

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
Harrisonburg Division**

Sky Cable, LLC )  
Robert Saylor )

**Plaintiffs**

v. )

Massanutten Resort, LC; )  
Great Eastern Resort Corporation; )  
Great Eastern Resort Management, Inc.; )  
Michael Shifflett, aka Mike Shifflett; )  
Randy Cooley, aka Randolph Powhatan )  
Cooley, aka Randy Coly, individually )  
and d/b/a East Coast Sales, East Coast )  
Cable and Resort Cable; )  
Kimberly Cooley, aka Kimberly Coly )

**Main Defendants**

and )

**Civil Action No.** \_\_\_\_\_

DIRECTV, Inc.; )  
Mountainside Villas Owners Association, )  
Inc.; )  
Woodstone Time-Share Owners )  
Association; )  
Shenandoah Villas Owners Association; )  
Summit at Massanutten Owners )  
Association; )  
Regal Vistas at Massanutten Owners )  
Association; )  
Eagle Trace Owners Association )

**Ancillary Defendants**

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY  
RESTRAINING ORDER and CERTAIN INJUNCTIVE RELIEF**

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Plaintiff Sky Cable, LLC and Robert Saylor hereby submit the following Memorandum of Law and Points of Authorities in support of their Motion for Temporary Restraining Orders against the Defendants herein as authority and support for the relief being sought against the Defendants, individually, as specified in each of the respective motions filed against each of the respective defendants.

## **INTRODUCTION**

Plaintiffs Sky Cable LLC (hereinafter Sky Cable) and Robert Saylor (hereinafter Saylor) have been the victims of an elaborate scheme to defraud them and the Defendant DIRECTV perpetuated by one or more of defendants Massanutten Resort, LC, Great Eastern Resort Corporation, Great Eastern Resort Management, Inc., Michael Shifflett, aka Mike Shifflett, Randy Cooley, aka Randolph Powhatan Cooley, aka Randy Coly, d/b/a East Coast Sales, East Coast Cable and Resort Cable, and Kimberly Cooley, aka Kimberly Coly, individually and in various combinations with one another. The purpose of that scheme has been to legally obtain DIRECTV satellite television programming for 168 certain specific timeshare units and then to redistribute and retransmit the legally received television programming illegally over a cable television systems owned and operated by one or more of the main Defendants to approximately 2,500 timeshare units and other properties without payment therefore to the provider, the Defendant DIRECTV. The Plaintiff Sky Cable is the Defendant DIRECTV's affiliate and the account of one or more of the main defendants has been assigned to it to oversee and to handle. The Plaintiff Saylor is a member and manager of the Plaintiff Sky Cable. For its services as the DIRECTV affiliate of the main defendant's DIRECTV account, Sky Cable receives a percentage of the payments made for each timeshare unit for which the Defendant DIRECTV's satellite television programming has been purchased. By claiming that the satellite television programming is being purchased for and distributed to only 168 timeshare units, when in fact it is being distributed to approximately 2,500 units, the commission being paid to the Plaintiff Sky Cable is markedly affected and decreased to the extent of the underreporting by one or more of the main Defendants. As a direct and proximate result of this scheme, the Plaintiff Saylor's income has also markedly suffered.

The actions of one or more of the Main Defendants violate both federal and state laws. Specifically the Plaintiff allege that the Main Defendants jointly and severally and in various combinations with one another are violating the Communications Act, 47 U.S.C. §605; the Electronic Communications Privacy Act, 18 U.S.C. §§2510-2521; Fraud and Related Activity in Connection with Access Devices, 18 U.S.C. §1029; Racketeer Influenced and Corrupt Organizations (RICO) 18 U.S.C. §§1961, 1962; Money Laundering 18 U.S.C. §§1956, 1957; Obtaining or

Attempting to Obtain Satellite Signals in violation of Virginia Code §18.2-187.1; and Conspiracy to Injure another in Trade, Business or Profession in violation of Virginia Code §18.2-499-500.

