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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL SPAFFORD, JR., individually and on behalf of
a class of Washington residents similarly situated,

Plaintiff,

v.

EHOSTAR COMMUNICATIONS CORPORATION, a
Nevada corporation; et al.,

Defendants.

EHOSTAR COMMUNICATIONS CORPORATION, a
Colorado corporation, et al.,

Third-Party Plaintiffs,

v.

SATELLITE SYSTEMS NETWORK, LLC, a California
limited liability corporation,

Third-Party Defendant.

NO. CV06-0479 RAJ

AMENDMENT TO
STIPULATION OF
SETTLEMENT

AMENDMENT TO STIPULATION OF SETTLEMENT

It is hereby stipulated and agreed, by and between Michael Spafford, Jr., on behalf of
himself and all similarly situated Washington residents ("Plaintiff") and DISH Network
Corporation (Nevada corporation) (formerly known as EchoStar Communications Corporation

1 (Nevada corporation)), EchoStar Orbital Corporation (Colorado corporation), EchoStar Orbital II
2 L.L.C. (Colorado limited liability company), EchoStar DBS Corporation (Colorado corporation),
3 EchoSphere L.L.C. (Colorado limited liability company), DISH Network Service L.L.C.
4 (Colorado limited liability company), EchoStar Technologies L.L.C. (Texas limited liability
5 company), and DISH Network L.L.C. (Colorado limited liability company) (formerly known as
6 EchoStar Satellite L.L.C. (Colorado limited liability company)) (collectively "Defendants"), that
7 the Stipulation of Settlement, executed by the parties and their counsel in August 2008
8 ("Stipulation of Settlement"), is hereby amended as follows:

9 1. Section III.B.2(b) shall be amended in its entirety as follows:

10 (b) DISH Network L.L.C. shall investigate complaints received from
11 consumers, government entities, and third-parties (e.g., the Better Business Bureau) originating in
12 Washington State regarding use of ADADs, and shall take reasonable steps to identify the retailer
13 or the retailer's agent whose activities prompted the complaint. DISH Network L.L.C. shall adopt
14 and enforce in a commercially reasonable manner policies requiring that an investigation
15 commence within thirty (30) days of receipt of the complaint.

16 2. Section III.B.2(h)(i) shall be amended in its entirety as follows:

17 (i) **Level 1:** Upon identification of a retailer pursuant to the
18 above-stated complaint investigation process, DISH Network L.L.C. shall notify the retailer in
19 writing of the complaint and demand a written explanation. DISH Network L.L.C. shall adopt and
20 enforce in a commercially reasonable manner policies requiring that the notification described in
21 this paragraph be sent within forty-five (45) days of the date the retailer is identified.

22 3. Attached as **Exhibit A** hereto is a revised form of the Class Notice. This Exhibit A
23 replaces the document that was formerly attached as Exhibit A to the Stipulation of Settlement.

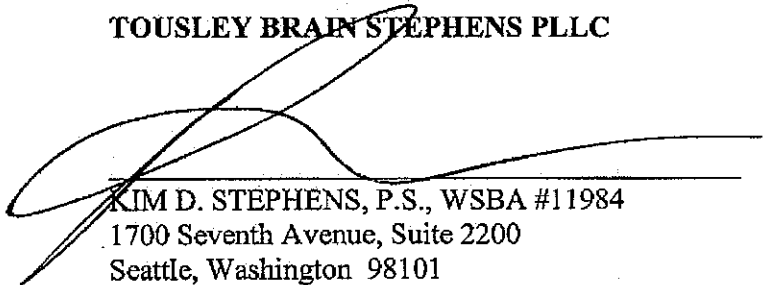
24 4. Attached as **Exhibit B** hereto is a revised form of the Preliminary Approval Order.
25 This Exhibit B replaces the document that was formerly attached as Exhibit B to the Stipulation of
26 Settlement.

1 5. Attached as **Exhibit C** hereto is a revised form of Final Judgment reflecting the
2 foregoing amendments. This Exhibit C replaces the document that was formerly attached as
3 Exhibit C to the Stipulation of Settlement.

