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The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

INSIDETX, INC., et al.,

Plaintiffs,

v.

SCOUT MEDIA, INC., et al.,

Defendants.

NO. C07-0737 RSM

**ORDER GRANTING MOTION OF
CLASS REPRESENTATIVES FOR
FINAL APPROVAL OF CLASS
SETTLEMENT AND ATTORNEYS
FEES**

On November 24, 2008, Plaintiffs InsideTx, Inc.; Major Upset Productions, Inc.; OUI Insider.com; Trojan Sports Publishing, LLC (collectively, "CLASS REPRESENTATIVES") filed a SETTLEMENT AGREEMENT in this Court. The capitalized terms in this Order have the meanings set forth in that SETTLEMENT AGREEMENT.

That SETTLEMENT AGREEMENT contains the following material terms:

(a) The following Class will be certified for Settlement purposes:

"All persons or entities that are or were parties to NETWORK AGREEMENTS and all persons or entities that are or were parties to MAGAZINE AGREEMENTS,

ORDER GRANTING MOTION OF CLASS
REPRESENTATIVES FOR FINAL APPROVAL OF CLASS
SETTLEMENT AND ATTORNEYS FEES - 1
Case No. C07-0737 RSM

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1 and excluding DEFENDANTS' RELEASING PARTIES."
2 SETTLEMENT AGREEMENT, § I.YY.

- 3
- 4 (b) The SETTLEMENT AGREEMENT provides for a SETTLEMENT
5 FUND of \$5,274,170. SETTLEMENT AGREEMENT, § I.AAA.
- 6
- 7 (c) SETTLEMENT AGREEMENT § I.B. provides that it would settle the
8 above-captioned action and the following litigation between the CLASS
9 REPRESENTATIVES and Scout:
- 10
- 11 (i) **Bucknuts, LLC. v. SCOUT.COM, LLC, et al. (Case No. 11 143**
12 **01020 07, American Arbitration Association):** On May 11,
13 2007, the CLASS REPRESENTATIVES and Bucknuts, LLC filed
14 a Class Action Arbitration Demand with the American Arbitration
15 Association ("AAA") against SCOUT.COM and SCOUT
16 PUBLISHING. The claims asserted in that Arbitration Demand
17 are similar to the claims asserted in the FEDERAL PUTATIVE
18 CLASS ACTION.
- 19
- 20 (ii) **SCOUT.COM, LLC v. Bucknuts, LLC, et al., Case No. 07-1444**
21 **(United States District Court for the Western District of**
22 **Washington):** On September 17, 2007, Scout filed a Motion to
23 Compel Individual Arbitrations. This Court granted the Motion to
24 Dismiss of CLASS REPRESENTATIVES and Bucknuts, LLC on
25 November 16, 2007, and Scout has filed an appeal, which remains
26 pending.
- 27
- 28 (d) The CLASS REPRESENTATIVES would be paid their expenses
29 associated with the ACTIONS, and CLASS COUNSEL would be paid its
30 expenses associated with the ACTIONS. SETTLEMENT AGREEMENT,
31 § VI.A.1.-2.
- 32
- 33 (e) CLASS COUNSEL would be paid 33% of the Settlement Fund after
34 deduction of expenses. SETTLEMENT AGREEMENT, § VI.A.3.
- 35
- 36 (f) CLASS REPRESENTATIVES would be paid incentive payments of
37 \$50,000 to compensate them for the risks incurred and time spent in acting
38 as CLASS REPRESENTATIVES. SETTLEMENT AGREEMENT,
39 § VI.A.4.
- 40
- 41 (g) The remainder of the SETTLEMENT FUND after expenses, attorneys'
42 fees and incentive payments would be distributed to the CLASS
43 MEMBERS. SETTLEMENT AGREEMENT, § VI.A.5.
- 44
- 45 (h) The CLASS MEMBERS would release all claims they have against the
46 DEFENDANTS' RELEASED PARTIES. SETTLEMENT
AGREEMENT, § IV.A.