By separate motions which the Plaintiffs have filed with respect to each individual defendant, the Plaintiffs are seeking the entry of a temporary restraining order and certain other injunctive relief with respect to each individual defendant. With respect to the Main Defendants Massanutten Resort, LC, Great Eastern Resort Corporation, Great Eastern Resort Management, Inc. and Randy Cooley the Plaintiff are seeking injunctive relief which prevents any of them 1) from terminating or cancelling any current subscription(s) with the Defendant DIRECTV to provide satellite television programming, 2) from seeking or attempting to procure from any other vendor of cable or satellite television programming contracts to provide said type of service to it or to any of the other Defendants and 3) from terminating any of the Defendant DIRECTV's satellite television programming which they or any one of them is providing to any of the remaining Ancillary Defendants. With respect to the Defendant DIRECTV the Plaintiffs are seeking to enjoin and prevent this defendant from terminating the satellite television programming which is currently being providing to one or more of the Main Defendants. With respect to the remaining Ancillary Defendants the Plaintiff are seeking 1) to enjoin them from paying and remitting to any of the Main Defendants any monies and funds which they currently are required to pay to one or more of the Main Defendant in order to receive the Defendant DIRECTV's satellite television programming and 2) to order them instead to pay all of said monies which they would otherwise have paid for these services to one or more of the main defendants into this court or into a separate individual trust account established by Plaintiff's counsel specifically for this action until further order of this court and 3) to enjoin them from seeking or attempting to procure from any other vendor of cable or satellite television programming contracts to provide said type of service to them directly.

### **STATEMENT OF FACTS**

The Plaintiffs, having stated the facts of this case in as much detail as possible in their complaint, do hereby incorporate herein paragraphs 26 thru 77 of their complaint as fully as if it had been so stated herein.

## **MAIN DEFENDANTS SCHEME TO DEFRAUD**

Beginning at a time which is unknown to the Plaintiffs, but upon information and belief which commenced approximately June of 1999 and has continued to the date of the filing of this action, the Defendants Randy Cooley, Shifflett, Massanutten, GERC and/or GERM, as members of a conspiracy in various different combinations with one another and between themselves, conspired together and engaged in repeated illegal and improper acts and practices for the purpose of contractually or otherwise obtaining DIRECTV satellite television programming for a limited and specific number of units, with the specific purpose and intention to thereafter illegally and improperly redistribute the legally purchased DIRECTV satellite programming signal to hundreds of additional units, for which the DIRECTV satellite programming had not been purchased, over a cable and/or telecommunications system which was built, installed, owned and/or operated by the Defendants Massanutten, GERC and/or GERM.

Beginning at a time which is unknown to the Plaintiffs, but upon information and belief which commenced sometime in June of 1999 and which has continued up to the date of the filing of this action, the Defendants Randy Cooley, Shifflett, Massanutten, GERC and/or GERM, individually and as members of a conspiracy together and/or in different combinations between themselves, conspired together and engaged in repeated illegal and improper acts and practices for the specific purpose of delivering the DIRECTV satellite television programming, which was being purchased by the Defendants Massanutten, GERM and/or GERC, to the Defendant Cooley, doing business as Resort Cable, over a cable and/or telecommunications system which was built, installed, owned and/or operated by the Defendants Massanutten, GERC and/or GERM for the purpose of the Defendant Randy Cooley contractually selling for profit said stolen television programming signal to the Defendant Mountainside Villas Owners Association, Inc., knowing that the Defendant Cooley was not and had never been authorized by the Defendant DIRECTV or the Plaintiff Sky Cable to receive or to resell the Defendant DIRECTV's satellite television programming.

Over the course of the past twelve years the Defendants Randy Cooley, Shifflett, Massanutten, GERC and/or GERM individually and as members of a conspiracy have repeatedly on various occasions made false and fraudulent representations and

misrepresentation to representatives of the Plaintiff Sky Cable in furtherance of their scheme in order to permit them to continue the perpetration of their conspiracy and of the aforementioned illegal acts. The false representations were the verbal denials by either the defendants themselves or agents of the Main Defendants to the Plaintiff Saylor that the signals which he was observing in the various timeshare units, which were managed or controlled by the Defendants, seemed to be the same DIRECTV satellite television programming which was being purchased for only 168 units. These defendants and agents assured him that it was not the same programming.

