

AMENDED OFFICIAL NOTICE OF PENDENCY OF CLASS ACTION  
AND PROPOSED SETTLEMENT

**If You Are Currently an AOL Member You Are A Member of A Proposed Settlement and  
Your Rights May Be Affected.**

- The Proposed Settlement is on behalf of all current AOL Members. It resolves claims regarding advertising or promotional “footers” that may have been appended to the bottom of your e-mails by AOL.
- The Proposed Settlement provides that all current AOL Members will immediately be provided notice of the footers and their ability to discontinue the footers via [AOL Keyword: Footer](#) and <http://footer.aol.com>, and that, if AOL continues to append footers to its Members’ e-mails, such notice will be provided both to all new customers upon their registration of an AOL account and to all current AOL Members on a regular, periodic basis (every six months for two years)
- The Proposed Settlement provides that AOL shall make donations to several different charities totaling \$110,000.
- If you do nothing and this Proposed Settlement is approved by the Court you will be part of the Settlement Class and bound by the terms of the Settlement.
- The Court still has to decide whether to approve the Proposed Settlement. Settlement Class Members will receive the benefits of the Settlement after the Court approves the Settlement.

PLEASE DO NOT CALL OR WRITE DIRECTLY TO THE COURT.

YOUR LEGAL RIGHTS ARE AFFECTED WHETHER OR NOT YOU ACT.  
**PLEASE READ THIS NOTICE CAREFULLY.**

**YOUR RIGHTS AND CHOICES:**

<b>You May</b>	<b>Due Date</b>
<b>1. Do Nothing</b> (see question #7 and 15)	This space intentionally left blank
or	
<b>2. Exclude Yourself</b> (see questions #11 – 13)	<b><i>Postmarked by</i></b> <b>November 20, 2009</b>
or	
<b>3. Object to the Settlement</b> (see question #14)	<b><i>Filed and Received by</i></b> <b>December 7, 2009</b>
or	

<b>4. Appear in the Lawsuit</b> (see question #14)	<b><i>Filed and Received by</i></b> <b>December 7, 2009</b>

## 1. WHO SHOULD READ THIS NOTICE?

If you are presently an AOL customer you should read this notice. Your legal rights are affected by the proposed Settlement of a class action lawsuit, *Fairchild et al v. AOL*, Case No. CV09-03568 CAS (PLAx), which is pending in the United States District Court for the Central District of California. This Notice explains:

- What this Lawsuit is about;
- Who is included in the Settlement;
- How the Settlement will benefit you;
- How to get the benefits of the Settlement; and
- What your legal rights are.

*If you have any questions regarding this Notice, please send an e-mail to [footerlitigation@corp.aol.com](mailto:footerlitigation@corp.aol.com), which will be shared with Settlement Class Counsel.* If you send an e-mail, please be sure to include the name of the lawsuit (*Fairchild v. AOL*) in the Subject Line. However, please read the entire Notice before writing.

***PLEASE DO NOT CALL OR WRITE DIRECTLY TO  
THE COURT OR THE CLERK'S OFFICE.***

## 2. WHAT IS THIS LAWSUIT ABOUT?

This Lawsuit was brought by Plaintiffs Dawn Fairchild, Robert Nachshin, Brian Geers and Larry Gerrard against Defendant AOL LLC. Plaintiffs allege that (1) the failure to inform them that AOL would insert e-mail footers in their sent e-mails and (2) the insertion of such footers, violate the law.

AOL denies Plaintiffs' allegations and maintains that it acted in accordance with all laws and regulations.

## 3. WHO REPRESENTS ME IN THIS CASE?

The Court has appointed the following attorneys in the Fairchild Action to act as Settlement Class Counsel who may be reached at [footerlitigation@corp.aol.com](mailto:footerlitigation@corp.aol.com):

Glenn Nunes  
The Nunes Law Group  
15760 Ventura Blvd Ste 860  
Encino, CA 91436

Christopher J. Hamner, Esq.  
Kimberly A. Westmoreland, Esq.

Hamner Law Offices  
15760 Ventura Blvd Ste 860  
Encino, CA 91436

Brian Kabateck, Esq.  
Richard Kellner, Esq.  
Kabateck Brown Kellner LLP  
644 South Figueroa Street  
Los Angeles, CA 90017

Each of these counsel may be reached via e-mail at [footerlitigation@corp.aol.com](mailto:footerlitigation@corp.aol.com)

#### **4. WHY IS THERE A SETTLEMENT?**

The Court has not decided who is right or wrong in this lawsuit. Instead, the Settlement Class Representatives and AOL agreed to a Settlement, which was preliminarily approved by the Court on August 25, 2009. As a result of the Settlement, all parties avoid the costs of further litigation and risks of a trial and Settlement Class members may obtain the benefits of the Settlement.

The Settlement Class Representatives believe that the case has merit and that the evidence supports their claims. The Settlement Class representatives determined that the proposed settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class. The Settlement will permit Plaintiffs and the Settlement Class Members to receive full and complete disclosure of AOL's practice of appending e-mail footers and the ability simply and easily to discontinue these footers, without the time, risk and expense of litigation. AOL has also agreed to contribute significant sums to 8 charities as part of this settlement.

AOL does not believe that Plaintiffs' claims have factual or legal merit. However, AOL desires to avoid unnecessary litigation costs while also ensuring that it has taken adequate steps to ensure that consumers are fully aware of the footers and their ability to discontinue them.

In an effort to resolve this matter, the parties engaged The Hon. Dickran Tevrezian, (Ret.) U.S. District Judge for the Central District of California, to mediate a resolution. The parties were thereby able to negotiate a settlement.

#### **5. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?**

If you are a current AOL member you are in the class and are part of this settlement.

#### **6. WHAT DOES THE SETTLEMENT PROVIDE AND HOW WILL I RECEIVE THE BENEFITS?**

The Settlement provides that all current AOL Members will be provided e-mail notice of the footers and their ability to discontinue the footers via [AOL Keyword: Footer](mailto:Footer@corp.aol.com) and <http://footer.aol.com>, and that, if AOL continues to append footers to its Members' e-mails, such notice will be provided both to all new customers upon their registration of an AOL account

and to all current AOL Members on a regular, periodic basis (every six months for two years). A copy of this settlement agreement has been posted at [www.aole-mailfootersettlement.com](http://www.aole-mailfootersettlement.com) and at <http://legal.web.aol.com/Footersettlement.pdf>.

