached
mailing list.

Executed on September 20, 2004, at Los Angeles, California.

[] (State) I declare under penalty of perjury under the laws of the State of
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[xx] (Federal) I declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

28

Sandra Vaughn

1 EchoStar Satellite Corporation et al. V. NDS Group, PLC, et al.
2 Case No. SA CV 03-950 DOC(ANX)

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