

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DISH NETWORK L.L.C.,)	
)	
Plaintiff,)	Case No. 1:22-cv-00993
)	
v.)	Honorable John F. Kness
)	
DATA CAMP LIMITED d/b/a CDN77 and)	Magistrate Sheila M. Finnegan
Datapacket,)	
)	
Defendants.)	
)	

ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS

Defendants DataCamp Limited d/b/a CDN77 and Datapacket (“DataCamp”), by and through their undersigned counsel, hereby responds to the Plaintiff Dish’s Complaint and asserts Counterclaims against Plaintiff as follows:

Nature of the Action

1. Except as explicitly admitted herein, DataCamp expressly denies every allegation in the Complaint and demands strict proof of the same.
2. Answering Paragraphs 1-3, DataCamp is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.
3. DataCamp denies the allegations of Paragraphs 4-7 and demands strict proof thereof.

Parties

4. The allegations of Paragraph 8, upon information and belief, are admitted.
5. The allegations of Paragraphs 9 are admitted.

Jurisdiction and Venue

6. DataCamp admits that the Complaint purports to be an action under the Copyright Act, but denies it has any merit or that DISH has properly asserted claims under the Copyright Act. Further, DataCamp denies that the Court has subject matter jurisdiction to the extent DISH asserts Copyright Claims for *unregistered* works.

7. Answering Paragraph 11, DataCamp admits this Court has personal jurisdiction over DataCamp and that it operates and services consumers in the State of Illinois. DataCamp denies the remainder of the allegations set forth in Paragraph 11 and demands strict proof thereof.

8. The allegations of Paragraphs 12-16 are admitted.

9. Answering Paragraph 17, DataCamp admits that venue is proper in this Court pursuant to 28 U.S.C. § 1391 and Plaintiff's purported *claims* under 29 U.S.C. § 1400(a). To the extent this allegation seeks an admission of any actual violation to the Copyright Act, DataCamp denies and demands strict proof thereof.

Factual Allegations

10. Answering Paragraph 18-20, DataCamp is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

11. Answering Paragraph 21-23, DataCamp is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

12. Answering Paragraph 24, DataCamp is without sufficient knowledge or information to form a belief as to the truth of the allegation in the first sentence of the paragraph which addresses lawsuits filed by DISH and therefore denies. DataCamp is without sufficient

knowledge of information to form a belief as to the truth of the allegation in the last sentence of the Paragraph which addresses the knowledge and/or motive of the customers who allegedly infringed upon Plaintiff's purported rights (the "Alleged Direct Infringers"), who are not related to DataCamp and not a party to the lawsuit, and therefore denies the allegation. DataCamp denies all other allegations of Paragraph 24 (second and third sentences) and demands strict proof thereof.

13. Answering Paragraph 25, DataCamp admits only that a CDN is generally described as a geographically distributed network of datacenters and computer servers designed to transmit content over the internet with high efficiency and peak performance and that one of its services, CDN77 offers a Dedicated CDN infrastructure, although it does not offer a Dedicated CDN infrastructure to all its clients. Other than "Istar," none of the Alleged Direct Infringers used DataCamp's CDN.

14. Answering Paragraph 26, to the DataCamp admits only that one of its services, CDN77, offers "live streaming processing," assists clients with "IPTV/OTT delivery," and that DataCamp has marketed the same, but denies any other allegation, including any implication that DataCamp provides the same to all its customers or the Alleged Direct Infringers.

15. Answering Paragraphs 27-31, to the extent the Plaintiff quotes from the website regarding one of DataCamp's services, CDN77, DataCamp generally admits the allegations but clarifies that these statements concern the CDN77 service which, as stated above, was only utilized by one account (described as "Istar" by DISH). Therefore, these statements are wholly irrelevant to DataPacket customers, the majority of the accounts mentioned in the Complaint.

16. Answering Paragraph 32, to the extent the Plaintiff quotes from the website regarding one of DataCamp's services, CDN77, DataCamp generally admits the allegations but clarified that these statements concern only the CDN77 service which, as stated above, was only

utilized by one account (described as “Istar” by DISH). In further response, DataCamp denies any allegation or implication that the listed free features were utilized by any of the Alleged Direct Infringers, except for the use of the Secure Tokens by the account described as “Istar” by DISH.

