

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NARCISO FUENTES,
Plaintiff,

v.

DISH NETWORK L.L.C.,
Defendant.

Case No. [16-cv-02001-JSW](#)

**ORDER RESOLVING CROSS-
MOTIONS FOR SUMMARY
JUDGMENT AND SETTING STATUS
CONFERENCE**

Re: Dkt. No. 155, 157

Now before the Court for consideration are the cross-motions for summary judgment, filed by Plaintiff Narciso Fuentes (“Fuentes”) and Defendant Dish Network L.L.C. (“Dish”). The Court has considered the parties papers, relevant legal authority, and the record in this case, and the Court HEREBY GRANTS, IN PART, AND DENIES, IN PART, Dish’s motion, and GRANTS Fuentes’ motion.

BACKGROUND

Fuentes’ claims against Dish are based on alleged violations of four California statutes: the Home Solicitation Sales Act (“HSSA”), Translation Act (“CTA”), the Consumer Legal Remedies Act (“CLRA”), and the Unfair Competition Law (“UCL”). The facts, which are undisputed unless otherwise noted, supporting these claims are as follows:

On or about August 1, 2015, Fuentes, who speaks Spanish, received a Spanish language postcard in the mail advertising Dish’s satellite television service for \$19.99 per month for 12 months. The postcard included other terms and conditions, in small print, including the following: (1) if service was terminated during the first 24 months, a cancellation fee of \$20 per month remaining on the contract would apply; and (2) the prices for certain equipment. (Dkt. No. 155-3,

1 Declaration of Clifford E. Yin (“Yin Decl.”), ¶ 5, Ex. A (Deposition of Narciso Fuentes (“Fuentes
2 Depo.”) at 73:5-20, 75:21-77:23; Dkt. No. 155-4, Fuentes Depo. Ex. 41.)

3 Dish has some month-to-month subscription options, and those customers pay Dish’s full
4 retail rates and purchase Dish’s equipment. In order to determine if a customer qualifies for
5 promotional rates and the option to lease equipment, Dish will run a credit check, with a
6 customer’s permission. (Dkt. No. 156-4, Declaration of Elliot Conn in Support of Motion for
7 Summary Judgment (“Conn MSJ Decl.”), ¶ 9, Ex. H (Deposition of Mark Vervae (“Vervae
8 Depo.”) at 13:17-22, 39:7-41:5; Dkt. No. 168-1, Declaration of Elliot Conn in Opposition to Dish
9 Motion for Summary Judgment (“Conn Opp. Decl.”), ¶¶ 3-4, Ex. B (Deposition of Paul Orban
10 (“Orban Depo.”) at 20:11-21:14, 46:17-22, 47:1-10), Ex. C (Deposition of Shannon Picchione
11 (“Picchione Depo.”) at 16:16-25, 18:7-12, 22:3-23:18, 25:16-26:18, 31:24-33:8.)

12 On August 2, 2022 Fuentes called Dish, spoke with its employee Claudia Flores, and asked
13 whether the offer of \$19.99 per month was “with a contract? ... or, is it more on a monthly basis.”
14 Flores asked Mr. Fuentes some questions about the type of televisions he had in his home and
15 what type of programs he liked to watch. She then advised Fuentes that to determine if Dish could
16 give him the promotion, she would need to run a credit check, and Fuentes gave permission to run
17 it. (Dkt. No. 155-14, Declaration of Jodeci Guzman (“Guzman Decl.”), ¶¶ 2, 5-6, Exs. C-D
18 (Transcripts of Recordings on 8/2/15 (“8/2/15 Tr.”) at 1-7).)¹ Flores then advised Fuentes he
19 qualified for two offers, both of which required two year terms: (1) a fixed price for both years;
20 and (2) a discounted price during the first year that would increase during the second. Flores also
21 explained that the \$19.99 offer was for one TV and represented the cost of the programming
22 without a digital recorder. (8/2/15 Tr. at 8-9.) Fuentes did not subscribe that day because Dish
23 could not offer him \$19.99 per month for one year. (Fuentes Depo. at 72:9-12.)

24 On August 6, 2015, Fuentes called Dish again and spoke with Paulina Nunez (“Nunez”).
25 (Guzman Decl., ¶¶ 3-4, Exs. A-B (Transcripts of Recordings on 8/6/15 (“8/6/15 Tr.”); *see also*
26 Fuentes Depo. at 52:20-53:8).) Fuentes testified that he called Dish again because he wanted to
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28 ¹ When the Court quotes from a transcript, it is quoting from the English translation.

1 determine if he could get a one-year contract. (Fuentes Depo. at 75:317.) Like Flores, Nunez
2 advised Fuentes she would need to run a credit check in order to determine what offers would be
3 available, and Fuentes consented. (8/6/15 Tr. at 2-5). When Nunez pulled up the offers available
4 to him, she also referred Fuentes to the small print on the postcard regarding the prices for
5 equipment, and Fuentes acknowledged those prices. (*Id.* at 6-7.) Nunez advised Fuentes about an
6 offer would give him a promotional rate of \$19.99 for the first year, plus \$12.00 for the “Hopper
7 equipment.” (*Id.* at 7.)² Nunez also explained that Fuentes would receive three months of certain
8 premium channels and six months of protection for the equipment for free, but if he did not want
9 to be charged for those items, he would need to cancel them on or before the trial periods ended.
10 (*Id.* at 20-22.)