**7. HOW CAN I GET THE BENEFITS OF THE SETTLEMENT?**

To obtain the benefits of this Settlement all you need to do is not opt-out of this Settlement.

**8. WHEN WILL I GET THE BENEFITS OF THIS SETTLEMENT?**

If the Court approves the Settlement, and if AOL continues to append footers to its Members' e-mails, AOL will send you the notice explaining how to discontinue the footers within 30 days of approval and every 6 months thereafter for a period of two years.

**9. AM I GIVING ANYTHING UP IN EXCHANGE FOR THE BENEFITS OF THE SETTLEMENT?**

Yes. If the Court approves the Settlement, it will enter a judgment dismissing the lawsuit with prejudice as to all Settlement Class Members and releasing all claims they may have against AOL regarding advertising or promotional "footers" that may have been appended to the bottom of their e-mails by AOL. In other words, by remaining in the Settlement Class, all of the Court's Orders will apply to you and you will thereby release all claims that you may have regarding advertising or promotional "footers" that may have been appended to the bottom of your e-mails by AOL, thereby barring you from bringing your own lawsuit based on such claims.

**10. IF I CURRENTLY USE AOL, WILL THIS SETTLEMENT CANCEL OR INTERRUPT MY SUBSCRIPTION?**

No. Neither the settlement nor this lawsuit affects your ongoing online service. If you have any questions about your existing subscription, please contact AOL Member Services.

**11. CAN I GET OUT OF THE SETTLEMENT AND THE SETTLEMENT CLASS?**

Yes. You may request to be excluded from the Settlement and the Settlement Class. If you exclude yourself, you will not receive any of the benefits of the Settlement. You will still have the right to bring your own lawsuit. The deadline to exclude yourself is November 20, 2009.

**12. HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

To exclude yourself, you must, no later than November 20, 2009, send an e-mail to [settlementoptout@corp.aol.com](mailto:settlementoptout@corp.aol.com) requesting exclusion from the Settlement.

Your e-mail should include all of the following:

- Your name, address and telephone number;
- A statement that you wish to be excluded from the lawsuit and the Settlement.

**13. IF I EXCLUDE MYSELF, CAN I OBTAIN THE BENEFITS OF, OR COMMENT ON, THE SETTLEMENT?**

No. If you exclude yourself, you are no longer part of the Class or the Settlement. You will not receive any benefits from the Settlement and the Court will not consider your comments in support of or in opposition to the Settlement.

**14. CAN I TELL THE COURT IF I SUPPORT OR OBJECT TO THE SETTLEMENT OR THAT I WANT TO APPEAR AT THE FINAL SETTLEMENT APPROVAL HEARING?**

Yes. So long as you do not exclude yourself, you can tell the Court that you support or object to the Settlement or some part of it.

To comment in support of, or in opposition to, the Settlement, you must file a letter with the Clerk of the Court, United States District Court for the Central District of California, Western Division, 312 North Spring Street Los Angeles, California 90012 on or before December 7, 2009, and mail a copy to: AOL E-mail Footer Litigation Settlement, P.O. Box 65771, Sterling, VA 20165-8806. Your letter must be received no later than December 7, 2009.

Your letter should include all of the following:

- Your name, address and telephone number;
- The name and number of the lawsuit: Fairchild v. AOL, Case No. CV 09-03568 CAS (PLAx);
- A statement of the reasons why you believe the Settlement is or is not fair, reasonable, or adequate; **and**
- A statement regarding whether you (or your lawyer) wish to speak at the Settlement Fairness Hearing.

If you object, you may, but are not required to, appear at the Final Approval Hearing, either in person or through an attorney retained and paid by you. The Fairness Hearing will take place on December 28, 2009 at 10 AM. The Court is located at 312 North Spring Street Los Angeles, California 90012, Courtroom 5. If you or your attorney intend to appear at the Final Approval Hearing, you or your attorney must file a written Notice of Intention to Appear, together with any supporting legal memoranda and evidence, with the Clerk of the Court no later than December 7, 2009, and mail a copy to: AOL E-mail Footer Litigation Settlement, P.O. Box 65771, Sterling, VA 20165-8806. The Notice of Intention to Appear must be received no later than December 7, 2009. If you do not appear at the hearing, you waive the right to appeal.

**15. WHAT HAPPENS IF I DO NOTHING AT ALL?**

If you do nothing, you will receive any and all benefits under the Settlement, and you will be subject to the Release (described in # 9).

**16. IF I WANT TO KEEP THE E-MAIL FOOTERS WILL I BE ABLE TO?**

Yes. This Settlement only gives you as the Member the option to discontinue these footers.

**17. WHO PAYS THE LAWYERS AND HOW MUCH WILL THEY BE PAID?**

If the Court approves the Settlement, the lawyers for the Settlement Class will apply to the Court for an award of the fees and costs that they have incurred over the course of this lawsuit. AOL has agreed to pay up to \$320,000 in fees and costs, in addition to the \$110,000 in charitable donations, and the costs of administering the Settlement, including the notice process.<sup>1</sup> AOL's payment of attorneys' fees and litigation costs will not reduce any amounts paid or credited to the Charities.

**18. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

A Fairness Hearing will be held at 10AM on December 28, 2009. The Court is located at 312 North Spring Street, Los Angeles, California 90012, Courtroom 5. At the Fairness Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and adequate to Settlement Class Members. As part of making this determination, the Court will consider the views of Settlement Class Members both in favor of and opposed to the Settlement. The Court will further consider Settlement Class Counsel's request for attorneys' fees and litigation costs. After the hearing, the Court will decide whether to approve the Settlement and attorneys' fees and costs.

**19. HOW DO I GET MORE INFORMATION?**

This Notice only provides a summary of the Settlement. The full terms of the Settlement are set forth in the Settlement Agreement. To assist you a copy of this settlement agreement has been posted at [www.aole-mailfootersettlement.com](http://www.aole-mailfootersettlement.com) and at <http://legal.web.aol.com/Footersettlement.pdf>. Additionally, you can read the Settlement Agreement and the other documents in this lawsuit during regular business hours, at the Clerk of the Court, United States District Court for the Central District of California, Western Division, 312 North Spring Street, Los Angeles, California 90012 (fees may apply for copies of these documents).