4 Except as expressly provided herein, the terms of the Stipulation of Settlement remain in
5 full force and effect.

6 Dated: October ^{17th} __, 2008

TOUSLEY BRAIN STEPHENS PLLC



KIM D. STEPHENS, P.S., WSBA #11984
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: (206) 682-5600

Attorneys for Plaintiff
Michael Spafford, Jr.

14 Dated: October __, 2008

STOKES LAWRENCE, P.S.

SHELLEY M. HALL
800 Fifth Avenue, Suite 4000
Seattle, Washington 98104-3179
Telephone: (206) 626.6000

Attorneys for Defendants
DISH Network Corporation (formerly known as EchoStar
Communications Corporation), EchoStar Orbital
Corporation, EchoStar Orbital II L.L.C., EchoStar DBS
Corporation, EchoSphere L.L.C., DISH Network Service
L.L.C., EchoStar Technologies L.L.C., and DISH Network
L.L.C. (formerly known as EchoStar Satellite L.L.C.)

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1 5. Attached as Exhibit C hereto is a revised form of Final Judgment reflecting the
2 foregoing amendments. This Exhibit C replaces the document that was formerly attached as
3 Exhibit C to the Stipulation of Settlement.

4 Except as expressly provided herein, the terms of the Stipulation of Settlement remain in
5 full force and effect.

6 Dated: October __, 2008

TOUSLEY BRAIN STEPHENS PLLC

7
8
9
10 KIM D. STEPHENS, P.S., WSBA #11984
11 1700 Seventh Avenue, Suite 2200
12 Seattle, Washington 98101
13 Telephone: (206) 682-5600

14 Attorneys for Plaintiff
15 Michael Spafford, Jr.

16 Dated: October 6, 2008

STOKES LAWRENCE, P.S.

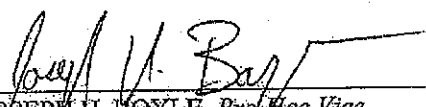
17 *Shelley Hall by Act.*
18 SHELLEY M. HALL (with permission)
19 800 Fifth Avenue, Suite 4000
20 Seattle, Washington 98104-3179
21 Telephone: (206) 626.6000

22 Attorneys for Defendants
23 DISH Network Corporation (formerly known as EchoStar
24 Communications Corporation), EchoStar Orbital
25 Corporation, EchoStar Orbital II L.L.C., EchoStar DBS
26 Corporation, EchoSphere L.L.C., DISH Network Service
L.L.C., EchoStar Technologies L.L.C., and DISH Network
L.L.C. (formerly known as EchoStar Satellite L.L.C.)

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Dated: October 6, 2008

T. WADE WELCH & ASSOCIATES



JOSEPH H. BOYLE, *Pro Hac Vice*
CHRISTINE D. WILLETTTS, *Pro Hac Vice*
7401 Fountainview, Suite 700
Houston, Texas 77057
Telephone: 713.952.4334

Attorneys for Defendants
DISH Network Corporation (formerly known as EchoStar
Communications Corporation), EchoStar Orbital
Corporation, EchoStar Orbital II L.L.C., EchoStar DBS
Corporation, EchoSphere L.L.C., DISH Network Service
L.L.C., EchoStar Technologies L.L.C., and DISH Network
L.L.C. (formerly known as EchoStar Satellite L.L.C.)

— **EXHIBIT A** —

EXHIBIT A TO THE
AMENDED STIPULATION OF SETTLEMENT

THE HONORABLE RICHARD A. JONES

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL SPAFFORD, JR., individually and on behalf of
a class of Washington residents similarly situated,

Plaintiff,

v.

ECHOSTAR COMMUNICATIONS CORPORATION, a
Nevada corporation; et al.,

Defendants.

ECHOSTAR COMMUNICATIONS CORPORATION, a
Colorado corporation, et al.,

Third-Party Plaintiffs,

v.

SATELLITE SYSTEMS NETWORK, LLC, a California
limited liability corporation,

Third-Party Defendant.