17. Answering Paragraph 33, DataCamp admits only that the marketing statement quoted by Plaintiff appears on Plaintiff’s website, but DataCamp denies the allegation that “[b]y using DataCamp’s CDN” the Alleged Direct Infringers “do not have to pay for foreign hosting services close to their customers.”

18. Answering Paragraph 34, to the extent the Plaintiff quotes from the website regarding one of DataCamp’s services, CDN77, DataCamp generally admits the allegations, but DataCamp denies any allegation or implication that such statements apply to this lawsuit or any of the Alleged Direct Infringers.

19. DataCamp denies the allegations of Paragraphs 35-36 and demands strict proof thereof.

20. Answering Paragraph 37, DataCamp denies that “without Datacamp’s CDN services and expertise, the [Alleged Direct Infringers] could not to what they are doing.” DataCamp is without sufficient information or knowledge to form a belief as to the remainder of the allegations contained therein and therefore denies the same.

21. DataCamp denies the allegations of Paragraphs 38-45 and demands strict proof thereof.

22. Paragraph 46 states a legal conclusion to which no response is required.

23. DataCamp denies the allegations of Paragraph 47 and demands strict proof thereof.

24. Answering Paragraphs 48-51, DataCamp is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

25. DataCamp denies the allegations of Paragraphs 52 and demands strict proof thereof.

26. Answering Paragraph 53, DataCamp admits only that it received notices from DISH which purport to be related to infringement but denies all remaining allegations.

27. DataCamp denies the allegations of Paragraphs 54 and demands strict proof thereof.

28. Answering Paragraphs 55-56, DataCamp admits only that it received notices from DISH which purport to be related to infringement and that it communicated with DISH regarding the same and denies any allegation inconsistent therewith.

29. DataCamp denies the allegations of Paragraph 57 and demands strict proof thereof.

30. DataCamp denies the allegations of Paragraph 58 and further responds that although DataCamp's policy allows for customers to submit counter notices, and that some customers have done so, the DMCA, nor any other law, requires counter notices.

31. DataCamp denies the allegations of Paragraph 59 and further responds that, at all relevant times, DataCamp complied with the applicable law, and that the DMCA, nor any other law, requires DataCamp to verify the rights of its customers prior to allowing customers to transmit content on the internet.

32. DataCamp denies the allegations of Paragraphs 60 and 61. In further response, DataCamp states that DISH's notices did not properly identify or specify the copyright works allegedly infringed upon, nor does the DMCA, nor any other law, requires DataCamp to act as DISH's private copyright police at DataCamp's expense. In good faith, DataCamp responded to DISH's notices as promptly as possible under the circumstances.

33. DataCamp denies the allegations of Paragraph 61 and demands strict proof thereof.

In further response, DataCamp states

34. DataCamp denies the allegations of Paragraph 62 and demands strict proof thereof.

In further response, DataCamp responds that, at all relevant times, DataCamp acted reasonably and in compliance with the law and, to the extent a multi-strike policy refers to a repeat infringement policy, DataCamp had such a policy which, like many others in the industry, is flexible and depends on the circumstances.

35. DataCamp denies the allegations of Paragraph 63 and demands strict proof thereof.

36. Answering Paragraph 64, DataCamp admits only that it has the right to terminate accounts, but denies the remaining allegations, including any implication that DataCamp had a service agreement with the Alleged Direct Infringers.

37. DataCamp denies the allegations of Paragraphs 65-68 and demands strict proof thereof.

38. Answering Paragraph 69, DataCamp admits only that Datacamp increased its revenue from 2018 to 2020 but denies all other allegations.

39. Paragraphs 70-71 state legal conclusions to which no response is required.

40. DataCamp denies the allegations of Paragraphs 72-75 and demands strict proof thereof.

AS TO COUNT I

(Materially Contributing to Copyright Infringement under 17 U.S.C. § 501)

41. In response to the allegations contained in Paragraph 76 of the Complaint, Defendant restates and realleges each of the prior responses as if fully set forth herein.

42. Answering Paragraphs 77-78, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and therefore denies the same.

43. Defendant denies the allegations of Paragraphs 79-84 and demands strict proof thereof.

AS TO COUNT II
(Vicarious Copyright Infringement under 17 U.S.C. § 501)

44. In response to Paragraph 85 of the Complaint, Defendant restates and realleges each of the prior responses as if fully set forth herein.

