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FEDERAL APPEALS COURT CLEARS WAY FOR NATIONWIDE CLASS ACTION LAWSUIT AGAINST DIRECTV FOR ALLEGED "BAIT-AND-SWITCH" SCHEME

In a major victory for consumers throughout the nation, the Ninth Circuit U.S Court of Appeals held today that DirecTV's contractual ban on customers bringing class actions against it violates a "fundamental policy" of California.

The Court also ruled that, because DirecTV is headquartered in California and the national class action lawsuit is based on California law alone, DirecTV could not use the "choice-of-law" provision in its contract to avoid the application of California's consumer protection laws in this case.

"DirecTV knew that if it could avoid the application of California law and a nationwide class action, it could cheat customers in many states with impunity, because some states permit corporations to ban class actions," said Public Justice Staff Attorney Leslie Bailey, who was the principal author of the appellate brief. "Now that the company can no longer hide behind its contract, its customers will have their day in court."

The plaintiffs in this putative nationwide class action allege that DirecTV has violated California consumer protection laws by engaging in a "bait and switch" scheme in which it markets satellite television receivers for purchase, informing customers only after the sale is completed that they have merely "leased" the equipment and must pay additional long-term monthly fees or incur cancellation penalties.

DirecTV's consumer contract includes a term banning its customers from bringing or participating in a class action ban, but a California court had earlier ruled that the class action ban is unenforceable under California law. DirecTV sought to block the case by arguing that California law did not apply to the contracts of non-California customers, invoking a choice-of-law clause in its consumer contract which selects the law of each customer's state of residence.

The Ninth Circuit agreed with Public Justice that enforcement of DirecTV's choice-of-law clause would violate California's fundamental public policy against exculpatory class action bans, and that because DirecTV is based in California, the alleged wrongful acts emanated from California, and the plaintiffs allege violations of only California law, California has a "materially greater interest" in applying its own laws to its corporate citizen than any other state has in preventing its residents from joining in this class action to hold DirecTV accountable. It affirmed a decision by the U.S. District Court for the Central District of California.

"This victory allows us to vigorously pursue the claims of our clients throughout the United States," said Michael Reese of New York, co-counsel in the case. "We look forward to bringing them justice in this matter."

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In addition to Bailey and Reese, the plaintiffs were represented by Public Justice staff attorney Paul Bland, who argued the appeal, Mark J. Tamblyn of Sacramento, Robert S. Green of San Francisco and Public Justice's Goldberg, Waters & Kraus Fellow Amy Radon, and Baron-Brayton Fellow Melanie Hirsch.

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