NO. CV06-0479 RAJ

NOTICE OF PENDENCY AND
SETTLEMENT OF CLASS
ACTION

• Final Approval Hearing Date:
December 3, 2008

• Last Day To Request Exclusion:
November 24, 2008

• Last Day To File Objections:
November 24, 2008

NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION

TO ALL PERSONS RESIDING IN WASHINGTON WHO received one or more
commercial solicitations for "DISH Network" products or services via a prerecorded message,

///

1 also known as an automatic dialing and announcing device ("ADAD") in the State of Washington
2 at any time prior to [the date of the Preliminary Approval Order, _____, 2008].

3 **PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE MAY AFFECT**
4 **YOUR RIGHTS.**

5 By Order of the United States District Court, Western District of Washington, at Seattle,
6 (the "Court"), YOU ARE HEREBY NOTIFIED AS FOLLOWS:

7 A class action lawsuit is now pending in the Court. A class action lawsuit is a lawsuit in
8 which one or more persons sue on behalf of other persons who are in a similar situation. This
9 Notice contains a brief description of this lawsuit and discusses your participation as a potential
10 member of the class of plaintiffs.

11 I. **DESCRIPTION OF LAWSUIT**

12 A class action lawsuit is now pending in a Washington United States District Court against
13 EchoStar Communications Corporation, EchoStar Orbital Corporation, EchoStar Orbital
14 Corporation II, EchoStar DBS Corporation, Echosphere L.L.C., DISH Network Service L.L.C.,
15 EchoStar Technologies Corporation and EchoStar Satellite L.L.C., (collectively, "Defendants").
16 This lawsuit is brought on behalf of all Washington residents who received one or more
17 commercial solicitations for "DISH Network" products or services via a prerecorded message in
18 the State of Washington.

19 The claim in this lawsuit is that the Defendants' alleged use of prerecorded messages for
20 commercial solicitations of Washington residents in order to encourage them to purchase
21 subscriptions to "DISH Network" products or services violated Washington law. Defendants deny
22 this claim. The Court has not ruled on the merits of this claim or on Defendants' denial.

23 Plaintiff has conducted an investigation into and has engaged in discovery with respect to
24 the facts and the law applicable to this lawsuit. Plaintiff, and Counsel for plaintiff and the Class,
25 have concluded that resolving this case on the basis of injunctive relief and a *cy pres* distribution

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1 pursuant to the terms of the Stipulation of Settlement and Amended Stipulation of Settlement
2 (collectively, the "Settlement") on file with the Court is in the best interests of the Class.

3 **II. SUMMARY OF THE PROPOSED SETTLEMENT**

4 If the Settlement is approved, an Injunction will be issued by the Court requiring the
5 Defendants to comply with the Washington law regulating the use of prerecorded messages and
6 will impose due diligence, reporting and disciplinary procedures (as set forth in section III of the
7 Stipulation of Settlement and Amended Stipulation of Settlement on file with the Court) designed
8 to monitor and ensure that Defendants' Retailer's comply with the law.

9 In addition, Defendants shall make a contribution pursuant to the *cypres* doctrine to the
10 Legal Aid for Washington Fund to support civil legal aid programs in an aggregate total amount of
11 \$50,000; pay the fees and costs incurred by the Plaintiff and Counsel for the Plaintiff and the Class
12 in an amount determined by an arbitration process engaged in between the parties and approved by
13 this Court and an incentive payment will be made to the Plaintiff for the Plaintiff's contribution of
14 time and effort in support of the prosecution of the claims in the amount of \$3,000 as approved by
15 the Court.

16 The above is a summary of the basic terms of the Settlement. For the precise terms of the
17 Settlement, you are referred to the detailed Stipulation of Settlement and Amended Stipulation of
18 Settlement which will be on file with the Clerk of the Court and posted on the website of Class
19 Counsel at <http://www.tousley.com>.

20 **III. WHAT ARE YOUR OPTIONS AS A MEMBER OF THE CLASS?**

21 Your options as a member of the Class are as follows:

22 **A. You Can Remain A Member Of The Class By Doing Nothing**

23 If you wish to remain a member of the Class, you do not need to do anything. Your
24 interests as a Class member will be represented by plaintiff and his counsel. You will be bound by
25 the terms of the Settlement and any final judgments that may be entered by the Court and will be
26 deemed to have released certain claims against Defendant as described in Section IV below.

