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THE HONORABLE RICHARD A. JONES

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.

NO. CV06-0479 RAJ  
  
FINAL JUDGMENT AND  
ORDER APPROVING  
SETTLEMENT, ENTERING  
INJUNCTION, AND DISMISSING  
CLAIMS OF CLASS MEMBERS  
WITH PREJUDICE

ECHOSTAR COMMUNICATIONS CORPORATION, a  
Colorado corporation, et al.,  
  
Third-Party Plaintiffs,  
  
v.  
  
SATELLITE SYSTEMS NETWORK, LLC, a California  
limited liability corporation,  
  
Third-Party Defendant.

The parties' joint motion to approve their settlement in this class action (Dkt. # 150) came before this court on for a final approval hearing on December 3, 2008. The Court has considered the Stipulation of Settlement, as amended ("Stipulation"), the record in the above-captioned action

1 (the “Action”), the evidence presented and the arguments and authorities presented by counsel.  
2 No opt-outs, objections or comments were received regarding the proposed Settlement. The  
3 parties have complied with the provisions of the Class Action Fairness Act requiring that the  
4 United States Attorney General and Washington Attorney General be notified of this settlement.  
5 28 U.S.C. § 1715(b), (d). For good cause appearing, the court GRANTS the motion, and enters  
6 the following judgment and order.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

8 1. The Court, for purposes of this Final Judgment and Order Approving Settlement  
9 and Dismissing Claims of Class Members with Prejudice (“Final Judgment”), adopts the  
10 capitalized terms and their definitions set forth in the Stipulation.

11 2. The Court has jurisdiction over the subject matter of the Action, the Class  
12 representative, the Class Members and Defendants.

13 3. The Court finds that the notice to the Class of the pendency of the Action and of  
14 this settlement constituted the best notice practicable under the circumstances to all Persons within  
15 the definition of the Class, and fully complied with the requirements of due process and of all  
16 applicable statutes and laws.

17 4. The Court hereby adopts and approves the Stipulation and the settlement terms  
18 contained therein and finds that it is in all respects fair, reasonable, adequate, just, and in  
19 compliance with all applicable requirements of the United States Constitution (including the Due  
20 Process Clause), and all other applicable laws and in the best interests of the parties and the Class.  
21 No objections to the proposed Settlement were received. Accordingly, the Court directs the  
22 parties and their counsel to implement and consummate the settlement in accordance with the  
23 terms and conditions of all portions of the Stipulation.

24 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Class as finally  
25 certified, shall consist of:

26 All Washington residents who received one or more commercial

1 solicitations for “DISH Network” products or services via an  
2 automatic dialing and announcing device (“ADAD”) in the State of  
3 Washington at any time prior to October 6, 2008. Excluded from  
the class is the judge to whom this case is assigned, any member of  
the judge’s immediate family, as well as the judge’s staff and their  
immediate families.

4 The Class as certified satisfies all the requirements of Rule 23 and United States Constitution, and  
5 any other applicable law as more fully set forth in the Court’s Preliminary Approval Order, which  
6 is incorporated into this Final Judgment by this reference.

7 **PLAINTIFF CLASS**

8 6. In certifying this Action as a class action, the Court hereby finds, in part based  
9 upon the waiver of affirmative defenses by Defendants solely with regard to this action, that:

10 (a) the members of the Class are so numerous that joinder of all Class Members  
11 in this Action is impracticable;

12 (b) there are questions of law and fact common to the members of the Class;

13 (c) the claims of the named Plaintiff are typical of the claims or defenses of the  
14 Class;

15 (d) the questions of law and fact common to members of the Class predominate  
16 over any questions affecting only individual members of the Class;

17 (e) a class action was and is superior to other available methods for the fair and  
18 efficient adjudication of the controversy, considering, *inter alia*: (i) the interests of members of the  
19 Class in individually controlling the prosecution or defense of separate actions; (ii) the extent and  
20 nature of any litigation concerning the controversy already commenced by or against members of  
21 the Class; (iii) the desirability or undesirability of prosecuting the litigation of these claims in this  
22 particular forum; and (iv) the difficulties likely to be encountered in the management of the class  
23 action; and

24 (f) the named Plaintiff and Class Counsel have fairly and adequately protected  
25 the interests of the Class.

**INJUNCTION**

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7. Defendants shall be and are hereby ordered to comply with the following terms and conditions for a period of three (3) years from the Effective Date of the Settlement:

(a) Code Compliance. DISH Network L.L.C. shall comply with RCW Sections 80.36.400, *et seq.* For purposes of this injunction only, the acts of DISH Network L.L.C.’s retailers shall not be construed as conduct of DISH Network L.L.C. or violations of this provision.