- 1 (i) Individual CLASS NOTICE would be mailed and emailed to each
2 SETTLEMENT CLASS MEMBER. SETTLEMENT AGREEMENT,
3 § III.E.1.
4
5 (j) SETTLEMENT CLASS MEMBERS would have the opportunity to opt
6 out of the SETTLEMENT, or to file objections to the SETTLEMENT.
7 SETTLEMENT AGREEMENT, § III.F.
8

9 On January 12, 2009, this Court issued an Order preliminarily approving the
10 SETTLEMENT AGREEMENT (Dkt. 48) ("Preliminary Approval Order"). In that Preliminary
11 Approval Order, this Court: (1) granted CLASS REPRESENTATIVES conditional approval to
12 file a SECOND AMENDED COMPLAINT to add SCOUT.COM and SCOUT PUBLISHING as
13 Defendants, and to add additional claims; (2) granted preliminary approval of the
14 SETTLEMENT AGREEMENT; (3) conditionally certified a SETTLEMENT CLASS;
15 (4) appointed D. Jeffrey Ireland and Jeffrey S. Sharkey of Faruki Ireland & Cox P.L.L. as
16 CLASS COUNSEL; (5) approved the proposed CLASS NOTICE and Notice Plan; (6) approved
17 CAC Services Group, LLC ("CAC") as the THIRD PARTY ADMINISTRATOR for the CLASS
18 SETTLEMENT; (7) required SCOUT.COM and SCOUT PUBLISHING to provide records to
19 CLASS COUNSEL to permit CLASS COUNSEL to identify SETTLEMENT CLASS
20 MEMBERS; (8) enjoined SETTLEMENT CLASS MEMBERS from filing or pursuing litigation
21 against Scout; (9) set a date for CLASS COUNSEL to file a motion for attorneys' fees; and
22 (10) scheduled a final fairness hearing.
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37 Pursuant to the Preliminary Approval Order, on February 9, 2009, CAC sent the
38 CLASS NOTICE to the SETTLEMENT CLASS MEMBERS via U.S. mail and email at each
39 SETTLEMENT CLASS MEMBER'S last known address. In addition, CLASS NOTICE was
40 published in the February 11, 2009 edition of The Wall Street Journal.
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1 Pursuant to the Preliminary Approval Order, SETTLEMENT CLASS
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3 MEMBERS had until April 12, 2009 to file objections to the SETTLEMENT AGREEMENT.
4
5 As of that date, no SETTLEMENT CLASS MEMBER filed objections with this Court to the
6
7 SETTLEMENT AGREEMENT.
8
9

10 Pursuant to the Preliminary Approval Order, SETTLEMENT CLASS
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12 MEMBERS had until April 27, 2009 to opt out of the SETTLEMENT. As of that date, four
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14 SETTLEMENT CLASS MEMBERS sent opt-out notices to CAC: (1) Jerry Cornwell/Ag Tech,
15
16 Inc.; (2) Joseph Tybor/Global Electronic Telecommunications, Inc.; (3) Alan Tieuli; and (4)
17
18 Anthony Pauline/TFY Draft Preview. Pursuant to Settlement Agreement, § III.F.1., Parties that
19
20 sent an opt out notice had until July 7, 2009 to revoke that opt out notice. On July 7, 2009,
21
22 Joseph Tybor/Global Electronic Telecommunications, Inc. and Alan Tieuli revoked their opt out
23
24 notices.
25

26
27 On June 12, 2009, CLASS REPRESENTATIVES filed a Motion for Final
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29 Approval of the SETTLEMENT AGREEMENT. On June 12, 2009, CLASS COUNSEL also
30
31 filed a Motion for Attorneys' Fees.
32

33 The Court having considered all pleadings and proceedings, ORDERS,
34
35 ADJUDGES AND DECREES:
36

- 37
38 1. The Court finds that the requirements of Fed. R. Civ. P. 23(a) have been satisfied:
39
40
41 (a) The Court finds that there are approximately 335 CLASS MEMBERS,
42 and that the numerosity criterion of Rule 23(a)(1) is satisfied.
43
44 (b) The Court finds that the following questions of law and fact are common
45 to the CLASS MEMBERS:
46

- 1 (i) whether Scout breached the CLASS MEMBERS' NETWORK
2 AGREEMENTS, committed fraud, or committed unfair or
3 deceptive trade practices based on the alleged promise to provide
4 Internet Publishers a 10% interest in SCOUT MEDIA;
5
6 (ii) whether Scout implemented a method for allocating subscription
7 revenue that breached the CLASS MEMBERS' NETWORK
8 AGREEMENTS, or constituted an unfair or deceptive trade
9 practice;
10
11 (iii) whether Scout implemented a method for allocating advertising
12 revenue that breached the CLASS MEMBERS' NETWORK
13 AGREEMENTS, or constituted an unfair or deceptive trade
14 practice;
15
16 (iv) whether Scout implemented a method for allocating advertising
17 revenue that breached the CLASS MEMBERS' MAGAZINE
18 AGREEMENTS, or constituted an unfair or deceptive trade
19 practice.