**PLEASE DO NOT CALL THE COURT OR THE COURT CLERK.**

**THIS NOTICE IS NOT AN EXPRESSION BY THE COURT AS TO  
THE FAIRNESS OR ADEQUACY OF THE SETTLEMENT.**

Dated August 25 2009

By Order of the Court  
THE HONORABLE CHRISTINA A. SNYDER

---

<sup>1</sup> The attorneys' fees in this notice reflect the proper amount set forth in the settlement preliminarily approved by the court.

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

DAWN FAIRCHILD, ROBERT  
NACHSHIN, BRIAN GEERS and  
LARRY GERARD on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

vs.

AOL, LLC, a Delaware Limited Liability  
Company; and DOES 1 through 10  
inclusive,

Defendant.

No.: CV09-03568 CAS (PLAx)

Honorable Christina A. Snyder

**CLASS ACTION**

**CLASS ACTION SETTLEMENT  
AGREEMENT**

1 This Class Action Settlement Agreement (“Agreement”), negotiated under the  
2 guidance of the Honorable Dickran M. Tevrizian (Ret.), is entered into by, between,  
3 and among, on the one hand, Plaintiffs Dawn Fairchild, Robert Nachshin, Brian Geers  
4 and Laurence Gerard (collectively Plaintiffs) on behalf of themselves and as putative  
5 representative of the Settlement Class defined below; and, on the other hand, AOL  
6 LLC, its parents, subsidiaries and affiliates (collectively, “AOL” or “Defendant”).  
7 The Plaintiffs and the Defendant are collectively referred to as “the Parties.”

8 This Agreement is entered into to effect a full and final settlement and dismissal  
9 with prejudice of all claims asserted or that could have been asserted against AOL in  
10 the Lawsuits brought by Plaintiffs against AOL (the “Litigation”) on the terms set  
11 forth below and to the full extent reflected below, subject to the approval of the Court.

### 12 RECITALS

13 Plaintiffs filed Complaints against AOL in the United States District Court for  
14 the Central District of California. Plaintiffs filed these Complaints on behalf of  
15 themselves and a putative class of persons and entities alleging that AOL wrongfully  
16 inserted e-mail footers into e-mails sent by the Plaintiffs and asserting claims under  
17 the Electronic Communication Privacy Act; the California Business and Professions  
18 Code §§ 17200, *et seq.*; and the California Consumers Legal Remedies Act, as well as  
19 claims for breach of contract and unjust enrichment and additional claims under  
20 federal and state CAN-SPAM statutes.

21  
22 AOL denies both the accuracy of the factual allegations of the Complaints and  
23 that they state any legally cognizable claim because, inter alia, AOL has made never  
24 made any representation to consumers in its Terms of Service or otherwise regarding  
25 the non-placement of promotional or advertising material in e-mail footers; the  
26 primary purpose of e-mails sent through the AOL service is controlled by consumers,  
27 not AOL, and, therefore, the inclusion of promotional or advertising material in an e-  
28 mail footer does not render the primary purpose of such e-mail “commercial”; AOL

1 enables paid and free members to opt out of the inclusion of promotional or  
2 advertising material in e-mail footers through various means including AOL KW:  
3 Footer, AOL Help, and AOL Web Mail; and the claims asserted in the Litigation do  
4 not satisfy the requirements for a class action for purposes other than settlement.  
5 Absent a settlement of this Litigation, AOL would seek summary judgment on all  
6 claims, vigorously oppose class certification, and otherwise vigorously defend against  
7 these claims.

8 Plaintiffs' counsel conducted a factual investigation into the matters set forth in  
9 the Litigation, including the deposition of AOL's Vice President of Mail Products  
10 regarding the history, scope, and technical aspects of the e-mail footer program and  
11 other e-mail-related promotional and advertising programs as well as consumer  
12 response to such programs, and the review and analysis of documents and data  
13 regarding the e-mail footer program and AOL's various service offerings. Plaintiffs'  
14 counsel has also reviewed judicial rulings and regulatory materials on various legal  
15 issues related to the Litigation; and legal and factual analysis related to certifying a  
16 class for purposes of trial and the practicability and efficiency of certifying a class for  
17 settlement purposes.

18 After engaging in numerous settlement discussions, including two mediation  
19 sessions under the direction of the Honorable Dickran M. Tevrizian, United States  
20 District Judge for the Central District of California (Ret.), Plaintiffs determined that a  
21 proposed settlement would be fair, reasonable, adequate, and in the best interests of  
22 the Settlement Class and that it is desirable that the Litigation be settled in the manner  
23 and upon the terms and conditions set forth herein.

24 The gravamen of the Complaints is that Class Members failed to receive proper  
25 notice on how to avoid having e-mail footers added to the Class Members' e-mails.  
26 This Settlement provides that, upon its approval, all Class Members will not only  
27 immediately be provided direct electronic notice of their ability to avoid having these  
28 e-mail footers together with a hyperlink within the notice itself enabling them to

1 discontinue these e-mail footers by clicking on such link, but if AOL elects to  
2 continue appending footers to the Class Members' e-mails that they will also be  
3 provided such notice on a regular, periodic basis. Additionally, this Settlement  
4 provides that if AOL elects to continue appending footers to e-mails that AOL must  
5 provide notice of these e-mail footers to all new customers upon their establishment of  
6 an AOL account either as part of the registration path or as part of an e-mail  
7 registration confirmation enabling them to discontinue these e-mail footers by clicking  
8 on a link within such path or confirmation.

9 All of the above is achieved, plus significant contributions to several worthy  
10 charities, without the time and risk and expense of litigation, and permits AOL to  
11 avoid the expense, inconvenience, and distraction of further legal proceedings.

