

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Case No.

RUSSELL WESTBROOK ENTERPRISES, INC.,

Plaintiff,

v.

DISH PURCHASING CORPORATION and DISH WIRELESS LLC dba BOOST
MOBILE and/or BOOST INFINITE

Defendants.

COMPLAINT

Plaintiff, Russell Westbrook Enterprises, Inc., through its attorneys, Hall & Evans, LLC, submits this Complaint against DISH Purchasing Corporation and DISH Wireless, LLC dba Boost Mobile and/or Boost Infinite and alleges:

PARTIES, JURISDICTION & VENUE

1. Plaintiff, Russell Westbrook Enterprises, Inc. (RWE) is a Delaware corporation with its principal place of business in Los Angeles, California.
2. Upon information and belief, Defendant, DISH Purchasing Corporation is a Colorado Corporation with its principal place of business in Englewood, Colorado.
3. Upon information and belief, Defendant, DISH Wireless, LLC dba Boost Mobile and/or Boost Infinite, is a wholly owned subsidiary of DISH Wireless Holding, LLC which is a wholly owned subsidiary of DISH Network Corporation. In December

2023, EchoStar Corporation acquired DISH Network Corporation. To complete the acquisition, a wholly owned subsidiary of EchoStar merged with and into DISH Network Corporation, with DISH Network Corporation surviving the merger as a wholly owned subsidiary of EchoStar.

4. Upon information and belief, DISH Network Corporation is a Nevada Corporation with its principal place of business in Englewood, Colorado.

5. Upon information and belief, EchoStar Corporation is a Nevada corporation with its principle place of business in Englewood, Colorado.

6. In this Complaint, Defendants DISH Purchasing Corporation and DISH Wireless, LLC dba Boost Mobile and/or Boost Infinite are collectively referred to as “DISH.”

7. This case concerns DISH’s bad faith breach of contract where DISH has refused to pay RWE \$1,401,484.18 it owes RWE for services RWE provided under a valid and enforceable contract with DISH.

8. This Court has jurisdiction over this matter under 28 U.S.C. § 1391(a) because there is complete diversity of citizenship between RWE and DISH, and the amount in controversy is more than \$75,000.

9. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) and the applicable contract.

THE FACTS

10. DISH provides, among other things, mobile phone services through Dish Wireless, Boost Mobile, and Boost Infinite.

11. RWE provides, among other things, digital advertising and marketing services to companies like DISH.

12. DISH and RWE entered a Marketing Services Agreement (the Contract) effective May 14, 2021.

13. Under the Contract which includes all contract documents and amendments thereto, RWE agreed to provide certain marketing services to DISH, including Boost Mobile and Boost Infinite, related to DISH's mobile phone services.

14. Under the Contract, DISH agreed to pay RWE for the marketing services RWE provided to DISH.

15. The Contract is attached to this Complaint as **Exhibit 1**.

16. The marketing services performed by RWE under the Contract were specified in Statements of Work (SOWs) that were made part of the Contract.

17. The SOWs are attached to this Complaint as **Exhibit 2**.

18. To the extent the Contract required RWE to meet certain impression metrics related to its work, RWE met or exceeded those metrics and confirmed that it met or exceeded those metrics by providing DISH with independent DISQO reports confirming the impression metrics.

19. RWE invoiced DISH for the work it performed in compliance with the Contract.

20. RWE invoiced DISH as follows:

Invoice Date	Invoice No.	Payment Due	Amount
12/31/2022	144786-1	1/30/2023	400,000.00

6/30/2023	213985-1	7/30/2023	108,982.63
7/31/2023	226139-1	8/30/2023	369,980.28
8/31/2023	232124-1	9/30/2023	522,521.27

21. DISH never paid RWE the amounts owed under the Contract, SOWs and/or invoices, never claimed RWE failed to perform the work under the Contract, has never claimed the invoices were improper, and provided no explanation for its failure to pay the amounts owed under the Contract.