The Plaintiff Saylor conducted field tests of various television sets located within each of the ancillary defendants timeshare units in December of 2010 and January, February and May of 2011. As outline in the complaint the testing process is straight forward and provides immediate and definite confirmation that the signal being delivered to each respective property was in fact emanating from the address (4000 Killy Court) where the legal television programming signal was being received. At each time-share property Plaintiff Saylor entered various separate timeshare units. The television located in that unit was then turned on to specific channels which were known to be provided to the IRD (integrated receiver/decoder) located at the Killy Court address. There is an IRD for each programming channel being purchased and received at that location. In order to receive the satellite television programming, the IRD must also have an access card provided by the Defendant DIRECTV inserted into it. Each IRD and each access card have their own unique numbers associated with them. A telephone call was then placed to the DIRECTV Commercial Operations Center requesting a verification test. The DIRECTV operator was provided with the account number associated with the Massanutten Resort account and the unique identification access card number for the equipment located at the Killy Court address. The DIRECTV representative then turned off, for approximately 20 seconds, the particular channel(s) requested by the Plaintiff Saylor. If the channel then being viewed at that particular time share unit goes dark or blank and then reappears, the signal and programming for that particular timeshare unit is in fact tied directly to and being delivered from the equipment located at the Killy Court address and is in fact a part of that satellite programming distribution system. If the channel then being viewed is not affected by the requested cut off, then it is not tied to that system and is independent of it.

Using this testing procedure Plaintiff Saylor has repeatedly confirmed that the signal being sent and received at each of the ancillary defendant's time share properties is in fact the exact same signal being sold to the Defendant Massanutten Resort, LC for 168 listed units, which is then retransmitted to the timeshare units of all of the ancillary defendants which total far in excess of 168 units. Indeed in one specific unit of Woodstone Meadows on May 24, 2011 the above testing procedure was used for channels 37 (Lifetime Network), 36 (Comedy Central) and 50 (Cartoon Network). In each test the access cards and IRD's associated with the DIRECTV SMATV account #8810346 (which is the account assigned to Massanutten Resort) were turned off for the respective channels. The respective access card numbers assigned to the respective channels are Lifetime Channel - #000620275370; Comedy Central - #000627275586; and Cartoon Network - #000627275990. In each instance when the access card for the above account was deactivated the television screen went blank and then reappeared when the technician at the DIRECTV operation's center reactivated the access card.

The intent to defraud is manifest, especially so with respect to the Defendant Randy Cooley for whom there exists no account of record with the Defendant DIRECTV. This Defendant, despite having no account with DIRECTV, has contracted with the Defendant Mountainside Villas Owners Association, Inc. to provide the Defendant DIRECTV's satellite television programming service. No integrated receiver/decoder (IRD) box is located on the property of the Defendant Mountainside Villas Owners Association, Inc. Instead after field testing it was determined that this property was in fact receiving the same signal as was being sold to the Defendant Massanutten Resort for 168 units. It was being transmitted over fiber optic and/or copper lines designed, built and installed by one or more of the Main Defendants.

The Plaintiffs at this point are unable to accurately state and determine their actual losses because they do not have access to the records and accounts of the Defendants in this case and calculations of losses will have to await discovery in this case.

### **ARGUMENT**

The Plaintiffs move this Court to enter certain Temporary Restraining Orders and certain other orders which are different in their application to the various defendants in this

case. Specifically the Plaintiffs have filed motions with respect to the Defendants Massanutten Resort, LC (hereinafter Massanutten), Great Eastern Resort Corporation (hereinafter GERM), Great Eastern Resort Corporation (hereinafter GERC) and Randy Cooley seeking injunctive relief which prevents any of them 1) from terminating or cancelling any current subscription(s) with the Defendant DIRECTV to provide satellite television programming, 2) from seeking or attempting to procure from any other vendor of cable or satellite television programming contracts to provide said type of service to it or to any of the other Defendants and 3) from terminating any of the Defendant DIRECTV's satellite television programming which they or any one of them is providing to any of the remaining Ancillary Defendants; with respect to the Defendant DIRECTV to enjoin and prevent it from terminating the satellite television programming which it is currently providing to one or more of the Main Defendants; and with respect to the Defendants Mountainside Villas Owners Association, Inc., Woodstone Time-Share Owners Association, Shenandoah Villas Owners Association, Summit at Massanutten Owners Association, Regal Vistas at Massanutten Owners Association and Eagle Trace Owners Association 1) to enjoin them from paying and remitting to any of the Main Defendants any monies and funds which they currently are required to pay to one or more of the Main Defendant in order to receive the Defendant DIRECTV's satellite television programming and 2) to order them instead to pay all of said monies which they would otherwise have paid for these service to one or more of the main defendants into this court or into a separate individual trust account established by Plaintiff's counsel specifically for this action until further order of this court and 3) to enjoin them from seeking or attempting to procure from any other vendor of cable or satellite television programming contracts to provide said type of service to them directly.