12 NOW, THEREFORE, in consideration of the mutual covenants and agreements  
13 set forth herein, the Parties hereto agree as follows, subject to Preliminary and Final  
14 Approval of the Court:

15  
16 **AGREEMENT FOR SETTLEMENT PURPOSES ONLY**

17 1. This Agreement is for settlement purposes only, and neither the fact of its  
18 existence, nor any provision contained in it, nor any negotiations or proceedings  
19 related thereto, nor any action taken hereunder shall constitute, or be construed as, any  
20 admission of the validity of any claim or any fact alleged by Plaintiffs in the Litigation  
21 or of any wrongdoing, fault, violation of law, or liability of any kind on the part of  
22 Defendant or any admission by Defendant of any claim or allegation made in any  
23 action or proceeding against Defendant. This Agreement and its exhibits shall not be  
24 offered or be admissible in evidence against the Parties or the Settlement Class in any  
25 action or proceeding in any forum for any purpose whatsoever, except any action or  
26 proceeding brought by or against any Plaintiff, Settlement Class Member or  
27 Defendant to enforce its terms or to support a defense of res judicata, collateral  
28 estoppel, release, or other theory of claim or issue preclusion or similar defense.



1 and the remedy provided by the settlement to Settlement Class Members, and to future  
2 customers of AOL's e-mail service. Based on their evaluation, Plaintiffs' counsel has  
3 determined that the settlement set forth in this Settlement Agreement is in the best  
4 interests of Plaintiffs and the Settlement Class.

5 **PRELIMINARY CERTIFICATION OF SETTLEMENT AND**  
6 **SETTLEMENT CLASS**

7 6. The Parties stipulate to certification, for settlement purposes only, of the  
8 Settlement Class defined as follows:

9 All current AOL members.

10  
11 The Parties agree that the foregoing class will be certified for settlement purposes  
12 only, and that this settlement shall not be construed to represent either an assertion or  
13 concession that such a settlement class would be manageable at trial, and in the event  
14 this Agreement is not given final approval or this settlement is not finalized for any  
15 reason whatsoever, the Parties acknowledge and agree that Defendant remains free to  
16 challenge whether this proposed class or any other proposed classes are properly  
17 certifiable in the Litigation or anywhere else, and Plaintiffs shall not argue that  
18 anything in this Agreement limits Defendant's right to do so.

19 7. Solely for the purpose of implementing this Agreement and effectuating  
20 the settlement, Defendant stipulates that the Court may enter an Order preliminarily  
21 certifying the Settlement Class, appointing Plaintiffs as representatives of the  
22 Settlement Class, and appointing the following as class counsel (hereinafter  
23 "Settlement Class Counsel") for the Settlement Class:

24 Brian S. Kabateck, Esq.  
25 Richard L. Kellner, Esq.  
26 Kabateck Brown Kellner LLP  
27 644 S. Figueroa Street  
28 Los Angeles, CA 90017

Glenn C. Nunes, Esq.  
The Nunes Law Group  
15760 Ventura Blvd., Suite 860  
Encino, CA 91436

Christopher J. Hamner  
Hamner Law Offices  
15760 Ventura Blvd., Suite 860  
Encino, CA 91436

1  
2                   **CLASS NOTICE AND SETTLEMENT OPT-OUT PROCEDURES**

3           8.       The Parties agree that the best practical notice may be accomplished  
4 through e-mail notice to all class members. All potential class members shall receive  
5 the Notice attached as Exhibit A. The Parties also agree that the establishment of a  
6 website would facilitate notice to the class members. AOL agrees to establish a  
7 website with the URL [www.aole-mailfootersettlement.com](http://www.aole-mailfootersettlement.com) and shall post Exhibit A at  
8 this site.

9           9.       Neither Party, or any person acting on behalf of any Party, shall provide  
10 or publish any form of Notice except as provided for herein without prior written  
11 approval of the content of such Notice by all Parties, other than any information  
12 provided to any Court in furtherance of this Agreement

13           10.      It shall be the responsibility of Settlement Class Counsel to respond to all  
14 reasonable inquiries from members of the Settlement Class.

15           11.      The Honorable Dickran M. Tevrizian, United States District Judge for the  
16 Central District of California (Ret.) shall function as Settlement Arbitrator to  
17 supervise the administration of this Settlement and to resolve any related disputes.

18           12.      AOL, in consultation with Settlement Class Counsel and under the  
19 supervision of the Settlement Arbitrator, shall be responsible for the following tasks,  
20 including, without limitation, (i) e-mailing or arranging for the e-mailing of the Notice  
21 set forth in Paragraph 8; (ii) handling returned e-mail not delivered and making any  
22 additional e-mailings required under the terms of the Agreement; (iii) simultaneously  
23 providing to Settlement Class Counsel and counsel for AOL copies of any and all  
24 objections, notices of intention to appear and requests for exclusion from the  
25 Settlement Class within five (5) business days after receipt; (iv) preparing a list of all  
26 persons who timely request exclusion from the Settlement Class and submitting an  
27 affidavit attesting to the accuracy of that list (the "Opt-Out List"); (v) preparing a list  
28 of all persons who submitted objections to the settlement and submitting an affidavit

1 testifying to the accuracy of that list; and (vi) providing any declarations necessary or  
2 appropriate for completion of the Settlement. AOL will provide all information and  
3 data in its possession to implement its responsibilities under this Agreement.

4 13. Within 14 days after the Preliminary Approval Order, AOL shall provide  
5 to the Settlement Arbitrator a complete listing of the names and e-mail addresses of all  
6 members of the Settlement Class. AOL, in consultation with Settlement Class  
7 Counsel and under the supervision of the Settlement Arbitrator, shall send the Notice  
8 to each such person by e-mail within thirty (30) days after Preliminary Approval  
9 Order (the “Notice Date”), unless extended by Order of this Court.

10 14. Within 30 days after the Preliminary Approval Order, AOL shall  
11 establish a website with the URL [www.aole-mailfootersettlement.com](http://www.aole-mailfootersettlement.com) and shall post  
12 Exhibit A at this site

13 15. All potential members of the Settlement Class shall have ninety (90) days  
14 after the Notice Date to submit requests for exclusion from the Settlement Class. The  
15 requests for exclusion must be prepared and directed in the manner set forth in the  
16 notice proposed hereunder. Specifically, the Opt-Outs must include the person’s  
17 name and address and be sent by the Member via e-mail to [settlementopt-  
18 out@corp.aol.com](mailto:settlementopt-out@corp.aol.com)

19 16. Plaintiffs agree that none of them shall elect nor seek to opt out or  
20 exclude herself or himself from the Settlement Class.