(b) DISH Network L.L.C. Due Diligence and Reporting Requirements.  
(i) At the time of renewal, new and renewal DISH Network L.L.C. written retailer agreements shall contain a clause expressly prohibiting violation of applicable state and federal telephone solicitation laws.

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

(iii) Within thirty (30) days of the Effective Date, DISH Network L.L.C. shall notify retailers of the text of the Washington ADAD statute through a mass communication to retailers and shall post a copy of that mass communication to the DISH Network L.L.C. retailer website for the Injunction Period. Not earlier than six (6) months and not later than one (1) year after issuance of the original mass communications to retailers, DISH Network L.L.C. shall issue a second mass communication to the retailers of the text of the Washington ADAD statute.

(iv) For the purpose of ensuring ADAD and telemarketing compliance, new and renewal DISH Network L.L.C. written retailer agreements shall prohibit retailers from using independent contractors or agents to fulfill the retailer’s obligations under the retailer

1 agreement with respect to telemarketing activities in Washington without DISH Network L.L.C.'s  
2 specific prior written consent.

3 (v) If DISH Network L.L.C. learns that retailers are using ADADs to  
4 solicit new customers in Washington State, then DISH Network L.L.C. shall retain and investigate  
5 that information as a complaint.

6 (vi) When a retailer who has violated the Washington ADAD statute is  
7 identified through investigation, then DISH Network L.L.C. shall use reasonable efforts to inform  
8 the complaining customer, governmental entity and third party (as applicable) in writing of the  
9 identity and contact information for the retailer who violated the Washington ADAD statute.

10 (vii) DISH Network L.L.C. shall document receipt of ADAD complaints  
11 about retailers originating in the State of Washington and provide a report to Class Counsel not  
12 more than once per year upon Class Counsel's written request, within thirty (30) days of receipt of  
13 such request. The report shall identify the complaints received including, if available, the date of  
14 the alleged violation, the originating telephone number, the identity, address and telephone  
15 number of the alleged retailer, the conclusion reached, and the resolution of each complaint,  
16 including any penalty or enforcement action imposed. DISH Network L.L.C. shall maintain the  
17 complaining consumer's name but the reports will exclude information protected by applicable  
18 privacy laws unless and until the requirements for disclosure under those laws has been satisfied.

19 (viii) Progressive Retailer Enforcement:

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

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1 (2) **Level 2:** If at any time DISH Network L.L.C. becomes  
2 aware of clear and convincing proof measured against a reasonable, objective standard that a  
3 retailer or its agent has violated the Washington ADAD statute, DISH Network L.L.C. shall  
4 impose appropriate discipline on the retailer; the type of discipline to be determined in DISH  
5 Network L.L.C.'s sole discretion. Such discipline may include, but is not limited to:

- 6 a) Termination;
- 7 b) Imposing monetary fines;
- 8 c) Withholding of compensation;
- 9 d) Suspending the right to telemarket for a period of  
10 time;
- 11 e) Prohibiting telemarketing;
- 12 f) Requiring the retailer to improve its process and  
13 procedures for compliance with the Washington  
14 ADAD statute;
- 15 g) Requiring the retailer to terminate certain employees  
16 involved in violation of the Washington ADAD  
17 statute;
- 18 h) Requiring the retailer to terminate telemarketing  
19 affiliates;
- 20 i) Requiring the retailer to retrain employees in  
21 Washington ADAD statute compliance; or
- 22 j) Other appropriate discipline under the circumstances.

23 (3) **Level 3:** If, after a second found violation, DISH  
24 Network L.L.C. becomes aware of clear and convincing proof measured against a reasonable,  
25 objective standard that a retailer or retailer's agent has violated the Washington ADAD statute  
26 three (3) times within a thirty-six (36) month period, then DISH Network L.L.C. shall impose a

1 fine on the retailer in an amount to be determined in DISH Network L.L.C.'s sole discretion, in  
2 addition to other appropriate discipline to be determined in DISH Network L.L.C.'s sole  
3 discretion. For the purpose of this paragraph, each violation must be a separate violation in  
4 connection with a telemarketing campaign that is separate and distinct from the telemarketing  
5 campaigns involved in the prior violations.

6 (c) **Record Retention**. DISH Network L.L.C. shall retain all records of  
7 investigations and punitive actions taken against non-complying retailers under this Final  
8 Judgment for a minimum of three (3) years.