Additionally the Plaintiffs are seeking a further order which will permit the holder of the funds which are being withheld from one or more of the main defendants and paid by one or more of the ancillary defendant as outlined above, to pay the current bill which the Defendant DIRECTV has been sending to one or more of the main defendants on a monthly basis for the past twelve years. This relief, as outlined below, is authorized by the federal and state statutes under which this action is brought.

### **Temporary Restraining Order**

The Fourth Circuit employ a four-factor test to determine whether a temporary restraining order or preliminary injunction should issue: (1) that the plaintiff is likely to succeed on the merits, (2) that the plaintiff is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the plaintiff's favor, and (4) that an injunction is in the public interest. *Real Truth About Obama, Inc. v. Federal Election Commission*, 575 F.3d 342 (4<sup>th</sup> Cir. 2009); *Lorillard Tobacco Co. v. S & M Brands, Inc.*, 616 F.Supp.2d 581, 586 (E.D.Va. 2009). The Fourth Circuit's opinion in *Real Truth About Obama, Inc.* referenced the standards recently set forth by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 365, 374-76, 172 L.Ed.2d 249 (2008) which require a somewhat stronger showing than the previous standards required by the Fourth Circuit governing the grant or denial of preliminary injunctions as set forth in *Blackwelder Furniture Co. of Statesville v. Seilig Manufacturing Co.*, 550 F.2d 189 (4<sup>th</sup> Cir. 1977). Notably the Winter requirement that the plaintiff clearly demonstrate that it will likely succeed on the merits is stricter than the Blackwelder requirement that the plaintiff demonstrate only a grave or serious question for litigation. See Winter at 129 S.Ct. 374-377 and Blackwelder at 550 F.2d 196-197. Winter also requires that the plaintiff make a clear showing that it is likely to be irreparably harmed absent preliminary relief, while Blackwelder requires only that the court balance the irreparable harm to the respective parties, requiring only that the harm to the plaintiff outweigh the harm to the defendant.

This Court has specific authority to order injunctive relief under the federal and state statutes upon which this action is brought. The Federal Communications Act vests this Court with the authority to "grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain violations of subsection (a) of this section." 47 U.S.C. §605(e)(3)(B)(i). The Racketeer Influenced and Corrupt Organizations Act permits this court to issue "appropriate orders" to prevent or restrain violations of that act. Any person injured in his business or property may bring a civil action under this act and may obtain relief. 18 U.S.C. §1964(a) & (c). In addition pursuant to the Plaintiffs' allegations contained in counts 2, 4 and 10

of the Plaintiffs' complaint additional authority for the issuance of injunctive relief is provided by 47 U.S.C. §2520(b)(1), Virginia Code §18.2-187.1(E) and Virginia Code §18.2-500.

Section 605(a) provides in relevant part: "No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto." 47 U.S.C. §605(a)(6).

### **Likelihood of Success on the Merits**

The Federal Communications Act, the Electronic Communications Privacy Act and Virginia law prohibit the unauthorized use of satellite transmissions for an individual's own benefit. *See* 47 U.S.C. §605(a)(6) and 18 U.S.C. §2511(1)(a). These causes of action are set forth in Counts 1 and 2 of the Plaintiffs' complaint. Additionally Virginia law prohibits knowingly obtaining or attempting to obtain satellite television broadcast services with the intent to avoid or cause other persons to avoid any lawful charge for those services. This causes of action is set forth in Count 4. The Virginia Code creates a civil cause of action for damages for violations of Va. Code §18.2-187.1 and vests this Court with authority to enjoin further violations. The Virginia Code also provides a civil remedy, including injunctive relief, for claims involving a statutory business conspiracy in violation of Va. Code §18.2-499. This cause of action is set forth in Count 10 of the Plaintiffs' complaint, which addresses the Main Defendants' concerted actions in furtherance of their violations of state and federal law.