1 As part of approving the Settlement, the Court will approve the payment of attorneys' fees,
2 expenses and costs and an incentive award to plaintiff, which amount, as specified above, will be
3 paid by Defendants. As a member of the Class, you will not be responsible for the payment of the
4 incentive award or payment of attorneys' fees, expenses or costs. This payment will not reduce,
5 directly or indirectly, any of the benefits the Class members will receive under the Settlement.

6 **B. You Can Object To The Terms Of The Settlement**

7 You can object to the Settlement before final approval if you remain in the Class.
8 However, if the Court rejects your objection, you will be bound by the terms of the Settlement. To
9 object, you must file a written objection, Notice of Intention to Appear, and any and all papers and
10 briefs you intend to discuss at the Fairness Hearing with the Clerk of the Court at the following
11 address:

12 Clerk of the Court, U.S. District Court
13 700 Stewart Street, Lobby Level
14 Seattle, WA 98101

14 You must also send a copy to the following counsel:

15 TOUSLEY BRAIN STEPHENS PLLC
16 Kim D. Stephens, P.S., WSBA #11984
17 EchoStarSettlement@tousley.com
18 1700 Seventh Avenue, Suite 2200
19 Seattle, Washington 98101
20 Telephone: (800) 259-2652

19 Your written objection shall state each specific reason, if any, in support of your objection,
20 and any legal support for each objection. Your objection must also state (a) your full name, and
21 (b) the date on which you received a solicitation for a "DISH Network" product or services via a
22 prerecorded message. To be valid and effective, your objections to approval of the Settlement
23 must be filed with Clerk of the Court and served upon and received by the above-listed attorneys
24 no later than November 24, 2008.

25 If you elect to remain a member of the Class for purposes of the Settlement, but do not
26 wish to be represented by Class counsel, you may personally enter an appearance or appear

1 through your own attorney. To do so, you must file an Entry of Appearance with the Clerk of the
2 Court and deliver copies to the attorneys listed above. Your Entry of Appearance must be filed
3 with the Clerk of the Court and delivered to the above-listed attorneys no later than November 24,
4 2008. You will then continue as a Class member. However, if you hire your own attorney to
5 represent you, unless the Court orders otherwise, you will be solely responsible for the fees,
6 expenses and costs of your attorney.

7 **C. You Can Request Exclusion From The Settlement Class**

8 You can exclude yourself from the Class. To exclude yourself from the Class, you must
9 send a written request for exclusion to the attorneys listed above.

10 Your request for exclusion from the Class must be signed by you personally. If you are a
11 corporation, association, or other entity, the exclusion request must be signed by an authorized
12 representative of the corporation, association, or other entity. Your exclusion request must state
13 (a) your full name and current address and (b) the date on which you received a solicitation for a
14 "DISH Network" product or services via a prerecorded message. You must specifically state that
15 you request exclusion from the settlement Class in the *Spafford v. EchoStar Communications*
16 *Corporation, et al.*, Case No. CV06-0479-RAJ. In order to be valid, your written request for
17 exclusion must be received by the above attorneys on or before November 24, 2008.

18 **IV. WHAT DO YOU GIVE UP UNDER THE SETTLEMENT?**

19 The Settlement is intended to settle and release all claims against Defendants that members
20 of the settlement Class have alleged or could have alleged in this lawsuit, regarding solicitations
21 for "DISH Network" products or services via an ADAD at any time prior to [the date of the
22 Preliminary Approval Order, _____, 2008]. The Settlement will extend to the Defendants;
23 each of Defendants' direct and indirect parents, subsidiaries and affiliated entities; the officers,
24 directors, employees, partners, shareholders, and attorneys of all of the foregoing persons and
25 entities; and the successors, assigns, and legal representatives of all of the foregoing persons and
26 entities. This Settlement does not release any claims you may have against Dish Network

1 Retailers, independent contractors, or their agents who may have used prerecorded messages. If
2 you do not exclude yourself from the settlement Class, you will be deemed to have entered into
3 this Settlement and to have settled and released, among other things, the above described claims.

4 If the Settlement is approved by the Court and becomes final, the Settlement will be
5 consummated. If the Settlement is not approved by the Court or does not become final for some
6 other reason, the litigation will continue.