11 Nunez advised Fuentes she was “going to go over the clauses of the plan” and advised
12 Fuentes that: “all of the equipment is rented;” there would be a charge for unreturned equipment;
13 he had “selected the offer of savings for the first year, upon signing up”; and Dish would
14 “automatically charge” him for the amount due. Nunez asked Fuentes if he wanted to sign up, and
15 he said, “Uh-huh. All right.” (*Id.* at 24.) Nunez then advised Fuentes that the “price of the
16 package” was \$19.99 for the first year and when that promotional period was over it would be
17 \$44.99 per month, that he needed to keep the premium channels for three months “to receive this
18 offer,” that he would be charged extra for those channels if he did not cancel after three months,
19 and that he would receive the protection plan free for six months, but after six months he would be
20 charged extra for that service, unless he cancelled.

21 Nunez also advised Fuentes that “[b]y receiving these offers, you are going to accept a 24-
22 month contract. ... If you break this agreement, you will be charged for early termination, for the
23 cost of \$20 for each month that you have your contract,” and that his initial bill would be \$31.99.
24 (*Id.* at 25.) Nunez also stated, “...all the prices, programming, functionality, offers are subject to
25 change. Dish may increase your monthly bill at any time. However, the price of your
26 programming package is protected for 12 months. Okay?” Nunez asked Fuentes if he “agree[d] to
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28 ² Nunez actually stated that the price was “20 dollars” plus the equipment. (*Id.* at 7-9.)

all the terms and conditions [she] just read[.]” Fuentes said, “Yes, all right.” (*Id.*; *see also* Fuentes Depo. at 77:20-23, 93:3-95:12.)

At the end of the August 6 phone call, Nunez and Fuentes had the following exchange:

NUNEZ: Anything else I can help you with?

FUENTES: Yes. Well, well sure, everything is fine. So just 3 more months, and then cancel the movies and 12 months and it will be \$31.99, right?

NUNEZ: Correct. Mm-hmm.

FUENTES: Uh-huh. Okay. So then after 12 months, it ... if, if I don't cut it off, they would charge as normal, right?

NUNEZ: Correct. Uh-huh.

FUENTES: Uh-huh. Yes ... no, well, I'll call before the 12 months are up.

NUNEZ: Correct. Mm-hmm.

FUENTES: You know? Oh, all right.

NUNEZ: Okay?

FUENTES: Uh-huh.

NUNEZ: So that would be all set then. Okay? Welcome to the Dish family. Well, remember that the discount, so, it's for just 12 months. Afterwards, you, the contract, it can terminate, you know? But, well sure...

FUENTES: Uh-huh. All right.

NUNEZ: But as I told you, 24 months, the discount for 12 full months. Okay?

FUENTES: Uh-huh. All right.

(8/6/15 Tr. at 35.)

On August 8, 2015, a Dish technician came to Fuentes' home to install the necessary equipment and to activate the service. It is undisputed that the technician did not speak Spanish. Fuentes testified the technician spent two to three hours installing the equipment and then, pursuant to Dish's practices, presented Fuentes with a tablet that contained an electronic version of Dish's Digital Home Advantage Plan Agreement (“DHAP”), in English, and an English language

1 the DHAP by reference. (Fuentes Depo. at 129:4-130:11, 188:16-21; Conn MSJ Decl., ¶¶ 2, 8,
2 Ex. A (Fuentes Depo. Ex. 42 (RCA and DHAP), Ex. G (Deposition of Megan Casados (“Casados
3 Depo.”) at 57:10-58:2).) Dish requires a customer to sign the DHAP, either on paper or
4 electronically, in order to receive service, and customers normally sign the DHAP at the location
5 where the service is installed. (Casados Depo. at 73:14-75:4, 79:18-24.)

6 Because the document on the tablet was in English, Fuentes was not able to read it but
7 “saw a lot of 24s.” (Fuentes Depo. at 125:3-23, 150:24-151:1.) Fuentes told the technician that he
8 did not want to sign and, according to Fuentes, the technician told him to sign the document and
9 “call the company and handle that.” (*Id.* at 123:4-126:16.) Fuentes also testified that he did not
10 know how to ask for a Spanish version of the document and could not ask his wife, who speaks
11 English, for assistance because she was in the shower. However, Fuentes also testified that he did
12 not ask for assistance when his wife was available. (Fuentes Depo. at 124:19-23, 126:12-24.) The
13 Dish technician did not – and could not – provide Fuentes with a Spanish version of the DHAP
14 because it is not available on Dish’s tablets. (Casados Depo. at 62:1-10 79:18-24, 109:19-110:1.)

15 According to Fuentes, he signed the DHAP because even though he saw the references to
16 24 months, he believed he had reached an agreement with Nunez for a one-year contract. Fuentes
17 called Dish within a few days to “handle that issue,” and it is undisputed that Fuentes was not able
18 to modify the term of his contract. (*Id.* 130:20-25, 139:12-20, 211:18-25, 213:1-7; *see also* Conn
19 MSJ Decl., Ex. D (Declaration of Narciso Fuentes in Support of Motion for Class Certification, ¶¶
20 7-11).) It also is undisputed that Fuentes’ DHAP and the RCA contain terms and conditions in
21 addition to the terms Nunez read during the telephone call with Fuentes. Fuentes terminated his
22 Dish subscription in August 2017 and has not subscribed since that time. (Fuentes Depo. at 45:11-
23 19, 237:1-9).)

24 The Court will address additional facts as necessary in the analysis.

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