While the Plaintiffs need show likely success on the merits as to only one of these claims to obtain the relief sought by this Motion, the Plaintiffs believe that even at this early stage of the proceedings, they can show that they are likely to succeed on the merits of each of these claims. The allegations with respect to the Defendant Randy Cooley indeed are sufficient enough. With respect to this one Defendant, he has, through his fictitious company, Resort Cable, entered into a contract to provide the Defendant DIRECTV's satellite television programming to the timeshare units controlled by the Defendant Mountainside Villas Homeowners Association, Inc. Defendant Cooley has no right, permission or contract with the Defendant DIRECTV to provide any of these services to these timeshare units. He has been receiving payment for said television programming. (Plaintiffs have been able to obtain prior to the filing of this action a copy of one bill for December 2010, the top half of the initial contract between the Defendant Randy Cooley and the Defendant Mountainside Villas Homeowners Association, Inc. and two checks for December 2010 and January 2011 which copies are hereunto attached collectively as "Exhibit A" to this memorandum.)

The programming being received by Mountainside Villas timeshare units is in fact emanating from the receivers assigned and billed to the DIRECTV SMATV account #8810346, the same account for which service is being billed to Massanutten Resort for one or more of the Defendants Massanutten GERC or GERM. The transmission of this satellite television programming is over lines and telecommunication equipment designed, built, installed and/or maintained by one or more of these three defendants. Indeed all of the programming received by Mountainside Villas timeshare units is in fact associated with the Defendant DIRECTV's SMATV account #8810346 which is billed to Massanutten Resort. This fact has been confirmed by the field tests conducted by the Plaintiff Robert Saylor as heretofore outlined above. Indeed on May 25, 2011 a representative of Mountainside Villas Owners Association, Inc. confirmed to Plaintiff Saylor that there have been no changes in the television programming services provided by the Defendant Randy Cooley since they first began to be provided in 1999. At this point in time it is unknown by the Plaintiffs whether Massanutten Resort, LC, GERC or GERM is actually paying the bill for the above account. It has been confirmed however, by the Plaintiff

Robert Saylor that all of the equipment associated with the Defendant DIRECTV's SMATV account #8810346 is believed to be housed in a building located at 4000 Killy Court.

### **Irreparable Harm**

In this case the Plaintiffs are requesting this court to enter orders to maintain the *status quo* as it has existed for the past 12 years with the exception that all monies being paid by any of the ancillary defendants to any of the main defendants for the receipt of the Defendant DIRECTV's satellite television programming be paid into this court or into a separate trust account to be established by counsel for the plaintiffs until the conclusion of this case. They are also requesting that this court enter an order permitting the keeper of said funds to pay the monthly DIRECTV bill for SMATV account #8810346 from the funds so collected until the conclusion of this case. With respect to these specific requests none of the defendants will be prejudiced or harmed any more than they have already been for the past twelve years.

The Plaintiffs are also seeking an order from this court enjoining any party from changing or seeking to change the satellite television programming provider from that which it has been using or receiving for the past twelve years. It is also seeking to enjoin the Defendant DIRECTV from terminating service to any of the defendants until the termination of this case. The irreparable harm to and the mitigation of said harm to each of the respective Plaintiffs and Ancillary Defendants is set forth and specified below.

1. **Plaintiffs Sky Cable, LLC and Robert Saylor.** These Plaintiffs have suffered for the past twelve years from substantial lost revenues which would otherwise have been paid to either of them as commissions and or income had the Main Defendants not had a scheme to defraud the Defendant DIRECTV of the proper and rightful revenues which were due to it. The Main Defendants have valued the television programming of the Defendant DIRECTV for the past twelve years and they have never sought to change it or to seek an alternate provider of the television programming services. Indeed these defendants valued this service so much that they have illegally stolen the signal and the programming and have retransmitted it without authorization and without payment therefore to thousands of other timeshare units.

There is however a potentially more insidious reason for the theft of this signal by one or more of the Main Defendants which at this point, until discovery can be had, the Plaintiffs can only surmise. While they have no actual proof at this point in time, the Plaintiffs know that from an accounting

standpoint, the bills which the Main Defendants provide to the respective ancillary defendants, save DIRECTV, must in fact correspond and equal the payments being demanded of the respective timeshare owners and their associations. As can be seen from the bill of the Defendant Randy Cooley, he is billing the Defendant Mountainside Villas Owners Association, Inc. the sum of \$2,800.00 per month, but is paying nothing to the Defendant DIRECTV.