7 **V. FINAL SETTLEMENT APPROVAL HEARING**

8 The Court will hold a hearing at the United States District Court, Western District of
9 Washington, Seattle Courthouse in the Honorable Richard A. Jones' courtroom, 700 Stewart
10 Street, Seattle, WA 98101, on December 3, 2008, at 10:00 a.m., to determine whether the
11 Settlement should be finally approved as fair, reasonable and adequate. The hearing may be
12 continued without further notice to the settlement Class. It is not necessary for you to appear at
13 this hearing.

14 **VI. ADDITIONAL INFORMATION**

15 The pleadings and other records in this litigation, including copies of the Stipulation of
16 Settlement and Amendment thereto, may be found on the website of Class Counsel at
17 <http://www.tousley.com>, or may be examined at any time during regular business hours at the
18 office of the Clerk of the United States District Court, Western District of Washington, Seattle
19 Courthouse, 700 Stewart Street, Seattle, WA 98101.

20 If you have any questions about this Notice or the Settlement, please direct your questions
21 to the following Class counsel:

22 TOUSLEY BRAIN STEPHENS PLLC
23 Kim D. Stephens, P.S., WSBA #11984
24 EchoStarSettlement@tousley.com
25 1700 Seventh Avenue, Suite 2200
26 Seattle, Washington 98101
Telephone: (800) 259-2652

PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK, OR

1 REPRESENTATIVES OF YOUR SATELLITE SERVICE COMPANY. NEITHER
2 DEFENDANT NOR ITS ATTORNEYS WILL BE PERMITTED TO DISCUSS THE
3 TERMS OF THE SETTLEMENT WITH YOU.

4 By order of the United States District Court, Western District of Washington, at Seattle,
5 State of Washington.

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— **EXHIBIT B** —

1 EXHIBIT B TO THE
2 AMENDED STIPULATION OF SETTLEMENT
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL SPAFFORD, JR., individually and on
11 behalf of a class of Washington residents
12 similarly situated,

11 Plaintiff,

12 v.

13 ECHOSTAR COMMUNICATIONS
14 CORPORATION, a Nevada corporation; et al.,

15 Defendants.

16 ECHOSTAR COMMUNICATIONS
17 CORPORATION, a Colorado corporation, et
18 al.,

18 Third-Party Plaintiffs,

19 v.

20 SATELLITE SYSTEMS NETWORK, LLC., a
21 California limited liability corporation,

21 Third-Party Defendant.
22

NO. CV06-0479 RAJ

[PROPOSED] ORDER GRANTING
PROVISIONAL CERTIFICATION OF
SETTLEMENT CLASS AND
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
AGREEMENT

23 WHEREAS, Plaintiff, on behalf of himself and the Class of Washington residents, and
24 Defendants, all acting by and through their respective counsel, have agreed, subject to Court
25 approval following notice to the Settlement Class and a hearing, to settle this litigation upon the
26 terms as set forth in the Stipulation of Settlement.

[PROPOSED] ORDER GRANTING
PROVISIONAL CERTIFICATION OF
SETTLEMENT CLASS, ETC.

09617.010.967948v1

1 WHEREAS, this Court has reviewed and considered the Stipulation of Settlement and
2 the Amended Stipulation of Settlement, entered into among the parties in this Action
3 (collectively, the "Stipulation"), together with all exhibits thereto, the record in this case, and
4 the briefs and arguments of counsel;

5 WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the
6 Action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including
7 numerosity, ascertainability, community of interest, predominance of common issues,
8 superiority and typicality, that the Class representative, Michael Spafford, is an adequate
9 representative of the Class and Class Counsel are adequate to represent the Class (as defined in
10 below);

11 NOW, THEREFORE, based upon the files, records and proceedings herein, and it
12 appearing to the Court that a hearing should be held on notice to the Class of the proposed
13 settlement to determine finally if the terms of the settlement are fair, reasonable and adequate;

14 **IT IS HEREBY ORDERED THAT:**

15 1. All terms and definitions used herein have the same meanings as set forth in the
16 Stipulation.

17 2. The proposed settlement set forth in the Stipulation is hereby preliminarily
18 approved as being within the range of reasonableness such that notice thereof should be given
19 to members of the Class.

