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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

NANSEE PARKER and PHONG PHAM, on
Behalf of Themselves and All Others Similarly
Situated,

 Plaintiffs,

 v.

DISH NETWORK L.L.C.,

 Defendant.

Case No. 11-cv-01457-PJH

**[PROPOSED] FINAL JUDGMENT AND
ORDER APPROVING SETTLEMENT
AND DISMISSING CLAIMS OF
SETTLEMENT CLASS MEMBERS
WITH PREJUDICE**

This matter came before the Court for hearing on March 21, 2012. The Court, having considered the Motions for Preliminary Approval and Final Approval and the declarations in support thereof, the Settlement Agreement (the “Agreement”), objections and comments received regarding the proposed settlement, the record in the above captioned action (the “Action”), the evidence presented, and the arguments and authorities presented by counsel, and for good cause appearing,

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

1. The Court, for purposes of this Final Judgment and Order Approving Settlement and Dismissing Claims of Settlement Class Members with Prejudice (“Final Judgment”), adopts the capitalized terms and their definitions set forth in the Agreement.
2. The Court has jurisdiction over the subject matter of the Action, the Class

1 Representatives, the Settlement Class Members, and Defendant.

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

6 4. The Court hereby adopts and approves the Agreement and the settlement terms contained
7 therein and finds that it is in all respects fair, reasonable, adequate, just, and in compliance with all
8 applicable requirements of the United States Constitution (including the Due Process Clause) and all
9 other applicable laws, and in the best interest of the parties and the Settlement Class. Any objections
10 have been considered and are hereby overruled. Accordingly, the Court directs the parties and their
11 counsel to implement and consummate the settlement in accordance with the terms and conditions of all
12 portions of the Agreement.

13 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby finally
14 certifies the Settlement Class, except for the individuals listed in Attachment A hereto, consisting of:

15
16 All persons residing in the United States who activated DISH
17 programming services between February 1, 2009 and January 31, 2011
18 with a 24-month commitment term and an initial 12-month, promotional
19 discounted price, and subscribed to a programming package that was
20 subject to DISH's February 2011 Price Increase, excluding only: (a)
21 customers who received programming, equipment, and/or monetary
22 accommodations after the February 2011 Price Increase in response to
23 complaint(s) about the price increase, (b) customers who were in the
24 second year (*i.e.*, months 13-24) of their 24-month commitment term for
one of the following packages: DISH's America's Everything Pak, Latino
Welcome Pack, Latino Clásico, Latino Plus, Latino Dos, or Latino Max at
the time of the February 2011 Price Increase, and (c) the judge to whom
this case is assigned, any member of the judge's immediate family, and the
judge's staff and their immediate families.¹

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

28 _____
¹ The "February 2011 Price Increase" is defined in the Settlement Agreement at paragraph 10.

1 **PLAINTIFF CLASS**

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

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

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

8 (c) the claims of the Named Plaintiffs are typical of the claims or defenses of the
9 Settlement Class;

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

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

19 (f) the Named Plaintiffs and Class Counsel have fairly and adequately protected the
20 interests of the Settlement Class.

21 **SETTLEMENT CONSIDERATION**

22 7. After the Effective Date, and solely for the purposes of the Settlement Agreement, the
23 benefits available under the settlement shall be distributed by Defendant in accordance with the
24 eligibility requirement specified in the Settlement Agreement.

25 8. Plaintiffs, the Settlement Class, and/or Defendant may seek to enforce the provisions of
26 the Settlement Agreement by motion to the Court pursuant to the Court's continuing jurisdiction over
27 the Settlement Agreement as set forth in Paragraph 17 below.
28

1 **APPLICABILITY**

2 9. The provisions of this Final Judgment are applicable to and binding upon and inure to the
3 benefit of each party to the Action (including each Settlement Class Member and each of Defendant's
4 successors and assigns).

5 10. To the extent permitted by law and without affecting the other provisions of this Final
6 Judgment, this Final Judgment is intended by the parties and the Court to be *res judicata* and to prohibit
7 and preclude any prior, concurrent, or subsequent litigation brought individually, or in the name of,
8 and/or otherwise on behalf of the Named Plaintiffs or any Settlement Class Member or any others
9 similarly situated in the United States with respect to any and all claims, rights, legal theories, alleged
10 violations of law, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements,
11 costs, expenses, or losses arising out of or relating to the matters, whether factual or legal, alleged in the
12 Complaint or which could have been alleged in the Complaint based upon the same alleged facts, with
13 respect to DISH's February 2011 Price Increase at any time prior to the date of the Preliminary
14 Approval Order.

15 11. All Persons who are included within the definition of the Settlement Class and who did
16 not properly file requests for exclusion are therefore bound by this Final Judgment and by the Settlement
17 Agreement.

18 12. Persons who timely submitted a request for exclusion from the Settlement Class in
19 compliance with the procedures set forth in the Preliminary Approval Order shall not be entitled to
20 benefits from the settlement nor bound by this Final Judgment.

21 **GENERAL PROVISIONS**

22 13. The provisions of this Final Judgment are entered as a result of a voluntary agreement of
23 the parties. The Settlement Agreement and this Final Judgment are not intended to, and shall not be
24 construed as any admission, express or implied, of any fault, liability or wrongdoing by Defendant, or of
25 the accuracy of any of the allegations in the Complaint.

26 14. All terms, provisions, obligations and rights as contained in the Settlement Agreement are
27 hereby incorporated into this Final Judgment and the parties are ordered to perform their obligations
28 thereunder, including, but not limited to, the full release of claims. The claims of the Plaintiffs shall be

1 and are hereby dismissed with prejudice. Save and except as expressly set forth to the contrary in this
2 Judgment and any judgment issued by this Court regarding Plaintiffs' fee application, Plaintiffs and
3 Plaintiffs' Counsel shall take nothing by their claims and each party shall bear their own fees, costs, and
4 expenses in connection with this Action.

5 15. Jurisdiction is retained by this Court for three months following the Effective Date for the
6 purpose of enabling any party to this Final Judgment to apply to the Court at any time for such further
7 orders and directions as may be necessary and appropriate for the construction or carrying out of this
8 Final Judgment and Settlement Agreement, for the modification of any of the provisions hereof, for
9 enforcement of compliance herewith, and for the punishment of violations hereof.

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11 **IT IS SO ORDERED.**

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14 DATED: March 23, 2012

15 Hon. Phyllis J. Hamilton
16 United States District Judge
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