22. On April 24, 2024, RWE notified DISH of its breach of contract for failure to pay the amounts owed.

23. DISH never responded to the letter and never cured its breach of contract.

24. RWE has suffered, and continues to suffer, significant damages because of DISH's breach of contract.

**FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT)**

25. RWE incorporates the allegations in paragraphs 1-24, here.

26. DISH and RWE entered an enforceable and valid contract under which DISH agreed to pay RWE for certain services described in the Contract and SOWs.

27. RWE substantially performed all of its obligations under the Contract.

28. DISH breached the Contract by failing to pay RWE the amounts owed to RWE under the Contract for the services RWE performed under the Contract.

29. As a result of DISH's breach of contract, RWE suffered, and continues to suffer, damages and losses.

**SECOND CLAIM FOR RELIEF
(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING)**

30. RWE incorporates the allegations in paragraphs 1-29, here.

31. Under the Contract, DISH was required to act in good faith and deal fairly with RWE in performing the terms of the Contract.

32. DISH's actions were inconsistent with the agreed common purpose of the Contract and the reasonable expectations of RWE and DISH related to the Contract.

33. DISH breached its duty of good faith and fair dealing by refusing to pay RWE for its services without reason or explanation and without any claim that RWE did not substantially perform its obligations under the Contract.

34. DISH's refusal to pay RWE for the services rendered is contrary to the agreed common purpose of the Contract and the reasonable expectations of DISH and RWE under the contract.

35. Because of DISH's breach of its duty of good faith and fair dealing under the Contract, RWE suffered, and continues to suffer, damages and losses.

**THIRD CLAIM FOR RELIEF
(UNJUST ENRICHMENT)**

36. RWE incorporates the allegations in paragraphs 1-35, here.

37. By RWE performing the services under the Contract for DISH, DISH received a benefit from RWE.

38. By failing to pay RWE for the services it received, DISH has unjustly retained the benefit of RWE's services at RWE's detriment.

39. DISH's retention of the benefit of RWE's services without payment to RWE is inequitable.

40. As a result of DISH's unjust retention of the benefit of RWE's services without payment, RWE has suffered, and continues to suffer, damages and losses, and DISH must pay RWE for the value of the services RWE performed in an amount not less than the amount RWE invoiced DISH.

WHEREFORE, Plaintiff, Russell Westbrook Enterprises, Inc., requests entry of judgment in its favor against DISH and that this Court award it all damages and relief available under the law including, but not limited to:

1. Economic damages including, but not limited to, the amount due to RWE for unpaid services and/or all expenses and other amounts due under the Contract, plus interest that may be due under the Contract;
2. All other compensatory damages;
3. Pre- and post-judgment interest as provided by law.
4. All attorney fees available under the Contract and/or as otherwise allowed under the law.
5. The costs of this lawsuit as provided by contract and/or the law; and
6. Any other relief this Court may deem just and proper.

Dated: May 28, 2024

HALL & EVANS, LLC

s/Ethan E. Zweig

Ethan E. Zweig

David A. Belsheim

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Counsel for Plaintiff

Plaintiff's Address:

Russell Westbrook Enterprises, Inc.

10960 Wilshire Blvd., 5th Floor

Los Angeles, CA 90024

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Russell Westbrook Enterprises, Inc.
(b) County of Residence of First Listed Plaintiff Los Angeles County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Ethan E. Zweig
Hall & Evans LLC
1001 17th Street, Ste. 300, Denver, CO 80202 303-628-3300

DEFENDANTS
DISH Purchasing Corporation
DISH Wireless LLC dba Boost Mobile and/or Boost Infinite
County of Residence of First Listed Defendant Arapahoe County
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 X 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State X 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)
X 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause: Breach of Contract, Breach of Good Faith/Fair Dealing
AP Docket

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 1,401,484.18
CHECK YES only if demanded in complaint: JURY DEMAND: X Yes 0 No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 05/28/2024 SIGNATURE OF ATTORNEY OF RECORD /s/ Ethan E. Zweig

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service; **OR "AP Docket."**
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.