20 3. For purposes of determining whether the terms of the settlement should be
21 finally approved as fair, reasonable and adequate, a Settlement Class is conditionally certified
22 for purposes of this settlement as consisting of:

23 All Washington residents who received one or more
24 commercial solicitations for "DISH Network" products or
25 services via an automatic dialing and announcing device
26 ("ADAD") in the State of Washington at any time prior to
the date of the Preliminary Approval Order. Excluded from
the class are the judge to whom this case is assigned, any

1 member of the judge's immediate family, as well as the
2 judge's staff and their immediate families.

3 4. Plaintiff Michael Spafford is hereby found to be adequate and is therefore
4 appointed as representative of the Class and the following counsel are hereby found to be
5 adequate and are hereby appointed as counsel for the Class:

6 TOUSLEY BRAIN STEPHENS PLLC
7 Kim D. Stephens, P.S., WSBA #11984
8 EchoStarSettlement@tousley.com
9 1700 Seventh Avenue, Suite 2200
10 Seattle, Washington 98101
11 Telephone: 1-800-259-2652

12 GALLAGHER LAW OFFICE, P.S.
13 Daniel C. Gallagher, WSBA #21940
14 seattlelaw@hotmail.com
15 10611 Battle Point Drive NE
16 Bainbridge Island, Washington 98110
17 Telephone: 206-855-9310

18 LEVY RAM & OLSON LLP
19 Michael F. Ram, *Pro Hac Vice*
20 mfr@lrolaw.com
21 Erica L. Craven, *Pro Hac Vice*
22 elc@lrolaw.com
23 Karl Olson, *Pro Hac Vice*
24 ko@lrolaw.com
25 639 Front Street, Fourth Floor
26 San Francisco, California 94111-1913
Telephone: 415-433-4949

5. If final approval of the settlement is not obtained, this certification order,
including the above description of the Settlement Class and appointment of the Class
Representative and Class Counsel, shall be vacated and this action shall proceed as though the
certification and appointments never occurred.

6. Pending final determination of whether the settlement should be approved,
neither Plaintiff nor any member of the Class, whether directly, indirectly, representatively or
in any other capacity shall commence or prosecute any action or proceeding in any court or
tribunal asserting any of the claims herein against the Defendants herein.

1 7. The Notice of Pendency and Settlement of Class Action (“Class Notice”), which
2 is attached to the Stipulation as Exhibit A, is hereby approved as to form.

3 8. EchoStar has agreed to have the Class Notice published no later than October
4 10th for the first publication and no later than October 24th for the second publication in
5 substantially the form attached as Exhibit A hereto. Notice will be published for one day in the
6 following newspapers of general circulation: (1) *Vancouver-Columbian*, (2) *Seattle*
7 *Times/Post-Intelligencer*; (3) *Spokane Spokesman-Review*, and (4) *Tri-City Herald*. Fourteen
8 days later, the same notice will be published for one day in each of the following newspapers of
9 general circulation: (1) *Vancouver-Columbian*, (2) *Tacoma News Tribune*, (3) *Bellingham*
10 *Herald*, (4) *Spokane Spokesman-Review*, and (5) *Yakima Herald Republic*. Class Counsel will
11 monitor and track those Class Members seeking exclusion or objecting to the proposed
12 Settlement.

13 9. Defendants shall pay all costs associated with preparation and publication of the
14 Class Notice.

15 10. Defendants are directed to file with the Court and serve upon Class counsel,
16 prior to the final approval hearing, a declaration confirming that dissemination of the Notice
17 has taken place in accordance with this Order.

18 11. The Court finds that the dissemination of the Notice under the terms and in the
19 format provided for in the Stipulation and this Order constitutes the best notice practicable
20 under the circumstances that it is due and sufficient notice for all purposes to all persons
21 entitled to such notice and that it fully satisfies the requirements of due process and all other
22 applicable laws.

23 12. A hearing (the “Fairness Hearing”) shall be held on December 3, 2008, at 10:00
24 a.m., in the Honorable Richard A. Jones’ court room, United States District Court, Western
25 District of Washington to determine whether the proposed settlement of this action should be
26 finally approved as fair, reasonable, and adequate and whether the Final Judgment approving

