

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

DIRECTV, Inc., a California corporation,

Case No. 6:01-CV-1255-ORL-31DAB

Plaintiff,

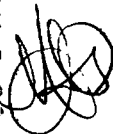
v.

WILLIAM HENDERSON, MICHAEL DANDRADE, ROBERT FERGUSON, KEVIN M. FLYNN, TOM FORTIN, MARK ANDREWS, FRANK LOSCALZO, JAMES MASKASKY, DANIEL PAYNE, GEORGE PLAKIOTIS, DICK SMITH, RICHARD TAYLOR, OTTO H. WALTER, GUY WINES, JOHN RODRIGUEZ, DAVID FOX, STEVE HUNTER, WILLIAM JOHNSON, KEITH O'BRIEN, MARK PALMER, LENNY PONTE, KEN STOGSDILL,

Defendants.

CLERK OF DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

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FILED

PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

Plaintiff, DIRECTV, Inc., hereby submits its written response to this Court's **January 29, 2002 Order to Show Cause** why this case should not be dismissed pursuant to Local Rule 3.10 for lack of prosecution due to the non-filing of a Case Management Report within the time prescribed by Local Rule 3.05 and states as follows:

Plaintiff's failure to timely submit a Case Management Report as required by Local Rule 3.05 was not the result of delay or contumacious conduct by the Plaintiff, and, therefore, should not result in the dismissal of Plaintiff's case. *E.g., Martin-*

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Trigona v. Morris, 627 F.2d 680 (5th Cir. 1980). Until recently the majority of the defendants in this action had either settled or had not yet been served, which effectively “tied the hands” of Plaintiff’s counsel in his efforts to perform his case management obligations.

Since the filing of this action, the Plaintiff has worked diligently to resolve through negotiation as many of the claims at issue as possible. As a result of these efforts, settlements have been reached with half of the defendants, including: MARK ANDREWS, KEVIN FLYNN, TOM FORTIN, WILLIAM JOHNSON, JAMES MASKASKY, DANIEL PAYNE, GEORGE PLAKIOTIS, JOHN RODRIGUEZ, MICHAEL DANDRADE, RICHARD TAYLOR and GUY WINES. Stipulations for Dismissal as to these defendants have either been filed or will be filed once settlement paperwork is finalized. Settlement negotiations are proceeding with additional defendants, and there is a strong likelihood additional settlements will be achieved within the next 30-45 days.

In addition to continuing settlement activities, Plaintiff’s compliance with the Court’s case management requirements has also been effected by the length of time it has taken the Plaintiff to serve the defendants who were added to the action in the Amended Complaint. Many of these defendants have only been served within the past 40 days. Defendant RICHARD TAYLOR was not served until January 31, 2002. Until service had been achieved on all of these defendants, Plaintiff was unable to make meaningful efforts to coordinate a Case Management Conference.

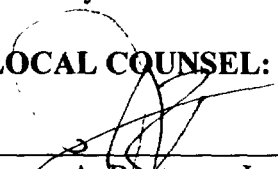
Now that all defendants have been served, Plaintiff can proceed under the requirements of Local Rule 3.05. To that end, the undersigned is in the process of

coordinating a Case Management Conference to occur no later than 30 days from the date of this Response.

WHEREFORE, the Plaintiff, DIRECTV, INC., would respectfully request that the Court refrain from dismissing this action and allow Plaintiff to submit its Case Management Report no later than 45 days from the filing of this Response.

DATED: Feb. 11-02

LOCAL COUNSEL:


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COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail delivery this 11th day of February, 2002 to **William Henderson c/o Lynn James Hinson**, Dean, Mead, Egerton, et al., P.O. Box 2346, Orlando, FL 32802-2346; **Michael Dandrade c/o John M. Cacciatore, Esquire** 1360 Sarno Road, Melbourne, FL 32935; **Robert Ferguson** 2022 Tanglewood Dr. NE, St. Petersburg, FL 33702; **Frank Loscalzo c/o Anthony G. Woodward**,

Esquire 2024 W. Cleveland Street, Tampa, FL 33606; **Dick Smith** c/o **Thomas C. Little, Esquire**, 2123 N.E. Coachman Road, Suite A, Clearwater, FL 33765 12607 Parkwood Street, Hudson, FL 34669; **Otto H. Walter** 8721 N. Pawnee Avenue, Tampa, FL 33617; **Mark Palmer** c/o Paul Katz, Atrium Suite, 1 Florida Park Drive South, Palm Coast, FL 32137; **Ken Stogsdill** c/o **Mark R. Osherow, P.A.** Parkway Center, Stanford Corporate Plaza, Suite 650, 7900 Glades Road, Boca Raton, FL 33434; **Keith O'Brien**, 5344 S. Marsha Terrace, Homosassa, FL 34446; **Steve Hunter**, 4015 Reid Street, Palatka, FL 32117; **David Fox** c/o Steven L. Barcus, 222 Newburyport Ave., Altamonte Springs, FL 32701; and **Lenny Ponte**, 855 North Park Avenue, Apopka, FL 32712 and **William Johnson**, 434 SE 47th Terrace, Cape Coral, FL 33904.



JAMES A. BOATMAN, JR., ESQUIRE