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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  
Situating,

Plaintiffs,

v.

DISH NETWORK L.L.C.,

Defendant.

Case No. 11-cv-01457-PJH

**ORDER GRANTING PROVISIONAL  
CERTIFICATION OF SETTLEMENT  
CLASS AND PRELIMINARY APPROVAL  
OF CLASS ACTION SETTLEMENT  
AGREEMENT**

WHEREAS, Plaintiffs, on behalf of themselves and all similarly situated DISH subscribers, and Defendant, all acting by and through their respective counsel, have agreed, subject to Court approval following notice to the Settlement Class and a hearing, to settle this litigation upon the terms as set forth in the Settlement Agreement;

WHEREAS, this Court has reviewed and considered the Settlement Agreement dated October 27, 2011, entered into among the parties in this Action (the "Agreement"), a copy of which is attached to the Declaration of Eric H. Gibbs as **Exhibit 1**, together with all exhibits thereto, the record in this case, and the briefs and arguments of counsel;

WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the Action meets all the prerequisites of Rule 23 of the Federal Rules of Civil Procedure, including numerosity, ascertainability, community of interest, predominance of common issues, superiority

1 and typicality, that the Class Representatives are adequate representatives of the Settlement Class,  
2 and that Class Counsel are adequate to represent the Settlement Class (as defined below);

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

7 **IT IS HEREBY ORDERED THAT:**

8 1. All terms and definitions used herein have the same meanings as set forth in the  
9 Agreement.

10 2. The proposed settlement set forth in the Agreement is hereby preliminarily  
11 approved as being within the range of reasonableness such that notice thereof should be given to  
12 members of the Settlement Class.

13 3. The following Settlement Class is conditionally and preliminarily certified for  
14 settlement purposes only:

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

24 4. Plaintiffs are hereby found to be adequate and are therefore appointed as  
25 representatives of the Settlement Class (the "Class Representatives").  
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1           5.       The following counsel are hereby found to be adequate and are therefore appointed  
2 as class counsel for the Settlement Class (“Class Counsel”):

3                   **GIRARD GIBBS LLP**

4                   Eric H. Gibbs, Esq.  
5                   David Stein, Esq.  
6                   Amy M. Zeman, Esq.  
7                   601 California Street, Suite 1400  
8                   San Francisco, CA 94108  
9                   Telephone: 415.981.4800

10                   **COHEN MILSTEIN SELLERS & TOLL PLLC**

11                   Andrew N. Friedman, Esq.  
12                   Douglas J. McNamara, Esq.  
13                   Stefanie M. Ramirez, Esq.  
14                   1100 New York Ave. NW, Suite 500 West  
15                   Washington, DC 20005  
16                   Telephone: 202.408.4600

17                   **THE WENTZ LAW FIRM**

18                   Richard B. Wentz, Esq.  
19                   Jean W. Wentz, Esq.  
20                   82955 East Hillcrest Drive, Suite 123  
21                   Thousand Oaks, CA 91362  
22                   Telephone: 805.374.0060

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

27           7.       Pending final determination of whether the settlement should be approved, neither  
28 Plaintiffs nor any member of the Settlement 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 Defendant.

          8.       The Notice of Pendency and Settlement of Class Action (“Class Notice”) and  
Notice of Proposed Class Action Settlement (“Postcard Notice”), attached hereto as **Exhibits A**  
**and B** respectively, are hereby approved as to form. Defendant shall cause the Class Notice to be  
disseminated by sending out the Class Notice via e-mail to its current and former customers within  
the Settlement Class (the “Class Notice E-mails”) by January 30, 2012. If DISH does not possess

1 a valid e-mail address for any Settlement Class Member, DISH will send by U.S. Mail to the  
2 Settlement Class Member's last known mailing address a Postcard Notice, which shall inform the  
3 Member of his or her designated Sub-Group and direct the Member to a website to download the  
4 applicable Class Notice and Claim Form. To the extent that any Class Notice E-mails are returned  
5 to DISH as undeliverable, DISH will then send a Postcard Notice by U.S. Mail to the Settlement  
6 Class Member's last known mailing address. For current DISH customers, all Postcard Notices or  
7 other notices or communications that are sent via U.S. Mail may be included in the customers'  
8 monthly bill.

9 9. The Claim Forms attached hereto as **Exhibit C** are hereby approved as to form and  
10 shall be disseminated with the Class Notice. To be valid, completed Claim Forms must be  
11 returned to Defendant within 40 days of service of the Class Notice.

12 10. The date by which Defendant shall cause the Class Notice to be disseminated may  
13 be subject to change by stipulation of the parties and approval of the Court. If the Class Notice  
14 dissemination date is changed, all other agreed-upon dates will be changed accordingly.

15 11. Tracking and reporting of Persons eligible to be Settlement Class Members who  
16 request exclusion (the "Opt-Outs") shall be compiled by Defendant and reported to Class Counsel  
17 and the Court. Defendant shall pay all costs associated with such tracking and reporting of  
18 Persons electing to be excluded from the Settlement Class.

19 12. Defendant shall pay all costs associated with preparing and publishing the Class  
20 Notice.