45. Defendants deny the allegations of Paragraphs 86-87 and demand strict proof thereof.

46. Answering Paragraph 88, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations relating to the Alleged Direct Infringers motivations or knowledge, and therefore denies the same. Defendant denies the remainder of the allegations set forth in Paragraph 88 and demands strict proof thereof.

47. Answering Paragraph 89, Defendant is without sufficient knowledge or information to form a belief as to every single action by its customers (or their customers), and therefore denies the same. Defendant denies the remainder of the allegations set forth in Paragraph 89 and demands strict proof thereof.

48. Defendant denies the allegations of Paragraph 90-91 and demands strict proof thereof.

AS TO PLAINTIFF'S PRAYER FOR RELIEF

49. Defendant denies that Plaintiff is entitled to any of the relief requested in Plaintiff's Prayer for Relief, including all subparts (A-G), and demands strict proof thereof.

AFFIRMATIVE AND OTHER DEFENSES

50. Plaintiff's claims are barred by the statute of limitations.

51. Plaintiff's claims are barred because it has failed to identify or specify what copyright works were allegedly infringed upon.

52. Plaintiff's claims are barred because Plaintiff has failed to allege evidence that the primary infringers (the "Alleged Direct Infringers") infringed upon its rights prior to notice and thereafter.

53. Defendant is not a proper party to this action. Defendant is a separate and distinct entity from the Alleged Direct Infringers and Plaintiff's claims are therefore barred by their failure to join indispensable parties.

54. Plaintiff's failure to mitigate damages bars their claims or limits their recovery.

55. Plaintiff's claims are barred to the extent they do not own and/or have the legal right to enforce the copyrights in the works underlying their claims.

56. Some or all of Plaintiff's claims are barred by the fact that Plaintiff failed to register the copyrights at issue in this action in accordance with the law.

57. Plaintiff's claims are barred by the doctrine of copyright misuse.

58. To the extent that Plaintiff relies upon copyright registrations that rest upon misstatements or fraud, those misstatements or fraud bar Plaintiff's claims.

59. Plaintiff's claims are barred because Defendant's service has substantial non-infringing uses.

60. Plaintiff's claims based on secondary liability are barred because Plaintiff cannot establish primary liability.

61. Plaintiff's claims based upon vicarious liability are barred because Defendant did not have the right or ability to control the alleged primary infringement.

62. Plaintiff's claims based on vicarious liability are barred because Defendant did not obtain a direct financial benefit from the alleged primary infringement.

63. Plaintiff's claims based on contributory liability are barred because Defendant did not have the requisite knowledge of the alleged primary infringement and did not cause, encourage, or induce the alleged primary infringement.

64. Plaintiff's claims based on contributory liability are barred because Defendant did not materially contribute to the alleged primary infringement.

65. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may be sustained, in violation of the Due Process clause of the U.S. Constitution.

66. Application of the Copyright Act and its remedies to the conduct of Defendant as Plaintiff's request would violate due process.

67. Plaintiff's claims are barred, or its damages are barred, because any infringement was innocent and was not willful.

68. Plaintiff's claims are barred for failure to comply with the DMCA, 17 U.S.C. § 512 and/or the common law equivalent.

69. Defendant is entitled to one or more of the DMCA Safe Harbors set forth in 17 U.S.C. § 512 for any infringement that may have occurred.

70. Plaintiff's claims are barred by the Caching Safe Harbor, 17 U.S.C. § 512(b).

71. Plaintiff's claims are barred by the equitable doctrines of unclean hands, laches, estoppel, and/or *in pari delicto*.

72. Plaintiff's claims are barred in whole, or in part, by its express and/or implied waiver in seeking to enforce any potential copyright infringement.

73. To the extent Plaintiff suffered any damages, Defendant is entitled to a setoff for any and all amounts received (including future recovery), by Plaintiff from the Alleged Direct Infringers and/or the costs and expenses incurred by Defendant to assist Plaintiff in policing Plaintiff's purported rights.

74. Any award of punitive damages herein (entitlement to which is denied), is subject to the Fifth, Sixth, and/or Fourteenth Amendments to the Constitution of the United States.

75. Defendant reserves the right to assert all additional affirmative defenses that may be revealed during the course of discovery.

Parties

76. Counterclaim-Plaintiff DataCamp Limited ("DataCamp") is a company organized under United Kingdom law, with its principal place of business located at 207 Regent Street, London W1B 3HH, d/b/a CDN77 and Datapacket.

