

# *Exhibit 10*

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\*\*E-Filed 10/23/09\*\*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re DITECH NETWORKS, INC. DERIVATIVE LITIGATION	)	No. C-06-05157-JF
_____	)	[PROPOSED] ORDER PRELIMINARILY
This Document Relates To:	)	APPROVING DERIVATIVE SETTLEMENT
	)	AND PROVIDING FOR NOTICE
ALL ACTIONS.	)	
_____	)	

1           WHEREAS, the Settling Parties have made application, pursuant to Federal Rule of Civil  
2 Procedure 23.1, for an order: (i) preliminarily approving the proposed settlement of the above-  
3 captioned shareholder derivative action and the related derivative action pending in the Superior  
4 Court of the State of California, County of Santa Clara, entitled *Zhu v. Montgomery, et al.*, No. 1:06-  
5 CV-075695, in accordance with the Stipulation and Agreement of Settlement dated September 29,  
6 2009 (“Stipulation”) and the exhibits thereto, and (ii) approving for distribution of the Notice of  
7 Settlement;

8           WHEREAS, the Stipulation sets forth the terms and conditions for the settlement, including  
9 but not limited to: (i) a proposed settlement and dismissal of the Actions with prejudice as to the  
10 Released Persons; and (ii) an award of attorneys’ fees and expenses to Plaintiffs’ counsel in the  
11 Actions, upon the terms and conditions set forth in the Stipulation;

12           WHEREAS, the settlement appears to be the product of serious, informed, non-collusive  
13 negotiations and falls within the range of possible approval;

14           WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth  
15 in the Stipulation; and

16           WHEREAS, the Federal Court, having considered the Stipulation and the exhibits annexed  
17 thereto and having heard the arguments of the Settling Parties at the preliminary approval hearing:

18           NOW THEREFORE, IT IS HEREBY ORDERED:

19           1.       The Federal Court does hereby preliminarily approve, subject to further consideration  
20 at the Settlement Hearing described below, the Stipulation and the settlement set forth therein,  
21 including the terms and conditions for: (i) a proposed settlement and dismissal of the Actions with  
22 prejudice as to the Defendants; and (ii) an award of attorneys’ fees and expenses to Plaintiffs’  
23 counsel in the Actions.

24           2.       The Settlement Hearing shall be held before the Federal Court on January 8, 2010,  
25 at 9:00 a.m., at the United States District Court for the Northern District of  
26 California, 2112 Robert F. Peckham Federal Building and United States Courthouse, 280 South First  
27 Street, San Jose, CA 95113, to determine whether: (i) the terms and conditions of the settlement  
28 provided for in the Stipulation are fair, reasonable, and adequate; (ii) an order and judgment as

1 provided in Exhibit A to the Stipulation should be entered herein; and (iii) to award attorneys' fees  
2 and expenses to Plaintiffs' counsel.

3           3.       The Federal Court approves, as to form and content, the Notice attached as Exhibit B-  
4 1 to the Stipulation, and finds that the distribution and publication of the Notice substantially in the  
5 manner and form set forth in ¶3.2 of the Stipulation, meets the requirements of Federal Rule of Civil  
6 Procedure 23.1 and due process, is the best notice practicable under the circumstances, and shall  
7 constitute due and sufficient notice to all Persons entitled thereto of all matters relating to the  
8 settlement.

9           4.       Not later than ten (10) days following entry of this Order, Ditech shall cause the  
10 Notice substantially in the form annexed as Exhibit B-1 hereto to be issued in a press release,  
11 published in *Investor's Business Daily*, and posted on the Company's website.

12           5.       Not later than ten (10) days following entry of this Order, Ditech shall cause a copy of  
13 the Stipulation to be filed with the Securities and Exchange Commission via a Form 8-K.

14           6.       All costs incurred in the filing and publication of the Notice shall be paid by Ditech  
15 and Ditech shall undertake all administrative responsibility for the filing and publication of the  
16 Notice.

17           7.       At least fourteen (14) days prior to the Settlement Hearing, Ditech's counsel shall  
18 serve on Lead Counsel and file with the Federal Court proof, by affidavit or declaration, of such  
19 filing and publication of the Notice.

20           8.       All Current Ditech Stockholders shall be bound by all orders, determinations, and  
21 judgments in the Federal Derivative Action concerning the settlement, whether favorable or  
22 unfavorable to Current Ditech Stockholders.

23           9.       Pending final determination of whether the settlement should be approved, no Current  
24 Ditech Stockholder shall commence or prosecute against any of the Released Persons, any action or  
25 proceeding in any court or tribunal asserting any of the Released Claims.