21 17. Plaintiffs, Settlement Class Counsel, and AOL hereby agree not to  
22 engage in any communications with the media or press, including press releases, on  
23 the Internet, or in any public forum, orally or in writing, that relate to this Settlement  
24 or the Litigation, other than statements that are fully consistent with the Notice. The  
25 Settlement Arbitrator shall have full authority to determine whether any such  
26 statement or communication is consistent with the terms of this paragraph and this  
27 Settlement Agreement and shall be empowered to issue appropriate relief, including  
28 attorneys’ fees and sanctions for breach of this Paragraph. This does not preclude

1 Settlement Class Counsel from communicating with settlement Class Members as set  
2 forth in Paragraph 10 above. This also does not preclude either Party, or their counsel  
3 from providing information to their respective auditors or to any Court in furtherance  
4 of this Agreement.

5 18. All members of the Settlement Class will receive the settlement relief  
6 provided for by this Settlement Agreement.

7 19. Defendant shall pay for all costs of settlement administration, including  
8 all costs associated with class notice, the Settlement Arbitrator and all costs as the  
9 Settlement Administrator, except as provided herein.

10 **RELIEF TO SETTLEMENT CLASS MEMBERS**

11 20. Within 30 business days of the Effective Date, if AOL continues to  
12 append e-mail footers, AOL must e-mail all Settlement Class Members a second  
13 Notice that is substantially similar to Exhibit B attached hereto. The purpose of the  
14 second Notice is to inform all Settlement Class Members of the existence of the  
15 footers and their ability to easily remove these e-mail footers from future e-mails sent  
16 by the Settlement Class Members. If AOL continues to append e-mail footers, AOL  
17 will re-send this second notice to all Settlement Class Members every six months for a  
18 period of two years –a total of five (5) e-mail deliveries.

19  
20 **OTHER RELIEF PROVIDED FOR BY THIS SETTLEMENT**

21 21. As of the Effective Date, if AOL continues to append e-mail footers to its  
22 members' e-mails, AOL will inform all new members of the existence of the e-mail  
23 footers either (1) as part of the process for registering an AOL account or (2) as part of  
24 an e-mail confirming the registration of an AOL account.

25 22. If AOL continues to append e-mail footers to its members' e-mails as  
26 part of the registration process or as part of the confirmation process, AOL shall  
27 provide each member a link enabling the member to discontinue these e-mail footers.

28 23. Within 30 days of the Effective Date, AOL will donate \$25,000 each to

1 (1) the Legal Aid Foundation for Los Angeles; (2) the Federal Judicial Center  
2 Foundation; and (3) the Boys and Girls Club of America (to be shared equally  
3 between the Boys and Girls Club of Los Angeles and of Santa Monica).

4 24. Within 30 days of the Effective Date, AOL shall donate \$8,750 to the  
5 designated charity of each of the Settlement Class Representatives. Ms. Fairchild has  
6 designated the New Roads School of Santa Monica as her designated charity. Mr.  
7 Nachsin has designated the New Roads School of Santa Monica as his designated  
8 charity. Mr. Geers has designated the Oklahoma Indian Legal Services as his  
9 designated charity. Mr. Gerard has designated the Friars Foundation as his designated  
10 charity. Such charitable donations shall reference the respective Settlement Class  
11 Representative. No one of the Settlement Class Representatives shall receive any  
12 additional remuneration or monetary compensation pursuant to this Settlement  
13 Agreement or the resolution of this Litigation.

14 **ATTORNEYS' FEE AWARD**

15 25. The Parties expressly agree that the terms of this Agreement are not  
16 conditioned upon any minimum or maximum attorneys' fees award.

17 26. Kabateck Brown Kellner LLP, as Settlement Class Counsel, agree not to  
18 seek from the Court an award of attorneys' fees and costs to Settlement Class Counsel  
19 in excess of one hundred and sixty thousand dollars (\$160,000) ("Attorneys' Fee and  
20 Costs Award"). AOL will not file an objection to any motion that is made which is  
21 fully consistent with this Paragraph.

22 27. The Nunes Law Group and the Hamner Law Group, as Settlement Class  
23 Counsel, each agree not to collectively seek from the Court an award of attorneys'  
24 fees and costs to Settlement Class Counsel in excess of one hundred and sixty  
25 thousand dollars (\$160,000) ("Attorneys' Fee and Costs Award"). AOL will not file  
26 an objection to any motion that is made which is fully consistent with this Paragraph.

27 28. No later than five (5) days after approval by the District Court, AOL will  
28 pay the Attorneys' Fee and Costs Awards ordered by the Court to Settlement Class

1 Counsel. If any Order by any Court alters or modifies this Approval, or alters the  
2 amount due to Settlement Class Counsel, each settlement Class Counsel shall be  
3 jointly and severably liable for the return of any monies paid.

4 29. Except for paying the Charitable Donations referenced herein, and the  
5 amount of the Attorneys' Fee Awards, as awarded by the Court, AOL shall not be  
6 responsible to Plaintiffs, Settlement Class Counsel, or any member of the Settlement  
7 Class for any attorneys' fees, costs, or expenses.

8 **FINAL APPROVAL, DISMISSAL OF CLAIMS, AND RELEASES**

9 30. If this Agreement (including any modification thereto made with the  
10 consent of the Parties as provided for herein) is approved by the Court following the  
11 Final Approval Hearing scheduled by the Court in its Preliminary Approval Order, the  
12 Parties shall request the Court to enter the Final Order and Judgment, without material  
13 alteration from that attached as Exhibit C hereto, which among other things:

14 (a) finds that the Court has jurisdiction over all members of the  
15 Settlement Class and that the Court has subject matter jurisdiction to approve this  
16 Agreement and all exhibits thereto;

17 (b) certifies the Litigation as a class action pursuant to Federal Rule of  
18 Civil Procedure 23 for settlement purposes only (the Court expressly reserving the  
19 right to determine, should the occasion arise, whether the Litigation may be certified  
20 as a class action for purposes other than settlement, and AOL retaining all rights to  
21 assert that the Litigation may not be certified as a class action except for settlement  
22 purposes);

23 (c) gives Final Approval to this Agreement as being fair, reasonable,  
24 and adequate as to, and in the best interests of, each of the Parties and the members of  
25 the Settlement Class and as being consistent and in compliance with all requirements  
26 of federal and state law, and directs the Parties and their counsel to implement and  
27 consummate this Agreement in accordance with its terms and provisions;

