

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

FILED

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STEFANIE E. JOFFE, CLERK

IN RE TOUCH AMERICA HOLDINGS,
INC. ERISA LITIGATION

No. CV-02-106-BU-SEH

ORDER
APPROVING FORM AND
MANNER OF NOTICE AND
SCHEDULING HEARING ON
FAIRNESS OF SETTLEMENT
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 23(E)

This Document Relates To:
ALL ACTIONS

WHEREAS, the certified class action captioned *In Re Touch America Holdings, Inc. ERISA Litigation*, No. CV-02-106-BU-SEH, is pending before this Court; and

WHEREAS, the *Named Plaintiffs* have applied to the Court, pursuant to Fed. R. Civ. P. 23, for an Order providing Notice of the proposed *Settlement* of the above-named action in accordance with the terms and provisions of the Agreement of Compromise and Settlement – ERISA Litigation (the “*Settlement Agreement*” or “*Agreement*”) which sets forth the terms and conditions for a proposed *Settlement* of the action as to the *Defendants* and for dismissal of the action with prejudice as to the *Defendants*;

WHEREAS, this Court has already entered an Order certifying the *Named Plaintiffs’* claims for class treatment pursuant to Fed. R. Civ. P. 23(b)(1); and

WHEREAS, the Court has read and considered that *Agreement* and the exhibits thereto and has read and considered all other papers filed and proceedings had herein, and is otherwise fully informed in the premises, and with good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. This Order (the "*Notice Order*") incorporates by reference the definitions in the *Agreement*, and all italicized terms shall have the same meanings set forth in the *Agreement*.

2. The Court has jurisdiction over the subject matter of this action and over all parties to this action, including all members of the proposed *Settlement Class* and *Defendants*.

3. Consistent with this Court's July 31, 2006, Order granting Plaintiffs' Motion for Class Certification, the proposed *Settlement Class* is defined as follows:

All *Persons* who were participants or beneficiaries in the *Plan* at any time during the period starting on September 12, 1999 through and including November 1, 2001; and as to each such *Person*, his, her or its beneficiaries, alternate payees (including spouses of deceased *Persons* who were *Plan* participants), *Representatives* and *Successors-In-Interest*. Excluded from the "*Settlement Class*" are: *Defendants* or any of their *Immediate Family*; any officer, director or partner of any Defendant or any entity in which a Defendant has a controlling interest; beneficiaries, alternate payees (including spouses of deceased *Persons* who were *Plan* participants), *Representatives* or *Successors-In-Interest*, except for spouses and immediate family members who themselves

are or were *Participants* in the *Plan*, who shall be considered members of the *Settlement Class* with respect to their own *Plan* accounts.

4. The Court approves, as to form and content, the Notice of Proposed Settlement of ERISA Class Action (the "*Class Notice*") as separately filed with the Court.

5. The Court finds that the mailing of the *Class Notice* in the manner and form set forth in paragraph 6 below, together with the publication of Notice of the proposed *Settlement* of this case, constitutes the best notice practicable under the circumstances, by providing individual notice to all *Settlement Class* members who can be identified through reasonable effort, and that it constitutes valid, due, and sufficient notice to all persons entitled thereto, complying fully with the requirements of Fed. R. Civ. P. 23 and due process.

6. The notice procedure shall be as set forth below:

(a) Commencing on or before March 22, 2010, *Class Counsel* shall cause the *Administrator* to mail, by first class mail, postage prepaid, copies of the *Class Notice* to all *Settlement Class* members who can be identified with reasonable effort at each such *Settlement Class* member's last known address; and

(b) On or before March 24, 2010, *Class Counsel* shall ensure that the *Administrator* causes the publication of Notice of the *Settlement* as well as the

proposed Settlements of related claims brought on behalf of former shareholders of MPC stock.

(c) On or before March 22, 2010, *Class Counsel* shall ensure that the *Administrator* sets up and makes live a settlement website which will include, among other things: a copy of the proposed *Settlement*; Frequently Asked Questions and the answers to those questions; contact information, including a toll-free number where *Class Members* can obtain additional information; and information about the proposed Settlements of related claims brought on behalf of former shareholders of MPC stock.

7. At or prior to the *Fairness Hearing* (as defined below), *Class Counsel* shall file with the Court and serve on counsel for the *Defendants* proof by declaration or affidavit of the mailing, publication and establishment of the Settlement website described in paragraphs 6(a)--6(c) above.