26           10.      All papers in support of the settlement and the award of attorneys' fees and expenses  
27 shall be filed with the Federal Court and served at least seven (7) calendar days prior to the  
28 Settlement Hearing.

1           11.     Any current record holder and beneficial owner of common stock of Ditech as of  
2 September 29, 2009 may appear and show cause, if he, she or it has any reason why the terms of the  
3 settlement should not be approved as fair, reasonable, and adequate, or why a Judgment should not  
4 be entered thereon, provided, however, unless otherwise ordered by the Federal Court, no Current  
5 Ditech Stockholder shall be heard or entitled to contest the approval of all or any of the terms and  
6 conditions of the settlement, or, if approved, the Judgment to be entered thereon approving the same,  
7 unless that Person has, at least fourteen (14) days prior to the Settlement Hearing, filed with the  
8 Clerk of the Court and served on the following counsel (delivered by hand or sent by First-Class  
9 Mail) appropriate proof of stock ownership, along with written objections, including the basis  
10 therefore, and copies of any papers and briefs in support thereof:

11                   BARROWAY TOPAZ KESSLER  
12                   MELTZER & CHECK, LLP  
13                   ERIC L. ZAGAR  
14                   280 King of Prussia Road  
15                   Radnor, PA 19087

16                   COUGHLIN STOIA GELLER  
17                   RUDMAN & ROBBINS LLP  
18                   JEFFREY D. LIGHT  
19                   655 West Broadway, Suite 1900  
20                   San Diego, CA 92101

21                   Co-Lead Counsel for plaintiffs  
22                   in the Federal Derivative Action

23                   ROBBINS UMEDA LLP  
24                   MARC M. UMEDA  
25                   600 B Street, Suite 1900  
26                   San Diego, CA 92101

27                   Counsel for plaintiff Peter Zhu  
28                   in the State Derivative Action

                  MORRISON & FOERSTER, LLP  
                  EUGENE ILLOVSKY  
                  755 Page Mill Road  
                  Palo Alto, CA 94304-1018

                  Counsel for the Individual Defendants and  
                  nominal defendant, Ditech

1           The written objections and copies of any papers and briefs in support thereof to be filed in  
2 Federal Court shall be delivered by hand or sent by First-Class Mail to:

3                   Clerk of the Court  
4                   UNITED STATES DISTRICT COURT  
5                   NORTHERN DISTRICT OF CALIFORNIA  
6                   SAN JOSE DIVISION  
7                   280 South First Street  
8                   San Jose, CA 95113

9           Any Current Ditech Stockholder who does not make his, her or its objection in the manner  
10 provided herein shall be deemed to have waived such objection and shall forever be foreclosed from  
11 making any objection to the fairness, reasonableness, or adequacy of the settlement as incorporated  
12 in the Stipulation and to the award of attorneys' fees and expenses to Plaintiffs' counsel, unless  
13 otherwise ordered by the Federal Court, but shall otherwise be bound by the Judgment to be entered  
14 and the releases to be given.

15           12.    Neither the Stipulation nor the settlement, nor any act performed or document  
16 executed pursuant to or in furtherance of the Stipulation or the settlement: (a) is, or may be deemed  
17 to be, or may be offered, attempted to be offered, or used in any way by the Settling Parties as a  
18 presumption, a concession, or an admission of, or evidence of, any fault, wrongdoing, or liability of  
19 the Settling Parties or of the validity of any Released Claims; or (b) is intended by the Settling  
20 Parties to be offered or received as evidence or used by any other person in any other actions or  
21 proceedings, whether civil, criminal, or administrative. The Released Persons may file the  
22 Stipulation and/or the Judgment in any action that may be brought against them in order to support a  
23 defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit,  
24 release, standing, good faith settlement, judgment bar or reduction, or any other theory of claim  
25 preclusion or issue preclusion or similar defense or counterclaim.

26           13.    The Federal Court reserves the right to adjourn the date of the Settlement Hearing or  
27 modify any other dates set forth herein without further notice to the Current Ditech Stockholders,  
28 and retains jurisdiction to consider all further applications arising out of or connected with the  
settlement. The Federal Court may approve the settlement, with such modifications as may be

1 agreed to by the Settling Parties, if appropriate, without further notice to the Current Ditech  
2 Stockholders.

3 IT IS SO ORDERED.

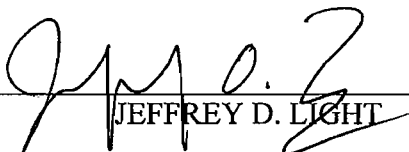
4 DATED: October 23, 2009

  
THE HONORABLE JEREMY FOGEL  
UNITED STATES DISTRICT JUDGE

6 Respectfully submitted,

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37 Co-Lead Counsel for Plaintiffs

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