The Plaintiffs have been able to determine that one or more of the other ancillary defendants is paying approximately \$40.09 per month per timeshare unit for the Defendant DIRECTV's satellite television programming which is now costing one or more of the Defendants Massanutten, GERC or GERM approximately \$11.45 per unit per month (but only for 168 units for a total monthly billing of \$1,923.60, but upon information and belief 84 of which units are located in Shenandoah Villas at Killy Court and the remaining 84 of which units are located in Eagle Trace at Killy Court). As of the date of the filing of this action, the Defendant Woodstone Time-Share Owners Association has approximately 645 timeshare units. Using the above numbers the Plaintiffs have estimated that this particular defendant is currently paying approximately \$25,000.00 per month for television programming that is currently costing the Defendants Massanutten, GERC and/or GERM nothing to deliver to this time share complex. The same would be true for each of the other ancillary Defendants, save certain units located in the Eagle Trace and Shenandoah Villas complexes. The sums involved in this scheme of the Main Defendants are staggering and this money is and has been flowing to someone and/or some entity or perhaps even to an unknown individual or entity for the past twelve years.

As one of the remedies which it is seeking, the Plaintiff Sky Cable is seeking to have this court order one or more of the Main Defendants to enter in to legal SMATV Agreements through the auspices of the Plaintiffs for television programming at the current billing rates for such period of time as the court deems to be fit and appropriate under the circumstances, but for no less period of time that at least ten years. To permit any of the Defendants to now voluntarily change the service provider in effect rewards these Main Defendants for their past conduct and will have significant and deleterious economic impact upon the Plaintiff Sky Cable and the Plaintiff Robert Saylor. As a remedy for their past conduct this court has the power to order one or more of the Main and Defendants to enter into valid contracts and to properly pay for the services which they previously were stealing. If any of the Main Defendants were permitted to change providers at this time, then any

other service provider would require a significant period of duration during which time their contract could not be cancelled without substantial penalty. In order to preserve this option for the Plaintiffs and prevent substantial economic harm to them, the Plaintiffs are asking this court for this injunctive relief.

Additionally if the court orders that the funds for the payment of DIRECTV's satellite television programming to be placed either with this court or in a trust account, those funds, which are far in excess of the monthly payment due to the Defendant DIRECTV, will be sufficient to pay the monthly bill owed to the Defendant DIRECTV and will create a substantial fund for the ready payment of damages to the Plaintiffs.

2. **Defendant DIRECTV.** If the court orders that the funds for the payment of DIRECTV's satellite television programming are placed either with the court or in a trust account, those funds, which are far in excess of the monthly payment due to this defendant, will be sufficient to pay the monthly bill owed to this defendant and will create a significant fund for the payment of damages, not only to the Plaintiffs, but also to this defendant in the event that it files its own action against one or more of any of the other defendants.

Within the past eighteen months or so, the Plaintiffs have in fact advised this defendant of the fraudulent scheme of the Main Defendants as outlined in the Plaintiffs' complaint and this defendant has not responded to the Plaintiffs and has taken no action against any of the Main Defendants. In light of this fact and the fact that a fund will be established to pay damages, this defendant will not be severely prejudiced.

3. **Defendant Mountainside Villas Homeowners Association, Inc.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably harmed. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to

the Plaintiffs who are asking this court to order this Defendant to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.

4. **Woodstone Time-Share Owners Association.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably harmed. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to the Plaintiffs who are asking this court to order this Defendant and/or one or more of the Main Defendants to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.
5. **Shenandoah Villas Owners Association.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably harmed. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to the Plaintiffs who are asking this court to order this Defendant and/or one or more of the Main Defendants to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.
6. **Summit at Massanutten Owners Association.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of

the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably harmed. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to the Plaintiffs who are asking this court to order this Defendant and/or one or more of the Main Defendants to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.

7. **Regal Vistas at Massanutten Owners Association.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably harmed. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to the Plaintiffs who are asking this court to order this Defendant and/or one or more of the Main Defendants to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.
8. **Eagle Trace Owners Association.** Unless the court orders the requested relief for the Defendant DIRECTV to maintain its current programming, then this Defendant will be highly prejudiced and harmed. If the Defendant DIRECTV is permitted to terminate programming, then all of the timeshare unit owners who are members of this defendant will suffer through no fault or doing of their own. This defendant will not be prejudiced by ordering it to pay its satellite television bill to this court or to a separate trust account established for this action, but to fail to order this defendant to do so will cause irreparable harm to the Plaintiffs in that they may have no other manner or method to collect any damages from any of the Main Defendants and in such an event the Plaintiffs would be irreparably

harm. In addition to permit this defendant to seek an alternate service provider of these services will unduly and unfairly prejudice and cause irreparable economic harm to the Plaintiffs who are asking this court to order this Defendant and/or one or more of the Main Defendants to also enter into a valid SMATV contract with the Plaintiff Sky Cable, LLC.