28

1 (d) declares this Agreement and the Final Order and Judgment to be  
2 binding on and have *res judicata* and preclusive effect in all pending and future  
3 lawsuits or other proceedings encompassed by the Release maintained by or on behalf  
4 of Plaintiffs or any other members of the Settlement Class, as well as their heirs,  
5 executors and administrators, successors, and assigns;

6 (e) finds that the notice program implemented pursuant to this  
7 Agreement (i) constituted the best practicable notice; (ii) constituted notice that was  
8 reasonably calculated, under the circumstances, to apprise members of the Settlement  
9 Class of the pendency of the Litigation, their right to object or exclude themselves  
10 from the proposed settlement and to appear at the Final Approval Hearing, and their  
11 right to seek monetary and other relief; (iii) was reasonable and constitutes due,  
12 adequate and sufficient notice to all persons entitled to receive notice; and (iv) met  
13 any and all applicable requirements of Due Process and federal law (including any  
14 notices due under the Federal Rules of Civil Procedure);

15 (f) finds that Plaintiffs and Settlement Class Counsel adequately  
16 represented the Settlement Class for the purpose of entering into and implementing the  
17 Agreement;

18 (g) dismisses the Litigation on the merits and with prejudice and  
19 without fees or costs except as provided herein;

20 (h) adjudges that Plaintiffs and the Settlement Class have conclusively  
21 compromised, settled, discharged, dismissed, and released any and all Released  
22 Claims against AOL;

23 (j) approves the payment of the Attorneys' Fee and Cost Awards to  
24 Settlement Class Counsel as set forth herein;

25 (k) without affecting the finality of the Final Order and Judgment for  
26 purposes of appeal, reserves jurisdiction over AOL, Plaintiffs and the Settlement Class  
27 as to all matters relating to the administration, consummation, enforcement and  
28

1 interpretation of the terms of the Settlement and the Final Order and Judgment and for  
2 any other necessary purposes;

3 (l) provides that, upon the Effective Date, Plaintiffs and all members  
4 of the Settlement Class who have not been excluded from the Settlement Class shall  
5 be permanently barred from asserting any Released Claims against AOL or its  
6 respective agents, affiliates, assigns, and other designees, and that any such members  
7 of the Settlement Class shall have released any and all Released Claims against AOL  
8 and its respective agents, affiliates, assigns, and other designees;

9 (m) determines that the Agreement and the settlement provided for  
10 herein and any proceedings taken pursuant thereto are not and should not in any event  
11 be offered or received against AOL as evidence of a presumption, concession, or an  
12 admission of liability or of any misrepresentation or omission in any statement or  
13 written document approved or made by AOL; provided, however, that reference may  
14 be made to this Agreement and the settlement provided for herein in such proceedings  
15 as may be necessary to effectuate the provisions of this Agreement;

16 (n) bars and enjoins all members of the Settlement Class from: filing,  
17 commencing, prosecuting, intervening in or participating (as class members or  
18 otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other  
19 proceeding in any jurisdiction based on, relating to or arising out of the claims and  
20 causes of action (or the facts and circumstances relating thereto) in the Litigation  
21 and/or the Released Claims, unless named on the Opt-Out List;

22 (o) approves the Opt-Out List and determines that the Opt-Out List is  
23 a complete list of all Settlement Class members who have timely requested exclusion  
24 from the Settlement Class and accordingly, shall neither share in nor be bound by the  
25 Final Order and Judgment; and

26 (p) authorizes the Parties, without further approval from the Court, to  
27 agree to and adopt such amendments, modifications, and expansions of this  
28 Agreement and all exhibits hereto as (i) shall be consistent in all material respects with

1 the Final Order and Judgment and (ii) do not limit the rights of the Settlement Class  
2 members.

3 31. As of the Effective Date, Plaintiffs and other members of the Settlement  
4 Class who have not excluded themselves from the Settlement Class hereby expressly  
5 agree that they shall release and discharge AOL, and its respective parents,  
6 subsidiaries, affiliated entities, predecessors, successors and assigns and each of their  
7 respective present, former, and future officers, directors, employees, agents, third  
8 party Customer Service Providers, third party payment processors, independent  
9 contractors, successors, assigns, parents, subsidiaries, affiliates, insurers, attorneys,  
10 and legal representatives (collectively, "Releasees") of and from all Released Claims  
11 and shall not now or hereafter initiate, maintain or assert against the Releasees any  
12 causes of action, claims, rights, demands, actions, damages, equitable, legal, and  
13 administrative relief, interest, demands, or rights, including without limitation, claims  
14 for damages of any kind, whether based on federal, state or local law, statute,  
15 ordinance, regulation, contract, common law or any other sources, that have been,  
16 could have been, may be or could be alleged or asserted now or in the future by the  
17 Plaintiffs or any member of the Settlement Class, either directly or as the  
18 representative of other persons or entities, against the Releasees or any of them in the  
19 Litigation or in any other court action or before any administrative body, tribunal,  
20 arbitration panel or other adjudicating body on the basis of, connected with, arising  
21 out of or related to the Released Claims. Subject to Court approval, all members of  
22 the Settlement Class who do not exclude themselves from the Settlement Class in the  
23 manner specified herein shall be bound by this Agreement, and all of their claims shall  
24 be dismissed with prejudice and released, even if they never received actual notice of  
25 the Litigation or the Settlement.

26 (a) The Parties acknowledge and agree that the relief afforded under  
27 this Agreement fully and completely satisfies the Settlement Class members' claims  
28 for relief attributable to them for footers being attached to their outgoing e-mails.

1 (b) This Release also covers, without limitation, any and all claims for  
2 attorneys' fees, costs, or disbursements incurred by Settlement Class Counsel or any  
3 other counsel representing Plaintiffs or members of the Settlement Class or by  
4 Plaintiffs or members of the Settlement Class, or any of them, in connection with or  
5 related in any manner to the Litigation, the settlement of the Litigation, the  
6 administration of such settlement and/or the Released Claims except to the extent  
7 otherwise specified in the Agreement.

8 (c) Plaintiffs and the Settlement Class expressly acknowledge that  
9 they are familiar with principles of law such as Section 1542 of the Civil Code of the  
10 State of California, which provides:

11 A GENERAL RELEASE DOES NOT EXTEND TO  
12 CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
13 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT  
14 THE TIME OF EXECUTING THE RELEASE, WHICH IF  
15 KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
16 AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR.

