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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

12 NANSEE PARKER and PHONG PHAM, on
 behalf of themselves and those similarly
 13 situated,

14 Plaintiffs,

15 v.

16 DISH NETWORK L.L.C.,

17 Defendant.

Case No. 4:11-cv-01457-PJH

**STIPULATED REQUEST SEEKING: (1)
 RELIEF FROM THE ORDER SETTING
 INITIAL CASE MANAGEMENT
 CONFERENCE; (2) A REVISED CASE
 MANAGEMENT CONFERENCE
 HEARING DATE AND RELATED
 DATES; AND (3) ENTRY OF A
 BRIEFING SCHEDULE FOR DISH'S
 PENDING MOTIONS; AND [PROPOSED]
 ORDER AS MODIFIED BY THE COURT**

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[Civil L.R. 7-11, 7-12 and 16-2(d)]

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20 Pursuant to Civil L.R. 7-12 and 16-2(d), the parties jointly seek relief from the Court's
 21 March 25, 2011 Order Setting Initial Case Management Conference and ADR Deadlines, and
 22 respectfully request that the Court enter the following stipulation, which extends the Case
 23 Management Conference from July 7, 2011 to October 20, 2011, at 2:00 p.m., and all related
 24 deadlines as set forth below.

25 Since shortly after this litigation began, the parties have been working to implement an
 26 informal, streamlined discovery plan that contemplates an early exchange of information, followed
 27 by a mediation. The parties intend to use the mediation to test the merits of the case, the legal and
 28 factual issues regarding the class claims, as well as DISH's pending motions to dismiss and

1 transfer, by advocating their views in an adversarial fashion before Randall W. Wulff in late July.
2 The parties' shared goal is to determine whether an early resolution is possible, which will both
3 significantly reduce the costs and fees for the parties and conserve judicial resources. To focus
4 their efforts on this process, the parties jointly request that the Court extend the scheduled July 7,
5 2011, Case Management Conference to October 20, 2011, at 2:00 p.m. and continue all related
6 events and deadlines under the Federal and Local Rules in accordance with the new hearing date.

7 The parties also ask that the Court adopt the briefing schedule proposed below for DISH's
8 Motion to Transfer Venue, pursuant to 14 U.S.C. section 1404(a), and Motion to Dismiss and
9 Strike, pursuant to Rules 9, 12(b)(6) and (f) of the Federal Rules of Civil Procedure.

10 Alternatively, should the Court deem it useful, the parties suggest that an early case
11 management conference be held on or about June 9, 2011, so that the parties can respond to any
12 questions or concerns that the Court may have, if any, about this proposal.

13 **STIPULATION**

14 This stipulated request for relief from the Case Management Conference deadline is based
15 on the following stipulation (the "Stipulation") between the parties:

16 WHEREAS, Plaintiffs filed their Complaint against Defendant DISH Network L.L.C.
17 ("DISH"), DISH Network Corporation, and EchoStar Technologies L.L.C. on March 25, 2011
18 (Dkt. No. 1);

19 WHEREAS, the Court scheduled the Case Management Conference for July 7, 2011 (Dkt.
20 No. 10);

21 WHEREAS, Plaintiffs served the Complaint on each of the defendants between April 7,
22 2011 and April 15, 2011 (Dkt. Nos. 11, 20, 24);

23 WHEREAS, shortly after the action was filed and the Complaint was served, counsel for
24 the parties began having informal discussions to explore the possibility of conducting informal
25 discovery, through a streamlined exchange of documents and information for the purpose of
26 conducting an early mediation;

27 WHEREAS, since then, the parties have engaged in frequent discussions, in both face-to-
28 face meetings, telephone conferences and email communications, about the implementation of the

1 informal discovery and early resolution process, and other procedural and substantive issues
2 related to the litigation;

3 WHEREAS, as a result of those conversations, certain issues have been resolved that have
4 streamlined the case, including that: (a) Plaintiffs dismissed two of the Defendants – DISH
5 Network Corporation and EchoStar Technologies L.L.C. (Dkt. No. 32), and (b) the parties
6 stipulated to the request by Plaintiffs’ counsel that they be appointed interim class counsel under
7 Federal Rule of Civil Procedure 23(g)(3), which was granted by the Court on May 12, 2011 (Dkt.
8 Nos. 29, 33);

9 WHEREAS, the parties agreed to mediate the matter, and have already scheduled two days
10 of mediation with Randy Wulff on July 26 and 27, 2011;