Federal courts have consistently found irreparable harm resulting from a defendant's violation of 47 U.S.C. §605(a). See ON/TV of Chicago v. Julien, 763 F.2d 839, 844 (7th Cir. 1985) and Chartwell Communications Group v. Westbrook, 637 E.2d 459, 467 (6th Cir. 1980) both of which dealt with illegal decoder devices and ESPN v Edinburg Community Hotel, Inc., 735 F. Supp. 1334, 1343 (S.D. Tex. 1986) and American Television and Communications Corp. v. Floken, Ltd, 629 F. Supp. 1462, 1472 (M.D. Fla. 1986) both of which dealt with unauthorized reception, interception and rebroadcasting of cable television.

In analyzing injunctions specifically under 47 U.S.C. §605 other courts have "presumed" the existence of irreparable harm upon a showing by a plaintiff that it is likely to succeed upon the merits of its claim. Indeed the district court in Time Warner Cable of New York City v Freedom Electronics, 897 F. Supp. 1454(S.D. Fla. 1995) stated "[h]owever, when authority for the issuance of 'statutory' injunctive relief is provided by legislative enactment, an aggrieved party is entitled to such relief upon a showing that a defendant has violated the statute or is likely to do so without regard to the traditional equitable prerequisites of injunctive relief." See Time Warner at 1460.

In Silver Sage Partners, Ltd v. City of Desert Hot Springs, 251 F.3d 814 (9th Cir. 2001) the court stated "[w]e have held that where a defendant has violated a civil rights statute, we will presume that the plaintiff has suffered irreparable injury from the fact of the defendant's violation. Smallwood v. National Can Co., 583 F.2d 419, 420 (9th Cir. 1978) (discussing Title VII); see also Burlington Northern R.R. Co. v. Department of Revenue, 934 F.2d 1064, 1074 (9th Cir. 1991) ('The standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief.' (internal quotation marks and citation omitted); Gresham v. Windrush Partners, Ltd., 730 F.2d 1417, 1423 (11th Cir. 1984) (stating that 'irreparable injury may be presumed from the fact of discrimination and violations of fair housing

statutes')." See Silver Sage Partners at 827. These courts have reasoned that Congress' express grant of injunctive authority reduces the plaintiff's burden of producing further proof of the traditional equitable prerequisites of injunctive relief.

The evidence before this Court clearly demonstrates that the Plaintiffs have and will continue to suffer irreparable harm and that all of the Ancillary Defendants will suffer irreparable harm if the *status quo* and monetary account relief which the Plaintiffs are requesting is not implemented and ordered by this court and there is no other adequate remedy at law to prevent this irreparable harm.

### **Balance of Equities**

The Plaintiffs seek at this point to protect the *status quo* until this court can determine the amount of damages owed to the Plaintiffs and further order one or more of the Main Defendants to properly entered into a SMATV contract with the Plaintiff Sky Cable, LLC at current prices and for the proper amount of units serviced. The Plaintiffs further seek an order requiring all Ancillary Defendants, save the Defendant DIRECTV, to pay into this court or a separate trust account all monies which they now pay to receive their satellite television programming until the Court has determined a resolution to this lawsuit. If the *status quo* is not maintained at this point in time, thousands of owners of the time share units of the ancillary defendants will find that their satellite television programming has been turned off in their units. In addition to permit one or more of the Main Defendants and the Defendant Mountainside Villas Homeowners Association, Inc. to seek an alternative source of television programming for their respective units will prevent this court from awarding and ordering a portion of the relief requested in their complaint and it will to some extent reward the Main Defendants for their fraudulent behavior over the past twelve years.

For approximately the past eighteen months or so the Plaintiffs have been advising the Defendant DIRECTV of the illegal activities being committed by one or more of the Main Defendants and said defendant has failed to act or to investigate these complaints of the Plaintiffs with respect to the Main Defendants. The Defendant DIRECTV will not be any more prejudiced in substantial degree than it has already been for the past twelve years. If funds for

the television programming are ordered to be placed with this court or in a separate trust account, funds will be accruing with which to pay not only the Plaintiffs, but also the Defendant DIRECTV.