20 The Court finds that those common issues of law and fact satisfy the
21 Rule 23(a)(2) commonality criterion.
22

23 (c) The Court finds that the CLASS MEMBERS and the CLASS
24 REPRESENTATIVES were each parties to a Network Affiliate
25 Agreement ("NETWORK AGREEMENT") and/or a Magazine Content
26 License, Publishing and Marketing Agreement ("MAGAZINE
27 AGREEMENT") with SCOUT.COM and/or SCOUT PUBLISHING, and
28 that the typicality criterion of Rule 23(a)(3) is satisfied.
29

30 (d) The Court finds that the CLASS REPRESENTATIVES constitute current
31 or former members of the Scout Internet and Magazine Networks, and that
32 the CLASS REPRESENTATIVES have and will adequately protect the
33 interests of the CLASS MEMBERS, and that the adequacy criterion of
34 Rule 23(a)(4) is satisfied.
35

36 2. The Court finds that the requirements of Rule 23(b)(3) have been satisfied:
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38 (a) The Court finds that common questions of law and fact regarding the
39 interpretation of the NETWORK AGREEMENTS and MAGAZINE
40 AGREEMENTS, and whether Scout breached those Agreements,
41 predominate over individualized questions.
42

43 (b) The Court finds that the CLASS MEMBERS' individual claims are small,
44 and that the CLASS MEMBERS do not have incentive to litigate the
45 CLASS CLAIMS on an individual basis. The Court thus finds that a class
46 action is a superior method to adjudicate the claims.

1 3. The following Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) and Fed. R.
2
3 Civ. P. 23(c)(1)(B), for purposes of settlement:
4

5 "All persons or entities that are or were parties to NETWORK
6 AGREEMENTS and all persons or entities that are or were parties
7 to MAGAZINE AGREEMENTS, and excluding DEFENDANTS'
8 RELEASING PARTIES."
9

10 4. Pursuant to Fed. R. Civ. P. 23(c)(1)(B), the class claims and issues are those
11
12 asserted in the SECOND AMENDED COMPLAINT.
13

14 5. The CLASS NOTICE, as approved by this Court in its Preliminary Approval
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16 Order, provided individualized notice to the CLASS MEMBERS at their last-known mail and
17
18 email addresses. In addition, CLASS NOTICE was published in The Wall Street Journal. The
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20 CLASS NOTICE constitutes the best practicable notice and was reasonably calculated under the
21
22 circumstances to apprise CLASS MEMBERS of the pendency of the ACTIONS and the
23
24 SETTLEMENT, the nature of the action, the definition of the class certified, the class claims,
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26 issues, and defenses, that a CLASS MEMBER may enter an appearance through counsel, that a
27
28 CLASS MEMBER may opt out of the Class and the procedure for doing so, the terms of the
29
30 SETTLEMENT AGREEMENT, the right to object to the SETTLEMENT AGREEMENT, the
31
32 claims procedure, the right to appear at the final approval hearing, and the binding effect of a
33
34 dismissal and final judgment on the CLASS MEMBERS. The Court finds that the CLASS
35
36 NOTICE is adequate and sufficient, meets the requirements of due process, and satisfies the
37
38 criteria set forth in Fed. R. Civ. P. 23(c)(2)(B) and Fed. R. Civ. P. 23(e)(1).
39
40

41 6. Pursuant to Fed. R. Civ. P. 23(c)(3), the CLASS MEMBERS are: "All persons or
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43 entities that are or were parties to NETWORK AGREEMENTS and all persons or entities that
44
45

1 are or were parties to MAGAZINE AGREEMENTS, and excluding DEFENDANTS'
2
3 RELEASING PARTIES."

