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18 NDS GROUP PLC and NDS AMERICAS, INC.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

ECHOSTAR SATELLITE CORP.,  
ECHOSTAR COMMUNICATIONS  
CORP., ECHOSTAR TECHNOLOGIES  
CORP., AND NAGRASTAR L.L.C.,

Plaintiffs,

v.

NDS GROUP PLC, NDS AMERICAS,  
INC., JOHN NORRIS, REUVEN  
HASAK, OLIVER KOMMERLING,  
JOHN LUYANDO, PLAMEN DONEV,  
VESSELINE NEDELTCHEV,  
CHRISTOPHER TARNOVSKY, ALLEN  
MENARD, LINDA WILSON, MERVIN  
MAIN, DAVE DAWSON, SHAWN  
QUINN, ANDRE SERGEI, TODD  
DALE, STANLEY FROST, GEORGE  
TARNOVSKY, BRIAN  
SOMMERFIELD, ED BRUCE,  
"BEAVIS," "JAZZERCZ,"  
"STUNTGUY," and JOHN  
DOES 1 - 100.

Defendants.

Case No. SA CV 03-950 DOC(ANX)

**DEFENDANTS NDS GROUP PLC  
AND NDS AMERICAS, INC.'S  
MOTION TO STRIKE  
PLAINTIFFS' THIRD AMENDED  
COMPLAINT**

Date: December 13, 2004

Time: 8:30 a.m.

Dept: Judge David Carter  
Courtroom 9D

1 Defendants NDS Group PLC and NDS Americas, Inc. (“NDS”) hereby move  
2 the Court, the Honorable David O. Carter, for an order to strike all or portions of  
3 the Third Amended Complaint (“TAC”) that has been submitted by the plaintiffs in  
4 this action. This motion is made pursuant to Rules 8(a), 8(e), 10(b), 12(e), and  
5 12(f) of the Federal Rules of Civil Procedure on the following grounds:

6 A. Plaintiffs’ 139-page TAC violates Fed. R. Civ. P. 8(a) and 8(e)  
7 because it is not a “short and plain statement” of plaintiffs’ claims for relief and  
8 the allegations contained therein are not “simple, concise, and direct.”

9 B. The TAC is so vague and ambiguous that NDS cannot reasonably be  
10 required to frame a responsive pleading. Plaintiffs’ allegations relating to the other  
11 named defendants, through whom plaintiffs attempt to attach secondary liability to  
12 NDS, lack the specificity required by Rule 12(e). NDS therefore asks the Court to  
13 require plaintiffs to address the following instances of vagueness and add the details  
14 requested:

<b>Paragraph</b>	<b>Details to be Added</b>
224, 233, 242, 252, 261, 270, 276, 283, 305, 310, 319, 328, 336, 344, 354, 361, 367, 374, 381 & 398	For each named defendant, specifically allege facts that, if true, would demonstrate that the named defendant is directly liable for asserted wrongdoing with respect to each asserted claim for relief.
225, 234, 243, 254, 262, 271, 277, 284, 306, 311, 320, 329, 337, 345, 355, 362, 368, 375, 382, 396 & 399	For each named defendant, specifically allege facts that, if true, would lead to the legal conclusion that the named defendant may be held secondarily liable for the acts of another with respect to each asserted claim for relief.

1 C. Major portions of the TAC consist of immaterial, impertinent, and  
 2 scandalous material, and all such portions of the TAC should be stricken pursuant  
 3 to Fed. R. Civ. P. 12(f). Specifically, NDS asks the Court to strike the following  
 4 paragraphs or language for the reasons stated:

- 5 1. All allegations regarding time-barred conduct and events should be  
 6 stricken

Paragraph(s)	Material to be Stricken
7 n. 1	Allegations re events in 1997
10	Allegations re events "from as early as 1998"
13 n. 5	Allegations re events on April 30, 1999
16 n. 8	Allegations re events on April 16, 1999
17	Allegations re events in April 1999
34	Allegations re events in 1997
35	Allegations re events in unspecified time in 1999
39	Allegations re events on March 26, 1999
44	Allegations re events "since 1996"
46	Allegations re events in August 1997
48	Allegations re events in February 1998
51	Allegations re events on March 13, 1998
107	Allegations re events in July 1997
111-112	Allegations re events in summer/fall of 1998
207-208	Allegations re events in March 1999
114-117	Allegations re events in September-October 1997
119-120	Allegations re events in November 1997
121	Allegations re events in "end of 1998"
122	Allegations re events in May 1999

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Paragraph(s)	Material to be Stricken
124	Allegations re events in July 1997
125-129	Allegations re events in December 1997
139-140	Allegations re events in November 1995
141	Allegations re events in July 1996
142	Allegations re events in November 1998
143	Allegations re events in March 1999
144	Allegations re events in July 1999
147	Allegations re events in August 1997, February 1998, March 1998
148	Allegations re events in unspecified time in 1999
159	Allegations re events in May 1999
163	Allegations re events in "fall 1998" and April 1999
165-169	Allegations re events from April 1999 to March 2000
287	Allegations re events "from as early as 1998"
296-297	Allegations re events in April 1999
298	Allegations re events in November-December 1998, March-May 1999, and July 1999

1 2. Plaintiffs' numerous allegations regarding the Canal+ litigation are  
2 irrelevant and should be stricken.

Paragraph(s)	Material to be Stricken
13 n. 6	All allegations re <i>Canal+ v. NDS</i> litigation
14	Allegations re the "Canal+ hack"
205-209	All allegations re the <i>Canal+ v. NDS</i> litigation
132	Allegations re Canal+
Exhibit 1	Entire exhibit
Exhibit 2	Entire exhibit

10 3. Unnecessary and highly prejudicial personal information regarding  
11 Christopher Tarnovsky should be stricken.