17 To the extent that, notwithstanding the choice of law provisions in the  
18 Agreement, California or other law may be applicable, Plaintiffs and the Settlement  
19 Class hereby expressly agree that the provisions, rights and benefits of Section 1542  
20 and all similar federal or state laws, rights, rules, or legal principles of any other  
21 jurisdiction that may be applicable herein are hereby knowingly and voluntarily  
22 waived and relinquished by Plaintiffs and the Settlement Class to the fullest extent  
23 permitted by law solely in connection with unknown claims constituting Released  
24 Claims, and Plaintiffs and the Settlement Class hereby agree and acknowledge that  
25 this is an essential term of this Release. In connection with this Release, the Plaintiffs  
26 and the Settlement Class acknowledge that they are aware that they may hereafter  
27 discover claims presently unknown or unsuspected or facts in addition to or different  
28 from those which they now know or believe to be true with respect to the matters

1 released herein. Nevertheless, it is the intention of the Plaintiffs and the Settlement  
2 Class in executing this Release to fully, finally, and forever settle and release all  
3 matters and all claims relating thereto, which exist, hereafter may exist or might have  
4 existed (whether or not previously or currently asserted in any action) constituting  
5 Released Claims.

6 (d) Nothing in this Release shall preclude any action to enforce the  
7 terms of this Agreement, including participation in any of the processes detailed  
8 therein; provided, however, that no Settlement Class Member shall have any claim  
9 against Settlement Class Counsel, the Settlement Administrator, Defendant or  
10 Defendant's counsel based on the claim administration process made substantially in  
11 accordance with this Agreement.

12 32. For purposes of this Agreement, "Released Claims" means any and all  
13 claims, actions, causes of action, rights, demands, suits, debts, liens, contracts,  
14 agreements, offsets, or liabilities, including but not limited to claims for breach of  
15 contract, breach of the duty of good faith and fair dealing, negligence, unjust  
16 enrichment, money had and received, bad faith, breach of statutory duties (including,  
17 but not limited to, violations of the Electronic Funds Transfer Act, 15 U.S.C. § 1693e,  
18 the Electronic Communication Privacy Act, 18 U.S.C. § 2510, the Postal  
19 Reorganization Act, 39 U.S.C. § 3009, the Racketeering Influenced and Corrupt  
20 Organizations Act, 18 U.S.C. § 1961, *et seq.*, Cal. Civ. Code § 1750, *et seq.*, Cal. Bus.  
21 & Prof. Code § 17200, *et seq.*, Cal. Bus. & Prof. Code § 17500, *et seq.*), actual or  
22 constructive fraud, misrepresentations, fraudulent inducement, statutory consumer  
23 fraud or protection violations, breach of fiduciary duty, unfair or deceptive business or  
24 trade practices or acts, restitution, rescission, conversion, compensatory and punitive  
25 damages, mental or emotional distress, injunctive or declaratory relief, attorneys' fees,  
26 interests, costs, penalties and any other claims, whether known or unknown, alleged or  
27 not alleged in the Litigation, suspected or unsuspected, contingent or matured, under  
28 federal, state, or local law, which Plaintiffs or any member of the Settlement Class

1 had, now has, or may in the future have with respect to any conduct, act,  
2 representations, omissions, facts, matters, transactions or oral or written statements or  
3 occurrences prior to the date of the entry of the Preliminary Approval Order involving,  
4 based on, relating to, arising out of, or in any way connected with, directly or  
5 indirectly, to e-mail footers.

6 **WITHDRAWAL FROM SETTLEMENT**

7 33. Within fifteen (15) days after the occurrence of any of the following  
8 events, and upon written notice to counsel for all Parties, any Party shall have the right  
9 to withdraw from the Settlement:

10 (a) if the Court fails to approve this Agreement or if on appeal the  
11 Court's approval is reversed or modified; or

12 (b) if the Court alters any of the terms of this Agreement; or

13 (c) if the Preliminary Approval Order, as described herein, or the Final  
14 Approval Order, as described herein, is not entered by the Court, or is reversed or  
15 modified on appeal, or otherwise fails for any reason. In the event of a withdrawal  
16 pursuant to this Paragraph, any certification of a Settlement Class will be vacated as to  
17 that withdrawing Party, without prejudice to any Party's position on the issue of class  
18 certification, and the withdrawing Party shall be restored to its litigation position  
19 existing immediately before the execution of this Agreement.

20 34. If it is determined by the Settlement Arbitrator that Plaintiffs or their  
21 Counsel breach Paragraph 17 of this Agreement or if more than ten thousand (10,000)  
22 members of the Settlement Class timely submit a valid request for exclusion from the  
23 Settlement Class as set forth herein, (other than Class Members expressing their  
24 satisfaction with Defendant and/or disclaiming any claim against AOL), or if any  
25 State, federal, or local governmental authority seeks to opt out of the Settlement on  
26 behalf of its residents then AOL may, at its sole option, withdraw from this  
27 Agreement. In order to elect to withdraw from this Agreement on the basis set forth  
28 in this Paragraph, AOL must notify Settlement Class Counsel in writing of its election

1 to do so within ten (10) business days after the Opt-Out List has been served on the  
2 Parties. In that event, all of AOL's obligations under this Agreement shall cease to be  
3 of any force and effect; the certification of the Settlement Class shall be vacated  
4 without prejudice; and the Parties shall be restored to their litigation position existing  
5 immediately before the execution of this Agreement.

6 35. In the event AOL withdraws from the Agreement as set forth above,  
7 Plaintiffs stipulate that Defendant may assert any and all defenses and claims in the  
8 Litigation and that Plaintiffs shall not argue that AOL is barred from asserting those  
9 defenses or claims due to waiver, estoppel or similar arguments as a result of the  
10 passage of time due to settlement negotiations.

11 36. In the event of AOL's withdrawal, AOL shall remain obligated for all  
12 costs and expenses for which it is otherwise obligated under this Agreement which are  
13 due and owing as of the date of withdrawal.