21 13. Defendant shall provide and bear the cost of notice to appropriate federal and state  
22 officials as required by the Class Action Fairness Act of 2005, 28 U.S.C. 1715(a).

23 14. Defendant is directed to file with the Court and serve upon Class Counsel, no later  
24 than March 9, 2012, a declaration confirming that dissemination of the Notice has taken place in  
25 accordance with this Order.

26 15. The Court finds that the dissemination of the Notice under the terms and in the  
27 format provided for in the Agreement and this Order constitutes the best notice practicable under

1 the circumstances, that it is due and sufficient notice for all purposes to all persons entitled to such  
2 notice, and that it fully satisfies the requirements of due process and all other applicable laws.

3 16. A hearing (the “Fairness Hearing”) shall be held on March 21, 2012, at 9:00 a.m.,  
4 in the Honorable Phyllis J. Hamilton’s courtroom, United States District Court, Northern District  
5 of California, to determine whether the proposed settlement of this action should be finally  
6 approved as fair, reasonable, and adequate and whether the Final Judgment approving the  
7 settlement and dismissing all claims asserted in the litigation on the merits and with prejudice  
8 should be entered. The Court will hear Class Counsel’s application for attorneys’ fees, costs, and  
9 Class Representative incentive payments concurrently with the Fairness Hearing. The Fairness  
10 Hearing may be postponed, adjourned, or rescheduled by order of the Court without further notice  
11 to the members of the Class.

12 17. Objections by any Settlement Class Member to the Agreement shall be heard by the  
13 Court at the Fairness Hearing. Written objections shall (1) be filed with the Clerk of the United  
14 States District Court, Northern District of California and served on counsel for the parties  
15 identified in the Class Notice by March 2, 2012, (2) describe the objection and its basis, (3)  
16 include the objector’s full name, address, telephone number and current or former DISH Network  
17 account number, and (4), if the objecting Settlement Class Member is represented by separate  
18 counsel, identify his, her or its attorney. A Settlement Class Member need not appear at the  
19 Fairness Hearing in order for his, her, or its written objection to be considered, and the filing of a  
20 written objection is not a precondition to speak at the Fairness Hearing.

21 18. Any Settlement Class Member shall have the right to opt-out of the class and the  
22 settlement. To be effective, all requests for exclusion from the Settlement Class must: (1) be in  
23 writing, (2) comply with the provisions of and contain the information requested in the Class  
24 Notice, and (3) be sent to the address identified in the Class Notice, post-marked by March 2,  
25 2012. Any Settlement Class Member who does not submit a timely and valid request for  
26 exclusion shall be subject to and bound by the Settlement Agreement and every order or judgment  
27 entered concerning the Settlement Agreement.

1           19.     Class Counsel shall file any application for an award of attorneys' fees and costs  
2 and for incentive payments to the named Plaintiffs ("Fee Application") no later than February 13,  
3 2012, which shall be set for the same date as the Fairness Hearing.

4           20.     Counsel for the parties shall file memoranda, declarations, or other statements and  
5 materials in support of final approval of the Settlement Agreement (the "Motion for Final  
6 Approval") no later than February 13, 2012.

7           21.     Counsel for the parties shall file any reply papers in support of the parties' Motion  
8 for Final Approval of the Settlement Agreement and in response to any objections from Settlement  
9 Class Members by March 9, 2012.

10          22.     Class Counsel shall file any reply papers in support of its Fee Application and in  
11 response to any objections from Settlement Class Members by March 9, 2012.

12          23.     The settlement on the terms and conditions of the Agreement filed concurrently  
13 with the parties' joint motion for preliminary approval is hereby preliminarily approved, but is not  
14 to be deemed an admission of liability or fault by Defendant or by any other party or person, or a  
15 finding of the validity of any claims asserted in the litigation or of any wrongdoing or of any  
16 violation of law by Defendant. The settlement is not a concession and shall not be used as an  
17 admission of any fault or omission by Defendant or any other party or person.

18          24.     Any Settlement Class Member may enter an appearance in the Action and/or may  
19 seek to intervene in the Action, individually or through the counsel of their choice at their expense.  
20 Other than (a) Settlement Class Members who enter an appearance and (b) Opt-Outs, the Class  
21 will be represented by Class Counsel.

22          25.     Counsel for the parties are hereby authorized to utilize all reasonable procedures in  
23 connection with the administration of the settlement which are not materially inconsistent with  
24 either this Order or the terms of the Agreement.

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## 26. Summary of Dates and Deadlines:

Last day to disseminate class notice:	January 30, 2012
Last day to file (1) Motion for Final Approval and (2) Fee Application:	February 13, 2012
Last day for class members to file comments and objections to the Motion for Final Approval or Fee Application:	March 2, 2012
Last day for class members to opt-out of the settlement class:	March 2, 2012
Last day for the parties to file replies to any class member objections to the Motion for Final Approval or Fee Application:	March 9, 2012
Due date for completed Claim Forms:	40 days after service of Class Notice
Fairness Hearing:	March 21, 2012

**IT IS SO ORDERED.**

DATED: November 23, 2011