77. Counterclaim-Defendant DISH Network L.L.C. ("DISH") is a limited liability company organized under Colorado law, with its principal place of business located at 9601 South Meridian Blvd., Englewood, Colorado 80112.

Jurisdiction and Venue

78. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as the parties are of diverse citizenship and the amount in controversy exceeds \$75,000, exclusive of interest and costs. This Court may exercise supplemental jurisdiction over DataCamp's state-law counterclaims pursuant to 28 U.S.C. § 1367 since the counterclaims are so closely related to Counterclaim-Defendant's federal claims so as to form the same case or controversy.

79. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a substantial part of the events causing DataCamp's claims occurred in this district; under 28 U.S.C. § 1391(b)(3) because DISH is subject to personal jurisdiction in this district; and under 28 U.S.C. § 1400(a) because the case involves alleged violations of the Copyright Act.

Factual Allegations Common to DataCamp's Counterclaims

80. DISH claims to be the fourth largest pay-tv provider in the United States and one of the largest providers of international television channels in the United States offering more than 400 channels in 27 languages.

81. DISH claims to contract for and licenses rights for certain international channels transmitted on its platform from channel owners and their agents, including ARY Digital USA LLC; B4U U.S., Inc.; Bennett, Coleman and Company Limited; Hum Network Limited; MBC FZ LLC; International Media Distribution (Luxembourg) S.A.R.L.; MSM Asia Limited; National Communications Services (SMC-PVT.) Limited; Soundview ATN LLC; Soundview Broadcasting LLC; Television Media Network (Pvt) Ltd; TV Today Network Ltd.; Vedic Broadcasting Inc.; and World Span Media Consulting, Inc. DISH previously contracted for and licensed rights from Al Jazeera Media Network. Al Jazeera Media Network along with the foregoing companies are referred to as "Networks."

82. DISH claims that these Networks include the following channels: Aaj Tak; Aastha; Al Arabiya; Al Hayah 1; Al Jazeera Arabic News; ART Cima; ARY Digital; ATN Bangla; ATN News; B4U Movies; B4U Music; CBC; CBC Drama; Dunya TV; Express Entertainment; Express News; Future TV; Hekayat; Hum Masala; Hum Sitaray; Hum TV; Hum World; India Today; LBC; LBCI (a/k/a LDC); MBC1; MBC Drama; MBC Kids (a/k/a MBC3); MBC Masr; Melody Aflam;

Melody Classic; Melody Drama; NTV Bangla; Rotana America; SAB; SET (a/k/a Sony SET); SET MAX; Times Now; and Zoom (referred to hereinafter as “Channels”).

83. DISH claims it entered into signed, written licensing agreements with the Networks granting DISH the exclusive right to distribute and publicly perform the Channels by means including satellite, over-the-top (OTT), internet protocol television (IPTV), and internet.

84. “The Channels” are not Registered Copyrighted Works with the U.S. Copyright Office.

85. The United States Supreme Court has held that a plaintiff, such as DISH, cannot file suit for unregistered works.

86. DISH has alleged copyright infringement for Unregistered Works in its Complaint. *See* DISH’s Complaint, Ex. 2.

87. Beginning in or near October of 2017, DISH claims it began to send “infringement notices” (referred to hereinafter as the “Phony Infringement Notices”) to DataCamp.

88. At this time, upon information and belief, DISH concocted a Scheme with NagraStar LLC, an entity owned in part by DISH, and its Law Firm, to aggressively monetize DISH’s contractual rights under the guise of United States Copyright Law. In furtherance of the Scheme, DISH and its co-conspirators began to craft the Phony Infringement Notices to target unsuspecting and vulnerable smaller companies, such as DataCamp, for the purpose of extorting money from them, and to use DataCamp as an example to bully the rest of the industry.

89. The Scheme preys upon smaller companies under the guise of DMCA enforcement and manipulates said companies, like DataCamp, to comply with DISH’s unlawful demands to avoid expensive, time-consuming, and brand-tarnishing litigation. DISH and its co-conspirators, knowing that the victims, being smaller companies, cannot afford to defend against DISH’s

baseless claims, threaten litigation unless the victim complies with DISH's demands with no questions asked—whether meritorious or not.

90. In some instances, when DataCamp informed DISH that its customer claimed the allegedly infringing content is free to air, instead of providing proof of registration or even one actual copyrighted work infringed, DISH instructed DataCamp to terminate the account.