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6 7. Pursuant to Fed. R. Civ. P. 23(e)(2), a final approval hearing was held on July 14,
7
8 2009. Based upon the evidence submitted at that hearing, the Court finds that the
9
10 SETTLEMENT AGREEMENT is fair, reasonable and adequate. The SETTLEMENT FUND of
11
12 \$5,274,170 recovers nearly 50% of the CLASS REPRESENTATIVES' estimate of the value of
13
14 the CLASS CLAIMS (excluding statutory damages and interest), which amount is reasonable in
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16 light of the difficulty CLASS REPRESENTATIVES would have in proving their claims and the
17
18 defenses that Scout has asserted or could assert. The Court further finds that it is reasonable to
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20 allocate the SETTLEMENT FUND to CLASS MEMBERS based upon revenue earned by each
21
22 CLASS MEMBER, since CLASS MEMBERS would have been injured in proportion to the
23
24 amount of revenue that each earned. There is no evidence of fraud, collusion or overreaching by
25
26 the PARTIES or that the rights of absent CLASS MEMBERS were disregarded. The
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28 SETTLEMENT AGREEMENT is fair, reasonable and adequate and is in the best interests of the
29
30 CLASS MEMBERS.

31
32
33 8. The Court finds that the CLASS REPRESENTATIVES have incurred the
34
35 following expenses in this litigation and related litigation, and directs that the CLASS
36
37 REPRESENTATIVES be paid the following expenses from the SETTLEMENT FUND:

38		
39	InsideTx	\$715.49
40		
41	Major Upset	\$0.
42		
43	OUI Insider	\$11,741.45
44		
45	Trojan Sports	\$57,143.31
46		

1 TOTAL **\$69,600.25**

2
3 9. The Court finds that the CLASS REPRESENTATIVES incurred significant risks
4 by initiating this action and the AAA Class Action Arbitration against Scout on behalf of the
5 Class, and that the CLASS REPRESENTATIVES have expended significant efforts on behalf of
6 the Class. The Court thus approves a CLASS REPRESENTATIVE Incentive Payment of
7 \$50,000 to each CLASS REPRESENTATIVE from the SETTLEMENT FUND.
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14 10. Pursuant to Fed. R. Civ. P. 23(e)(3), the CLASS REPRESENTATIVES have filed
15 all agreements made in connection with the SETTLEMENT AGREEMENT.
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19 11. Pursuant to Fed. R. Civ. P. 23(g), D. Jeffrey Ireland and Jeffrey S. Sharkey were
20 appointed as CLASS COUNSEL in the Preliminary Approval Order.
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23
24 12. Pursuant to Fed. R. Civ. P. 23(h), the Court finds that the request for attorneys'
25 fees, costs and expenses by CLASS COUNSEL is reasonable. The Court approves an attorneys'
26 fee award of \$1,705,381.79 and reimbursement of costs and expenses of \$63,691.51 to CLASS
27 COUNSEL, to be paid from the SETTLEMENT FUND.
28
29

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33 13. SCOUT MEDIA is ordered to pay any remaining balance of the SETTLEMENT
34 FUND into the ESCROW ACCOUNT within fifteen (15) business days of the EFFECTIVE
35 DATE. The escrow agent is ordered to issue checks to CLASS REPRESENTATIVES and
36 CLASS COUNSEL identified on Exhibit 7 in Dkt. # 71, at the addresses and in the amounts
37 identified on Exhibit 7, within thirty (30) days of the EFFECTIVE DATE. The escrow agent is
38 ordered to issue checks to CLASS MEMBERS identified on Exhibit 1 to this Order, at the
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1 addresses and in the amounts identified on Exhibit 1, within sixty (60) days of the EFFECTIVE
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3 DATE. Exhibit 1 shall be filed and maintained under seal.
4

5
6 14. SETTLEMENT AGREEMENT, § IV contains the following releases, which this
7
8 Court incorporates into this Order:
9

