

1 THE HONORABLE RICHARD A. JONES

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

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

12 Plaintiff,

13 v.

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

15 Defendants.

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

18 Third-Party Plaintiffs,

19 v.

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

21 Third-Party Defendant.
22

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

23 **NOTICE OF PENDENCY AND SETTLEMENT OF CLASS ACTION**

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

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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, October 6, 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 Michael Spafford, Jr. has conducted an investigation into and has engaged in
24 discovery with respect to the facts and the law applicable to this lawsuit. Plaintiff, and Counsel
25 for Plaintiff and the Class, have concluded that resolving this case on the basis of injunctive relief
26 and a *cy pres* distribution

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

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

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

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

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

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

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

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

24 If you wish to remain a member of the Class, you do not need to do anything. Your
25 interests as a Class member will be represented by Plaintiff Michael Spafford, Jr. and his counsel.
26 You will be bound by the terms of the Settlement and any final judgments that may be entered by

1 the Court and will be deemed to have released certain claims against Defendant as described in
2 Section IV below.

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

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

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

15 Clerk of the Court, U.S. District Court
16 Attn: Spafford v. Echostar Class Action Objections Case No. C06-479RAJ
17 700 Stewart Street
18 Seattle, WA 98101

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

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

26 Your written objection shall state each specific reason, if any, in support of your objection,
and any legal support for each objection. Your objection must also state (a) your full name, and
(b) the date on which you received a solicitation for a "DISH Network" product or services via a
prerecorded message. To be valid and effective, your objections to approval of the Settlement

1 must be filed with Clerk of the Court and served upon and received by the above-listed attorneys
2 no later than November 24, 2008.

3 If you elect to remain a member of the Class for purposes of the Settlement, but do not
4 wish to be represented by Class counsel, you may personally enter an appearance or appear
5 through your own attorney. To do so, you must file an Entry of Appearance with the Clerk of the
6 Court and deliver copies to the attorneys listed above. Your Entry of Appearance must be filed
7 with the Clerk of the Court and delivered to the above-listed attorneys no later than November 24,
8 2008. You will then continue as a Class member. However, if you hire your own attorney to
9 represent you, unless the Court orders otherwise, you will be solely responsible for the fees,
10 expenses and costs of your attorney.

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

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

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

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

23 The Settlement is intended to settle and release all claims against Defendants that members
24 of the settlement Class have alleged or could have alleged in this lawsuit, regarding solicitations
25 for "DISH Network" products or services via an ADAD at any time prior to October 6, 2008, the
26 date of the Preliminary Approval Order. The Settlement will extend to the Defendants; each of

1 Defendants' direct and indirect parents, subsidiaries and affiliated entities; the officers, directors,
2 employees, partners, shareholders, and attorneys of all of the foregoing persons and entities; and
3 the successors, assigns, and legal representatives of all of the foregoing persons and entities. This
4 Settlement does not release any claims you may have against Dish Network Retailers, independent
5 contractors, or their agents who may have used prerecorded messages. If you do not exclude
6 yourself from the settlement Class, you will be deemed to have entered into this Settlement and to
7 have settled and released, among other things, the above described claims.

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

11 **V. FINAL SETTLEMENT APPROVAL HEARING**

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

18 **VI. ADDITIONAL INFORMATION**

19 Certain pleadings and other records in this litigation that the court has ordered be made
20 available for review by class members, including copies of the Stipulation of Settlement and
21 Amendment thereto, may be found on the website of Class Counsel at <http://www.tousley.com>.
22 Complete pleadings and records in this action may be examined in electronic form at any time
23 during regular business hours at the office of the Clerk of the United States District Court,
24 Western District of Washington, Seattle Courthouse, 700 Stewart Street, Seattle, WA 98101.

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

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Kim D. Stephens, P.S., WSBA #11984
EchoStarSettlement@tousley.com
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
Telephone: (800) 259-2652

**PLEASE DO NOT CONTACT THE COURT, THE COURT CLERK, OR
REPRESENTATIVES OF YOUR SATELLITE SERVICE COMPANY. NEITHER
DEFENDANT NOR ITS ATTORNEYS WILL BE PERMITTED TO DISCUSS THE
TERMS OF THE SETTLEMENT WITH YOU.**

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