11 WHEREAS, the parties have worked together and are close to finalizing the parameters
12 and scope of the informal discovery and document exchange, which will continue during the
13 coming weeks;

14 WHEREAS, on May 20, 2011, DISH filed a Motion to Transfer Venue, pursuant to
15 14 U.S.C. section 1404(a) (“Motion to Transfer”), and Motion to Dismiss and Strike, pursuant to
16 Federal Rules of Civil Procedures 9, 12(b)(6) and (f) (“Motion to Dismiss”) (Dkt. Nos. 36, 37);
17 and,

18 WHEREAS, to ensure that the parties focus their efforts on informal discovery and early
19 resolution of the case, DISH agreed to set the hearing for the Motion to Transfer and Motion to
20 Dismiss to September 14, 2011, namely more than a month and a half from the date of the
21 mediation.

22 **NOW, THEREFORE, IT IS HEREBY STIPULATED**, by and between plaintiffs
23 Nansee Parker and Phong Pham and defendant DISH Network LLC, by and through their
24 respective undersigned counsel, and subject to the Court’s approval, that:

25 Pursuant to the parties’ diligent and good faith efforts to conduct informal discovery and
26 resolve this matter through early mediation, the parties hereby stipulate to the following:

27 1. Except as set forth in Paragraph 2 below, all formal discovery as well as any other
28 obligations contemplated under the Federal Rules of Civil Procedure, the Civil

1 Local Rules of this Court, or the Court's Standing Orders, including initial
2 disclosures under Rule 16 and developing a Rule 26(f) Case Management
3 Statement and related Discovery Plan, are stayed until the earlier of (i) October 6,
4 2011, or (ii) two weeks before the rescheduled Case Management Conference;

5 2. On or before September 23, 2011, the parties shall:

- 6 • Meet and confer re: initial disclosures, early settlement, ADR process selection,
7 and discovery plan, under F.R.C.P. 26(f) & ADR L.R.3-4 (available at
8 <http://www.cand.uscourts.gov>)
- 9 • File ADR Certification signed by Parties and Counsel, under Civil L.R. 16-8(b)
10 and ADR L.R. 3-5(b) (available at <http://www.cand.uscourts.gov>)
- 11 • File either Stipulation to DR Process or Notice of Need for ADR Phone
12 Conference, Civil L.R. 16-8(c) & ADR L.R. 3-5(b) & (c)

13 3. On or before October ~~11~~⁶, 2011, the parties shall file Rule 26(f) Report, complete
14 initial disclosures or state objection in Rule 26(f) Report and file Case Management
15 Statement per the Court's Standing Order re Contents of Joint Case Management
16 Statement (available at <http://www.cand.uscourts.gov>)

17 4. The Case Management Conference, currently scheduled for July 7, 2011, shall be
18 continued to October ~~20~~¹³, 2011, at 2:00 p.m.;

19 5. The parties shall attend mediation on July 27 and 28, 2011;

20 6. Each party reserves all rights, arguments and defenses, asserted or unasserted, as of
21 the date of this Stipulation, and no party shall assert that the passage of time
22 between the time that this Stipulation was first contemplated and later signed and
23 the expiration or termination of this Stipulation and [Proposed] Order, if any, but
24 which shall not be deemed to have occurred earlier than October 20, 2011, will be a
25 defense to any motion or basis for argument as part of any motion, opposition, or
26 reply, including as a basis for challenging DISH's Motion to Transfer;

27 7. The briefing schedule for DISH's Motion to Transfer and Motion to Dismiss, filed
28 on May 20, 2011, shall be as follows:

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- (a) Plaintiffs' Opposition briefs, if any, to DISH's Motion to Transfer and Motion to Dismiss must be filed on or before August 10, 2011;
- (b) Defendant's Reply briefs in support of its Motion to Transfer and Motion to Dismiss must be filed on or before August 31, 2011;
- (c) The hearing on DISH's Motions shall be held on September 14, 2011 at 9:00 a.m.

IT IS SO STIPULATED.

DATED: June 3, 2011

GIRARD GIBBS LLP
Attorneys at Law

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NANSEE PARKER and PHONG PHAM, on
behalf of themselves and those similarly situated

DATED: June 3, 2011

COBLENTZ, PATCH, DUFFY & BASS LLP

By: /s/ Richard R. Patch

Richard R. Patch
Attorneys for Defendant
DISH NETWORK L.L.C

1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**


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3 DATED: 6/7/11

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HON. PHYLIS J. HAMILTON
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA



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