91. Having been repeatedly threatened with litigation/prosecution, DataCamp believed it had no choice but to comply with DISH's demands by terminating its customers' accounts, even when some customers claimed that no infringement occurred and despite DISH's failure to provide proof of ownership/authority to sue, or proof of infringement, as required by the DMCA.

92. In fact, DISH did not possess exclusive rights to any actual identified Copyrighted Works in question. Rather, DISH merely has limited contractual rights to "Channels," which are not Registered Copyright Works, and are not categorically protected under U.S. Copyright Law.

93. DISH therefore is oddly and improperly trying to leverage its distribution agreements to secure exclusive rights not granted by the U.S. Copyright Office.

94. DISH has illicitly and improperly secured and continues to seek to secure exclusive rights in certain television programming that have not been registered with the U.S. Copyright Office.

95. Dish institutes this action for the primary, if not sole, purpose of bullying DataCamp into agreement to a False Public Judgement for tens of millions of dollars which DISH would agree, in private, never to execute on so that DISH would lie to the industry and terrorize and intimidate other companies like DataCamp into giving into its demands for money, attorneys' fees, and control of the Alleged Direct Infringers.

96. DataCamp rejected this fraudulent, false, unethical demand out of hand, yet DISH persists in its demand for this bizarre result.

97. DISH actually claims proudly that it “does this all the time.”

98. DISH’s demands for the creation of a fraudulent judgment would be a fraud on the Court and the Public which DataCamp will not be a party to.

FIRST COUNTERCLAIM

(Fraud)

99. Defendant restates and realleges each of the prior allegations as if fully set forth herein.

100. DISH, as alleged hereinabove, misrepresented to DataCamp the following:

- a. DISH had the exclusive right to any Copyright Works and the authority to enforce the same;
- b. DISH had registrations to any Copyright Works it claimed were infringed upon;
- c. DISH’s Infringement Notices were valid and lawfully issued under the DMCA.

101. DISH continuously made such statements, through its agents and law firm, to DataCamp in the “Infringement Notices” (more than 400 times accordingly to DISH’s Complaint) and correspondence between the parties from October of 2017 until the lawsuit was filed.

102. Unknown to DataCamp, DISH did not have the exclusive right to any identified Copyright Works or the authority to enforce the same, nor did it have Registrations for the Works it claimed were infringed upon.

103. DISH embarked upon a Scheme and course of conduct designed to exert economic pressure on DataCamp by threatening it with an expensive and resource-draining litigation without specifically identifying the Copyrighted Works at issue, or DISH’s authority to enforce the same, as required by the DMCA.

104. DataCamp relied upon the representations made by DISH because such representations and threats came from DISH, a large and respected corporation which touts itself as a content provider, and from its agent, an apparently legitimate law firm, and further, because DataCamp was not able to confirm or deny DISH's purported rights from a review of the "Infringement Notices."

105. DISH acted intentionally and/or with a reckless disregard for the truth because it (a) knew of the requirements of the DMCA and Copyright Law; (b) repeatedly engaged in this deceptive conduct with DataCamp as well as other service providers; (c) had no genuine concern for any specific Copyrighted Works at issue as evidenced by the demanded False Public Judgement.

106. DataCamp relied upon these representations as it worked tirelessly to comply with DISH's unlawful demands and termination requests. As a result of DataCamp's reliance on the representations of DISH, DataCamp has been damaged in the way of costs, fees, expenses, and the loss of customers associated with compliance with DISH's unlawful demands.

SECOND COUNTERCLAIM
(Deceptive Trade Practices¹)

107. Defendant restates and realleges each of the prior allegations as if fully set forth herein.

108. DISH, in its course of its business, as an entity and through its agents, willfully engaged in unfair and deceptive acts in the following ways:

¹ Both Illinois and Colorado authorize causes of action against businesses for deceptive trade practices and contain similar elements. *Compare* the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("Illinois Act") *with* the Colorado Consumer Protection Act, § 6-1-101, *et seq.* ("Colorado Act").

- a. Making material misrepresentations, as explained above, regarding DISH's purported exclusive, but identified copyrights; DISH's Registrations; and DISH's "Infringement Notices";
- b. Failing to identify specific Copyrighted Works allegedly infringed upon as required by law to hide DISH's lack of authority to enforce;
- c. Creating a plan and business strategy to coerce companies such as DataCamp to comply with its unlawful demands.

