

1 Robert B. Hawk (SBN 118054)
 2 J. Christopher Mitchell (SBN 215639)
 3 HOGAN LOVELLS US LLP
 4 525 University Avenue, 4th Floor
 5 Palo Alto, California 94301
 Telephone: (650) 463-4000
 Facsimile: (650) 463-4199
 robert.hawk@hoganlovells.com
 chris.mitchell@hoganlovells.com

6 Attorneys for Defendants
 7 HUGHES COMMUNICATIONS, INC.
 and HUGHES NETWORK SYSTEMS, LLC

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 TINA WALTER, CHRISTOPHER BAYLESS,
 11 and ERIC SCHUMACHER, individually and on
 behalf of all others similarly situated,

12 Plaintiffs,

13 v.

14 HUGHES COMMUNICATIONS, INC. and
 15 HUGHES NETWORK SYSTEMS, LLC,

16 Defendants.

CASE NO.: 09-CV-02136 SC

**STIPULATION AND [PROPOSED]
 ORDER REGARDING
 WITHDRAWAL WITHOUT
 PREJUDICE OF DEFENDANTS'
 MOTION TO DISMISS**

The Honorable Samuel Conti

17
18
19
20
21
22
23
24
25
26
27
28

STIPULATION AND ORDER REGARDING WITHDRAWAL OF MOTION TO DISMISS;
 CASE NO.: 09-CV-02136 SC

1 WHEREAS, currently pending before the Court is Hughes Communications, Inc. and
2 Hughes Network Systems LLC's (collectively, "Hughes") Motion to Dismiss Pursuant to the
3 Federal Arbitration Act and Alternative Motion to Dismiss and Strike ETF Claims (the "Motion
4 to Dismiss"), which has been fully briefed and submitted to the Court;

5 WHEREAS, Hughes and Plaintiffs Tina Walter, Christopher Bayless and Eric
6 Schumacher ("Plaintiffs") (collectively, the "Parties") have continued to discuss a potential
7 revised settlement following the Court's July 6, 2011 Order Denying Plaintiffs' Motion for Class
8 Certification and Preliminary Approval of Settlement, with the express understanding and
9 agreement that any and all actions by Hughes with respect to any revised settlement were subject
10 to and without waiver of any of their respective rights to enforce the Parties' arbitration
11 agreements, or Plaintiffs' rights to assert all applicable defenses to the aforementioned arbitration
12 agreements, excluding any defense based in any way on the negotiation, drafting, execution,
13 submission for Court approval or performance of such settlement, or on any other actions relating
14 to the approval or implementation of such settlement;

15 WHEREAS, the Parties have reached an agreement in principle to settle their disputes,
16 and, upon completion of the necessary settlement documentation, they desire to submit an
17 Amended and Restated Stipulation of Settlement (the "Amended Settlement Agreement") to the
18 Court for approval, subject to all of the terms and conditions of their agreement in principle;

19 WHEREAS, under the Parties' agreement in principle, as a condition of proceeding with
20 any settlement, Plaintiffs have stipulated that the negotiation of and entry into an Amended
21 Settlement Agreement, and the submission of an Amended Settlement Agreement to the Court, is
22 without prejudice to any right Hughes may have to compel arbitration or otherwise enforce the
23 Parties' arbitration agreements, and does not constitute a waiver or relinquishment of any
24 arbitration rights, or a waiver of any applicable defenses to such rights that may be asserted by
25 Plaintiffs, excluding any defense based in any way on the negotiation, drafting, execution,
26 submission for Court approval or performance of Amended Settlement Agreement, or on any
27 other actions relating to the approval or implementation of such Amended Settlement Agreement;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREAS, the Parties have agreed that, subject to the foregoing preservation of rights, Hughes may withdraw the Motion to Dismiss without prejudice to its right to reassert the Motion and/or any arguments made as a part of the Motion at a later time.

IT IS HEREBY STIPULATED, by and between the Parties through their respective counsel, that:

1. Hughes hereby withdraws its Motion to Dismiss without prejudice to Hughes's right to later re-file that Motion and seek a ruling on that fully-briefed Motion, or to file a new motion to dismiss on the same or similar grounds as the pending Motion to Dismiss.
2. Consistent with the September 28, 2011 stipulation of the parties, neither the Amended Settlement Agreement nor any action taken by Hughes pursuant to or in furtherance of a revised settlement or the Amended Settlement Agreement, including its withdrawal of the Motion to Dismiss without prejudice, shall waive or otherwise adversely affect any right Hughes may have with respect to its position and arguments in the Motion to Dismiss;
3. Plaintiffs expect to file a Motion for Preliminary Approval of the Amended Settlement Agreement on or before November 21, 2011.

1 4. Hughes' time to move to dismiss, answer or otherwise respond to the Second Amended
2 Complaint shall and hereby is extended until (a) November 25, 2011, or (b) if Plaintiffs file a
3 Motion for Preliminary Approval of the Amended Settlement Agreement on or before November
4 21, 2011, twenty (20) days after the Court rules on such motion.
5

6
7 IT IS SO STIPULATED.
8

9 Dated: October 12, 2011

HOGAN LOVELLS US LLP

11 By: /s/ Robert B. Hawk
12 Robert B. Hawk
13 Attorneys for Defendants
14 HUGHES COMMUNICATIONS, INC. and
15 HUGHES NETWORK SYSTEMS LLC

16 Dated: October 12, 2011

AUDET & PARTNERS, LLP

17 By: /s/ Joshua C. Ezrin
18 Joshua C. Ezrin
19 Attorneys for Plaintiffs

20 IT IS SO ORDERED.

21 Dated: October 14, 2011



22
23
24 I, Robert B. Hawk, attest that Joshua C. Ezrin has read and approved the STIPULATION
25 AND [PROPOSED] ORDER REGARDING WITHDRAWAL WITHOUT PREJUDICE OF
26 DEFENDANTS' MOTION TO DISMISS and consents to its filing in this action.
27
28