9 **INITIAL REPORT ON INJUNCTION COMPLIANCE**

10 8. No later than February 3, 2009, counsel for Plaintiffs shall submit to the court a  
11 declaration describing Defendants' compliance with the above injunction. The court reserves the  
12 right to require additional compliance declarations from either party, to the extent necessary to  
13 satisfy the court that the injunction is being carried out to the benefit of the class.  
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15 **APPLICABILITY**

16 9. The provisions of this Final Judgment are applicable to and binding upon and inure  
17 to the benefit of each party to the Action (including each Class Member, and each of Defendants  
18 successors and assigns).

19 10. To the extent permitted by law and without affecting the other provisions of this  
20 Final Judgment, this Final Judgment is intended by the parties and the Court to be *res judicata* and  
21 to prohibit and preclude any prior, concurrent or subsequent litigation brought individually, or in  
22 the name of, and/or otherwise on behalf of the Plaintiff or any member of the Class, any others  
23 similarly situated in Washington, or the general public, with respect to any and all claims, rights,  
24 demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs,  
25 expenses or losses arising out of or relating to any telemarketing activity via an ADAD, as alleged  
26 in the Complaint or which could have been alleged based upon the same facts, for DISH Network

1 products or services within the State of Washington at any time prior to the date of the Preliminary  
2 Approval Order.

3 11. All Persons who are included within the definition of the Class and who did not  
4 properly file requests for exclusion are therefore bound by this Final Judgment and by the  
5 Stipulation. No exclusion requests were received.

6 **CY PRES PAYMENT; ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**  
7 **AND INCENTIVE AWARD; FUTURE ACCOUNTING AND FURTHER HEARING**

8 12. **Cy Pres Payment.** DISH Network L.L.C. shall make a contribution, pursuant to  
9 the *cy pres* doctrine, to the Legal Aid for Washington Fund ("LAW Fund") to support civil legal  
10 aid programs in the aggregate total amount of \$50,000. This contribution shall be paid within  
11 thirty (30) days of the Effective Date.

12 13. DISH Network L.L.C. shall: (a) within thirty (30) days after the Effective Date,  
13 deliver to Michael F. Ram, at the address set forth below, a check payable to "Levy Ram & Olson,  
14 LLP" in the amount of \$907,000 awarded by Judge Cahill, Retired, pursuant to the arbitration  
15 proceeding which has been agreed to by the parties hereto, less \$3,000 that will be paid in  
16 accordance with paragraph 12, *infra*, to Michael Spafford, as Plaintiff's attorneys' fees, expenses  
17 and costs; and (b) pay interest at the rate of five percent (5%) per annum on all unpaid amounts  
18 commencing thirty (30) days from the Effective Date of this Final Judgment until paid in full.

19 14. Within thirty (30) days after the Effective Date, DISH Network L.L.C. shall:  
20 (a) deliver to Michael F. Ram, at the address below, a check payable to "Michael Spafford, Jr." in  
21 the amount of \$3,000 as an incentive award; and (b) pay interest at the rate of five percent (5%)  
22 per annum on all unpaid amounts commencing thirty (30) days from the Effective Date of this  
23 Final Judgment until paid in full.

24 **GENERAL PROVISIONS**

25 15. "Effective Date" shall have the meaning ascribed to that term, set forth in the  
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1 Stipulation.

2 16. The provisions of this Final Judgment are entered as a result of an agreement and  
3 stipulation of the parties. The parties' Stipulation and this Final Judgment are not intended to, and  
4 shall not be construed as any admission, express or implied, of any fault, liability or wrongdoing  
5 by Defendants.

6 17. Save and except as expressly set forth to the contrary in this Judgment, the claims  
7 of the Plaintiff shall be and are hereby dismissed. Plaintiff shall take nothing by its claims and  
8 each party shall bear its own fees, costs and expenses in connection with this Action, except as  
9 otherwise ordered by this Court.

10 18. Jurisdiction is retained by this Court for the purpose of enabling any party to this  
11 Final Judgment to apply to the Court at any time for such further orders and directions as may be  
12 necessary and appropriate for the construction or carrying out of this Final Judgment, for the  
13 modification of any of the injunctive provisions hereof, for enforcement of compliance herewith,  
14 and for the punishment of violations hereof.

15 **IT IS SO ORDERED.**

16 DATED January 14, 2009.

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The Honorable Richard A. Jones  
United States District Judge