10 (a) PLAINTIFFS' RELEASING PARTIES release DEFENDANTS'
11
12 RELEASED PARTIES from any and all claims, debts, demands, rights, causes of action,
13
14 damages, costs, expenses, and compensation of any nature whatsoever, whether based on tort,
15
16 contract, or any other theory of recovery, whether for compensatory or punitive damages,
17
18 whether direct or indirect, and whether known or unknown, (i) that PLAINTIFFS' RELEASING
19
20 PARTIES now own or hold, or have at any time owned or held, or may hold in the future,
21
22 against any or all of the DEFENDANTS' RELEASED PARTIES, or for which any or all of the
23
24 DEFENDANTS' RELEASED PARTIES could be held to an indemnification obligation, and
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26 (ii) that are or may be based upon, arising out of, or related to any facts, acts, omissions, conduct,
27
28 representations, contracts, agreements, events, causes, or matters of any kind that existed on or
29
30 before the EFFECTIVE DATE, including but not limited to all claims and counterclaims that
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32 have been raised or could have been raised, or are or may be based upon, arising out of, or
33
34 related in any way to any of the facts, allegations, acts, events, transactions, occurrences, courses
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36 of conduct, representations, omissions, circumstances, or other matters referenced in any claim
37
38 or counterclaim raised, in the ACTIONS.
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41 Notwithstanding the prior paragraph, SCOUT.COM and SCOUT PUBLISHING
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43 will continue to make payments to SETTLEMENT CLASS MEMBERS that are due under any
44
45 NETWORK AGREEMENTS and/or MAGAZINE AGREEMENTS as any such payments
46

1 become due using the methods for calculating revenues and payments utilized by SCOUT.COM
2
3 and SCOUT PUBLISHING.
4

5
6 PLAINTIFFS' RELEASING PARTIES acknowledge and consent to
7
8 DEFENDANTS' RELEASED PARTIES' use, including on the EFFECTIVE DATE and
9
10 thereafter, of the following methods for calculating revenues (the "REVENUE CALCULATION
11
12 METHODS") to be paid to any of PLAINTIFFS' RELEASING PARTIES under any agreement
13
14 with SCOUT.COM or SCOUT PUBLISHING (each a "PUBLISHER AGREEMENT"):
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- 16
17 • For purposes of calculating the portion of any revenues to be paid to any
18
19 of PLAINTIFFS' RELEASING PARTIES for website or magazine
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21 subscriptions, two thirds of any payment generated by any subscription
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23 that is a TAP Plus subscription, or is a similar subscription that bundles
24
25 both a website subscription and a magazine subscription into one
26
27 subscription, shall be considered revenue generated by a website
28
29 subscription, and one third of any such payment shall be considered
30
31 revenue generated by a magazine subscription.
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- 33
34 • To the extent that a PUBLISHER AGREEMENT contains a subscription
35
36 revenue sharing provision providing for payment to any of PLAINTIFFS'
37
38 RELEASING PARTIES of a specified percentage of revenues for a
39
40 specified number of first subscribers, and a larger percentage or
41
42 percentages of revenues for subsequent subscribers, the subscription
43
44 revenue sharing provision shall be applied on a monthly basis, such that,
45
46 for each month, the smallest specified revenue percentage shall apply to

1 the specified number of first active paid subscriptions that month, and the
2
3 larger revenue percentage or percentages shall apply only to the
4
5 subsequent active paid subscriptions that month.
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7
8 **PLAINTIFFS' RELEASING PARTIES** release **DEFENDANTS' RELEASED**
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10 **PARTIES** from any and all claims, debts, demands, rights, causes of action, damages, costs,
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12 expenses, and compensation of any nature whatsoever, whether based on tort, contract, or any
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14 other theory of recovery, whether for compensatory or punitive damages, whether direct or
15
16 indirect, and whether known or unknown, that **PLAINTIFFS' RELEASING PARTIES** now own
17
18 or hold, or have at any time owned or held, or may hold in the future, arising out of
19
20 **DEFENDANTS' RELEASED PARTIES'** use of the **REVENUE CALCULATION METHODS**,
21
22 including on the **EFFECTIVE DATE** and thereafter.
23

24
25 Unless otherwise agreed to by **SCOUT.COM**, **SCOUT PUBLISHING**, or **SCOUT**
26
27 **MEDIA**, on the one hand, and a **CLASS MEMBER**, on the other hand — **PLAINTIFFS'**
28
29 **RELEASING PARTIES** amend each **PUBLISHER AGREEMENT** to include, adopt, and
30
31 authorize the **REVENUE CALCULATION METHODS**.
32