109. DISH's wrongful conduct and violations of the Illinois and Colorado Acts are capable of repetition because DataCamp is one of many companies that offer web hosting services for internet users that may post infringing content.

110. Upon information and belief, DISH has repeated such conduct with other online service providers.

111. DataCamp is entitled to recover actual damages in an amount to be determined by the trier of fact.

112. DataCamp is informed and believes the conduct of Defendants constitutes a willful violation of both the Illinois Act as well as the Colorado Act and, therefore, DataCamp is entitled to an award of treble damages, as well as attorneys' fees and costs.

THIRD COUNTERCLAIM
(Civil RICO)

113. Defendant restates and realleges each of the prior allegations as if fully set forth herein.

114. DataCamp is a "person" within the meaning of 18 U.S.C. § 1961(3) and § 1964(c).

115. DISH is an "enterprise" for purposes of 18 U.S.C. § 1961(4).

116. This enterprise was engaged in, and its activities affected, interstate commerce within the meaning of 18 U.S.C. § 1962(c).

117. DISH, including persons employed by or associated with the enterprise, conducted or participated, directly or indirectly, in the operation and/or management of the enterprise's affairs through a “pattern of racketeering activity” within the meaning of 18 U.S.C. § 1961(5) and § 1962(c).

118. As set forth above, DISH committed two or more of these acts of racketing activity, including but not limited to fraud, mail fraud, and wire fraud.

119. DISH and their agents have caused or conspired to cause the transmission of fraudulent documents through the mail and/or by wire via facsimile. Such acts constituted:

- a. A scheme to defraud through the mail and/or over wire transmissions;
- b. With intent to defraud DataCamp, Defendant did in fact mail and/or transmit by wire materials in furtherance of this scheme.

120. DataCamp was injured as a result of these RICO violations.

121. As a result of their misconduct, DISH is liable to DataCamp for their losses in an amount to be determined at trial.

122. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble the damages sustained, plus costs including attorney’ fees.

FOURTH COUNTERCLAIM
(Abuse of Process)

123. Defendant restates and realleges each of the prior allegations as if fully set forth herein.

124. As explained above, DISH sent “Phony Infringement Notices” for an ulterior purpose: to enforce its contractual rights, rather than protect against actual copyright infringement.

125. Similarly, DISH filed this lawsuit to coerce DataCamp into complying with DISH's unlawful demands. Further, during the proceeding, DISH requested that DataCamp agree to the Scam Consent Judgment in which DISH would, on paper, obtain a large monetary settlement, yet would never actually receive said sum.

126. DISH acted willfully in sending Phony Infringement Notices, filing claims which have no basis in law, and attempting to settle with DataCamp for a fake sum for the purpose of gaining media attention.

127. These sham activities adversely affected the interests of DataCamp and have resulted in damages to DataCamp.

FIFTH COUNTERCLAIM
(Civil Conspiracy)

128. Defendant restates and realleges each of the prior allegations as if fully set forth herein.

129. As explained above, DISH acted with NagraStar LLC and its Law Firm, for the purpose of defrauding DataCamp by crafting Phony Infringement Notices to induce DataCamp to comply with its demands.

130. As a result of DISH's wrongful conduct described, DataCamp was injured and damaged because DataCamp was induced into compliance which resulted in significant costs, expenses, and lost of customers.

WHEREFORE, DataCamp prays for judgment and/or order against DISH as follows:

- a) Dismissal of all DISH's causes of action with prejudice;
- b) awarding actual, compensatory, special, consequential, and incidental damages as determined by the trier of fact;
- c) awarding liquidated, statutory, and/or treble damages as permitted by law;

- d) awarding punitive and exemplary damages as permitted by law;
- e) awarding reasonable attorneys' fees, costs, and expenses incurred in the prosecution of this action;
- f) awarding DataCamp pre-judgment and post-judgment interest on its Counterclaims as allowed by law;
- g) an equitable constructive trust for all past and future monies received by DISH from the Alleged Direct Infringers; and
- h) awarding such other and further legal and equitable relief which the Court deems necessary and proper.

PRAYER FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Defendant respectfully requests that all issues and claims so triable by tried by a jury.

By: /s/ Bijan K. Ghom

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CERTIFICATE OF SERVICE

I certify that on the 31st day of July, 2023, the foregoing *Defendant's Answer, Affirmative Defenses, and Counterclaims* was served via the Court's ECF filing system to all counsel of record.

By: /s/ Bijan Ghom

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