14 **EFFECTIVE DATE**

15 37. The "Effective Date" of this Agreement shall be the date when each and  
16 all of the following conditions have occurred:

17 (a) This Agreement has been fully executed by all the Parties and their  
18 counsel;

19 (b) Orders have been entered by the Court certifying a Settlement  
20 Class, granting preliminary approval of this Agreement, and approving a form of  
21 notice and claim form, all as provided above;

22 (c) The Court-approved Notice has been duly promulgated as ordered  
23 by the Court;

24 (d) The Court has entered a Final Order approving this Agreement and  
25 Judgment finally dismissing the Released Claims with prejudice, as provided above;  
26 and

27 (e) That order and judgment becomes Final as defined in Paragraph  
28 38.



1 data processing and other recordkeeping procedures and other materials to be utilized  
2 in effecting their obligations hereunder (“Confidential Information”) constitute trade  
3 secrets and/or highly confidential and proprietary business information of AOL.  
4 Therefore it is agreed that no person, unless specified herein shall be allowed to access  
5 such Confidential Information unless ordered by the Court after hearing on notice to  
6 all counsel of record.

7 42. The confidentiality of this Confidential Information shall be protected by  
8 the Preliminary Approval Order which shall incorporate all of the provisions of this  
9 Settlement Agreement. Violation of the order with respect to these confidentiality  
10 provisions may be remedied by seeking appropriate relief from the Court, including an  
11 action for damages and/or injunctive relief.

12 43. The Confidential Information provided to Settlement Class Counsel shall  
13 be used for purposes of this litigation only.

14 44. Settlement Class Counsel agree to either destroy or return all  
15 Confidential Information and materials obtained from AOL in connection with the  
16 settlement, including any copies made thereof, within ninety (90) days after the  
17 Effective Date, and to retain no copies thereof. This subparagraph shall not apply to  
18 the attorney work product of Settlement Class Counsel.

19 45. Settlement Class Counsel agree to either destroy or return any and all  
20 documents produced by AOL during the course of discovery within ninety (90) days  
21 after the Effective Date.

22 46. Settlement Class Counsel further agree not to disclose this Confidential  
23 Information or any portion thereof to any unauthorized person.

24 **MISCELLANEOUS PROVISIONS**

25 47. The headings and captions contained in this Agreement are for reference  
26 purposes only and in no way define, extend, limit, describe, or affect the scope, intent,  
27 meaning, or interpretation of this Agreement.

28 48. This Agreement shall be construed, enforced and administered in

1 accordance with the laws of the State of California.

2 49. This Agreement is not and shall not be offered in evidence as an  
3 admission of liability.

4 50. The Court shall retain jurisdiction with respect to implementation and  
5 enforcement of the terms of this Agreement, and the Parties hereto submit to the  
6 jurisdiction of the Court for purposes of implementing and enforcing the settlement  
7 embodied in this Agreement. To the extent that disputes arise under this Agreement,  
8 consistent with Paragraph 11 of this Settlement Agreement, the Parties agree that the  
9 Honorable Dickran Tevrizian (Ret.) may mediate those disputes, and, if necessary,  
10 render binding decisions resolving the disputes.

11 51. In the event that there are any developments in the effectuation and  
12 administration of this Agreement that are not dealt with by the terms of this  
13 Agreement, then such matters shall be dealt with as agreed upon by the Parties and  
14 failing agreement, as shall be ordered by the Court.

15 52. Except as otherwise stated herein, this Agreement constitutes the entire  
16 agreement between the Plaintiffs, the Settlement Class and AOL with respect to the  
17 settlement of the Litigation. This Agreement supersedes all prior negotiations and  
18 agreements (except as otherwise stated herein) and may not be modified or amended  
19 except by a writing signed by the Parties and their respective counsel.

20 53. This Agreement shall not be construed more strictly against one Party  
21 than another merely because of the fact that it may have been prepared by counsel for  
22 one of the Parties, it being recognized that because of the arms'-length negotiations  
23 resulting in the Agreement, all Parties hereto have contributed substantially and  
24 materially to the preparation of the Agreement.

25 54. The Exhibits to this Agreement are an integral part of the settlement and  
26 are hereby incorporated and made part of this Agreement.

27 55. The Parties hereto shall execute all documents and perform all acts  
28 necessary and proper to effectuate the terms of this Agreement. The executing of

1 documents must take place prior to the date scheduled for the Final Approval Hearing.

2         56. This Agreement shall be construed so that the word “including” means  
3 “including without limitation,” and the singular shall be construed to include the  
4 plural and vice versa.

5         57. In reaching this Agreement, none of the Parties to the Agreement has  
6 relied on any representations, covenants, or understandings by any of the other Parties  
7 or Counsel (other than each Parties’ own Counsel) to the Agreement or any third  
8 parties or any attorney, agent or representative for any of the other Parties to the  
9 Agreement, except as expressly set forth herein.

10         58. This Agreement shall be binding upon and inure to the benefit of the  
11 Parties and their respective employees, agents, officers, directors, parents,  
12 subsidiaries, divisions, affiliates, attorneys, insurers, representatives, heirs, successors,  
13 and assigns, authorized dealers, independent sales representatives, contracted  
14 providers of Customer Service Services Providers, and any other persons, corporations  
15 or entities allied in interest with the Parties. Subject to the foregoing, nothing in this  
16 Agreement is intended to or does create any rights in any third parties.

17         59. Except as otherwise provided herein, each of the Parties shall bear its  
18 own costs.

19         60. Settlement Class Counsel, on behalf of the Settlement Class, are  
20 expressly authorized to take all appropriate action required or permitted to be taken by  
21 the Settlement Class pursuant to this Agreement to effectuate its terms and are also  
22 expressly authorized to enter into any modifications or amendments to this Agreement  
23 on behalf of the Settlement Class which Settlement Class Counsel deem appropriate.

24         61. Each counsel or other person executing the Agreement or any of its  
25 Exhibits on behalf of any party hereto hereby warrants that such person has the full  
26 authority to do so.

27         62. This Agreement may be executed in one or more original, photocopied,  
28 or telecopied counterparts. All executed counterparts are deemed to be one and the

1 same instrument. Counsel for the Parties to this Agreement will exchange among  
2 themselves original signed counterparts, and a complete set of original executed  
3 counterparts will be filed with the Court.

4 63. The Parties agree that, to the extent appropriate and to the extent  
5 permitted by law the Parties may request the Honorable Dickran Tevrizian to provide  
6 submissions to the Court.

7 64. The Parties voluntarily sign this Agreement after consultation with their  
8 respective counsel of choice.

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28