33
34 (b) **DEFENDANTS' RELEASING PARTIES** release **PLAINTIFFS'**
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36 **RELEASED PARTIES** from any and all claims, debts, demands, rights, causes of action,
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38 damages, costs, expenses, and compensation of any nature whatsoever, whether based on tort,
39
40 contract, or any other theory of recovery, whether for compensatory or punitive damages,
41
42 whether direct or indirect, and whether known or unknown, (i) that **DEFENDANTS'**
43
44 **RELEASING PARTIES** now own or hold, or have at any time owned or held, or may hold in the
45
46 future, against any or all of the **PLAINTIFFS' RELEASED PARTIES**, or for which any or all of

1 the PLAINTIFFS' RELEASED PARTIES could be held to an indemnification obligation, and
2
3 (ii) that are or may be based upon, arising out of, or related to any facts, acts, omissions, conduct,
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5 representations, breaches of contracts, breaches of agreements, events, causes, or matters of any
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7 kind that existed on or before the EFFECTIVE DATE, including but not limited to all claims and
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9 counterclaims that have been raised or could have been raised, or are or may be based upon,
10
11 arising out of, or related in any way to any of the facts, allegations, acts, events, transactions,
12
13 occurrences, courses of conduct, representations, omissions, circumstances, or other matters
14
15 referenced in any claim or counterclaim raised, in the ACTIONS.

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18 Notwithstanding the prior paragraph, all NETWORK AGREEMENTS and
19
20 MAGAZINE AGREEMENTS remain in full force and effect except as amended, modified
21
22 and/or terminated in this SETTLEMENT AGREEMENT, and DEFENDANTS' RELEASED
23
24 CLAIMS do not include any claims for breach of any NETWORK AGREEMENTS or
25
26 MAGAZINE AGREEMENTS that exists or occurs after the EFFECTIVE DATE.

27
28
29 15. DEFENDANTS' RELEASING PARTIES and PLAINTIFFS' RELEASING
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31 PARTIES are permanently enjoined from (i) filing, commencing, prosecuting, continuing,
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33 maintaining, intervening in, participating in (as class members or otherwise) or receiving any
34
35 benefits from any lawsuit or arbitration based on any or all DEFENDANTS' RELEASED
36
37 CLAIMS or PLAINTIFFS' RELEASED CLAIMS against one or more of PLAINTIFFS'
38
39 RELEASED PARTIES or DEFENDANTS' RELEASED PARTIES; (ii) instituting, continuing,
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41 maintaining, organizing class members in, or joining with class members in, any action or
42
43 arbitration, including but not limited to a purported class action, in any jurisdiction or forum,
44
45 against one or more of PLAINTIFFS' RELEASED PARTIES or DEFENDANTS' RELEASED
46

1 PARTIES, based on, involving, or incorporating, directly or indirectly, any or all
2
3 DEFENDANTS' RELEASED CLAIMS or PLAINTIFFS' RELEASED CLAIMS; and (iii) filing,
4
5 commencing, prosecuting, intervening in, participating in (as class members or otherwise) or
6
7 receiving any benefits from any lawsuit or arbitration based on an allegation that an action taken
8
9 by PLAINTIFFS' RELEASED PARTIES or DEFENDANTS' RELEASED PARTIES, which is
10
11 in compliance with the provisions of the SETTLEMENT AGREEMENT, violates any legal right
12
13 of PLAINTIFFS' RELEASING PARTIES or any CLASS MEMBER.
14

15
16 16. There is no just reason for delay and the Final Approval Motion shall be final, and
17
18 judgment shall be entered.
19

20
21 17. The Court has and shall retain exclusive jurisdiction over: (i) the SETTLEMENT
22
23 AGREEMENT, including its administration, consummation, claim procedures, enforcement, and
24
25 any other issues or questions that may arise; (ii) the Parties and disputes for purposes of the
26
27 SETTLEMENT AGREEMENT; and (iii) any applications for attorneys' fees, expenses, and
28
29 costs related to the SETTLEMENT AGREEMENT; (iv) all proceedings related to the
30
31 SETTLEMENT AGREEMENT, both before and after this Order becomes final and is no longer
32
33 subject to appeal, and over enforcement of this Order.
34

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36 IT IS SO ORDERED.
37

38 DATED July 14, 2009.
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44 RICARDO S. MARTINEZ
45 UNITED STATES DISTRICT JUDGE
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