In the unlikely event that the Plaintiffs should fail in their complaint, all funds collected will still be ready and available to all parties to whom said funds might have been owed and none of the defendants, whether main or ancillary, would have been harmed economically or otherwise by any of the injunctive relief requested by the Plaintiffs.

### **Public Interest**

The public along with the Plaintiffs have been deceived by the fraudulent scheme orchestrated and perpetrated by one or more of the Main Defendants. Unquestionably the public interest strongly supports protecting consumers from television programming that is procured by fraudulent means. The Defendant DIRECTV contracts and pays for the right to distribute this type of programming and entertainment content to its subscribers and holds license rights under the Copyright Act to exhibit the programming to its subscribers. The Plaintiff Sky Cable is the Defendant DIRECTV's Affiliate in this area. The Plaintiffs' and the Defendant DIRECTV's contractual obligations between one another and with any respective license holders and the rights of the underlying copyright owners are impaired by unlawful and fraudulent scheme of the Main Defendants. Federal courts have recognized that the public interest can only be served by upholding copyright protections and correspondingly, "preventing the misappropriation of the skills, creative energies, and resources which are invested in the protected works." *Apple Computer, Inc. v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3<sup>rd</sup> Cir. 1983) (internal quotations and citation omitted); see also *Worlds of Wonder v. Vector Intercontinental, Inc.*, 653 F. Supp. 135, 141 (N.D. Ohio 1986) (public interest in preserving integrity of copyright laws).

Congress and the Virginia state legislature have created statutory protections for satellite companies that are intended to safeguard their satellite transmissions. See 47 U.S.C. §605(a), 18 U.S.C. §2511(1)(a), and Va. Code §§18.2-187.I & 18.2-499. Additionally the Defendant DIRECTV operates a Direct Broadcast Satellite Service under part 100 of Title 47 of the Code of Federal Regulations, pursuant to licenses issued by the Federal Communications

Commission ("FCC") and other government agencies. The public interest is embodied in that extensive statutory and regulatory scheme. The Plaintiffs submit that the public interest is served by enforcing federal and state laws.

### **BOND**

The Main Defendants, whether joint or severally, and in various combinations with one another are engaged in an elaborate scheme to defraud the Defendant DIRECTV, resulting not only in substantial economic and other losses to this defendant but also to the Plaintiffs in this case. The proposed injunctive relief and other orders being sought by the Plaintiffs in this case seek to maintain the *status quo* with respect to the actual reception of the stolen television programming *vis-s-vis* the Ancillary Defendants, while removing from the purview and control of the Main Defendants all of the financial funds and remunerations which they are currently receiving as a result of their fraudulent activities. The relief and orders being sought by the Plaintiffs are modest and in the unlikely event that they are unsuccessful before this court in their complaint, all funds will still be available to all parties as if this suit had never been brought and nothing will have changed in regards to any defendant, whether main or ancillary. Under these circumstances the Plaintiffs respectfully submit that no bond is necessary, but should this court require a bond, then one of not more than \$5,000 should be sufficient in this case. The Plaintiffs further request leave of Court to file proof of any bond required by this court within ten days of the date of entry of this Court's order.

### **ORDER TO SHOW CAUSE**

Pursuant to Federal Rule Civil Procedure 65(b), the Plaintiffs respectfully request the Court to order all Defendants to appear before this court and show cause why the preliminary injunctive and other relief requested by the Plaintiffs should not issue forthwith from this Court, which relief will continue through the trial in this case.

## CONCLUSION

The Main Defendants' illegal and unlawful practices, whether jointly or severally, and in various combinations with one another, have caused and continue to cause substantial injury to the Plaintiffs and in addition to the Defendant DIRECTV for which the Plaintiffs have no adequate remedy at law. By this Motion the Plaintiffs seek to maintain the *status quo vis-a-vis* the Ancillary Defendants while removing the unlawful and unjust financial gains and remunerations which one or more of the Main Defendants have been receiving and enjoying for the past twelve years as a direct and proximate result of the aforementioned illegal acts of one or more of said Main Defendants. This temporary relief is expressly authorized by the federal and state statutes upon which this action is brought. For all of these reasons, the Plaintiffs respectfully request that this Court issue the proposed injunctive and other relief requested by the Plaintiffs.

Respectfully submitted.  
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