Paragraph(s)	Material to Be Stricken
38, 40, 45, 57-59	All allegations re "double agents"
188	Chris Tarnovsky's home address and telephone number
189	Chris Tarnovsky's home address and telephone number
190	Chris Tarnovsky's home address, telephone number, driver's license number, voice verification password, and credit card number
191	Allen Menard's address and telephone number; Chris Tarnovsky's address information; address information for Hi-Fi Exchange and Regency Audio
193-194	Chris Tarnovsky address information
196	Chris Tarnovsky address information
297	Chris Tarnovsky address and birth date information; address information for Hi-Fi Exchange and Regency Audio

4. The TAC contains numerous inflammatory and argumentative allegations that should be stricken pursuant to Fed. R. Civ. P. 12(f).

Paragraph(s)	Material to be Stricken
5	Allegations re “loss of confidence in NDS’s encryption technology”
7	Allegations that “NDS knew it needed to act...”
8	Allegations that “NDS made the calculated decision to hire the ‘worst’ and most well-known satellite pirates and hackers in the world...” and that “NDS concluded...”
10	Allegations re “notorious hackers” and “the NDS plan to conquer...”
20	Allegations that “NDS, Tarnovsky, and Menard had already made an obscene amount of illegal revenue...”
23	Allegations re “shocks the conscience of modern-day capitalism and basic tenets of lawful competition,” “an unprecedented level of corporate espionage,” “high risk corporate financed organized crime,” and “[t]he time has finally come for NDS to answer for its actions”
38	Allegations that “Hasak is fully aware...”
40	Allegations that “Hasak was also aware...”
55	Allegations that “Tarnovsky is a self-admitted hacker...is believed to have designed the first ‘battery cards’...”
68	Allegations that “Main’s job responsibilities included trafficking ... of illegal drugs...”
106	Allegations that “NDS made the conscious decision to manipulate the hacking...” and “the world’s best pirates on its payroll...”
121 n. 14	Reference to Boris Floricic being “found dead in a Berlin park (hanging from a tree with his feet on the ground)”
142	Allegation re “indicating his full understanding of the illegal activity...”
144	Allegations that “Tarnovsky openly acknowledges the

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Paragraph(s)	Material to be Stricken
	injurious effects of the NDS conspiracy, and his intention to continue to hack..."
150	Allegation re "the only time in the history of satellite and cable piracy..."
186	Allegation re "I lost my first real love ... because I was addicted to this f***ing computer shit"
190-201	Allegations re information obtained from "Law Enforcement's Investigation of Christopher Tarnovsky, NDS Employee and Hacker for Satellite Piracy"
297	Allegations re information obtained from criminal investigation

5. The highly deceptive parenthetical statements in the TAC should be stricken.

Paragraph(s)	Material to be Stricken
7 n.1	Edited statements from "NDS Memorandum Report"
8 n.2	Edited statements from "NDS Letter"
13 n. 5	Edited statements from "NDS Letter"
16 n. 8	Edited statements from "NDS Letter"
114	Edited statements in "NDS Memorandum Report"
115	Excerpts from "NDS Memorandum"
116	Excerpts from "NDS Memorandum"
117-118	Excerpts from "NDS Memorandum"
119	Edited statements from "letter from Norris to Adams"
121	Edited statements from "NDS report"
122	Edited statements from "NDS Letter"
123	Edited statements from "NDS Letter"
124	Excerpts from "NDS Memorandum"

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Paragraph(s)	Material to be Stricken
125	Excerpts from "NDS Memorandum"
126	Excerpts from "NDS Memorandum"
127-129	Edited statements from letters from Adams to Hasak
136-137	Excerpts from "NDS Memorandum"
138	Excerpts from "NDS Memorandum"
140	Parenthetical addition of "[the smart card]"
141	Parenthetical additions of "[hacking]" and "[secret keys to EEPROM or ROM]"
142, 144-145	Parenthetical additions of "[Tarnovsky]"
159	Numerous parenthetical additions
166	Parenthetical addition of "[NDS]"
172	Parenthetical additions of "[EchoStar hack]" and "[NDS via Tarnovsky]"
177, 179-181, 191, 192, 194, 296-298	Parenthetical additions of "[Tarnovsky]"
296-298	Numerous parenthetical additions

6. Plaintiffs' previously dismissed claims for disgorgement under Business and Professions Code § 17200 should again be stricken.

Paragraph(s)	Material to be Stricken
353-359	Sixteenth Cause of Action, in its entirety

7. Plaintiffs' claim of "Civil Conspiracy/Joint Contribution" should be stricken.

Paragraph(s)	Material to be Stricken
397-403	Twenty-Second Cause of Action, in its entirety



1 8. Counsel's annotations in the TAC should be stricken.

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Paragraph(s)	Material to be Stricken
297 (l)	Note to "[CONFIRM Menard's company]"
297 (m)	Note to "ADD DETAILS ABOUT THIS SHIPMENT AND LATER INVESTIGATION LINKING MAIN'S FINGERPRINTS"
297 (q)	Note to "[VERIFY EQUIPMENT'S PURPOSE AND USE]"
297 (r)	Note to "[VERIFY EQUIPMENT'S PURPOSE AND USE]"

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11 This motion is based upon the attached Memorandum of Points and  
12 Authorities, the Order of this Court dated December 22, 2003 dismissing portions  
13 of plaintiffs' First Amended Complaint, the Order of this Court dated July 21, 2004  
14 requiring plaintiffs to file a more definite statement, and upon all other pleadings,  
15 papers, and other evidence on file herein.

16  
17 Dated: September 20, 2004

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