8. *Settlement Class* members who wish to comment or object to the *Agreement* must do so in accordance with the instructions contained in the *Class Notice*.

9. A hearing (the "*Fairness Hearing*") shall be held on May 20, 2010, at 8:30 a.m., and if necessary, continuing on May 21, 2010 at 8:30 a.m., before the Honorable Sam Haddon, United States District Court Judge, at the United States District Court for the District of Montana, Butte Division, 400 North Main, Butte,

MT 59701, for the purpose of determining (a) whether the proposed *Settlement* as set forth in the *Agreement* is fair, reasonable and adequate and should be approved by the Court; (b) whether an *Order of Final Judgment and Dismissal*, substantially in the form of Exhibit J to the *Master Settlement Agreement*, should be entered; (c) whether the proposed *Plan of Allocation* of the *Net Settlement Fund* is fair, reasonable, and adequate and should be approved by the Court; (d) whether *Class Counsel* should be awarded attorneys' fees and expenses, and, if so, in what amounts; (e) whether the *Named Plaintiffs* should receive *Service Awards* in light of their assistance in prosecuting this *Action*; and, if so, in what amounts; and (f) such other matters as the *Agreement* contemplates and as the Court may deem just and proper.

10. All Papers in support of the *Settlement* shall be filed by April 6, 2010 and any reply briefs shall be filed by May 13, 2010.

11. Any application by *Class Counsel* for attorneys' fees and reimbursement of expenses, and all papers in support thereof, and any application for *Named Plaintiffs' Service Awards* shall be filed with the Court by April 6, 2010, and any reply brief shall be filed by May 13, 2010.

12. Any *Settlement Class* member may appear and show cause (if he, she, or it has any) why the Court should or should not (a) approve the proposed *Settlement* as set forth in the *Agreement* as fair, reasonable and adequate; (b)

approve the *Plan of Allocation*; (c) approve *Class Counsel's* request for attorneys' fees and reimbursement of expenses; (d) approve the request for *Named Plaintiffs' Service Awards* and (e) enter the *Order of Final Judgment and Dismissal*, substantially in the form of Exhibit J to the *Master Settlement Agreement*; provided, however, that no person shall be heard with respect to, or shall be entitled to contest, the foregoing matters unless no later than April 30, 2010, that person has served by hand, express mail delivery service, or by first-class mail notice of his, her, or its intention to appear, setting forth briefly each objection and the basis therefore, together with copies of any papers and briefs in support of said objections and proof of membership in the *Settlement Class*, upon: Andrew M. Volk, Hagens Berman Sobol Shapiro LLP, 1918 Eighth Ave., Suite 3300, Seattle, WA 98101 (on behalf of *Named Plaintiffs* and the *Settlement Class*) and upon Nicole A. Diller, Morgan Lewis & Bockius LLP, One Market, Spear Street Tower, San Francisco, CA 94105 (on behalf of the *Settling Defendants*); and has filed said objection, papers, and briefs with the Court, upon: Clerk of the Court, United States District Court, District of Montana, Butte Division, 400 North Main, Butte, MT 59701.

Unless otherwise ordered by the Court, any *Settlement Class* member who does not make his, her, or, its objection in the manner provide for herein shall be

deemed to have waived such objection and shall forever be foreclosed from making any objection to the foregoing matters.

13. The Court may adjourn the *Fairness Hearing* from time to time and without further notice to the *Settlement Class*. The Court reserves the right to approve the *Settlement* at or after the *Fairness Hearing* with such modifications as may be consented to by the *Settling Parties* and without further notice to the *Settlement Class*. The Court further reserves the right to enter a *Final Order*, dismissing the action with prejudice as to the *Defendants* and against the *Named Plaintiffs* and the *Settlement Class* at or after the *Fairness Hearing* and without further notice to the *Settlement Class*.

14. Upon entry of the *Final Order*, the *Named Plaintiffs*, and each of the *Settlement Class* members, on behalf of themselves, their successors, assigns, and any other person claiming (now and in the future) through or on behalf of them, and regardless of whether any such *Named Plaintiff* or *Settlement Class* member ever seeks or obtains by any means any distribution from the *Settlement Fund*, shall be deemed to have, and by operation of the *Final Order* shall have, fully, finally and forever released, relinquished and discharged all *Released Claims* against all *Releasees* and shall have covenanted not to sue all such *Releasees* with respect to all such *Released Claims*, and shall be permanently barred and enjoined

from instituting, commencing, or prosecuting any such *Released Claim* against any *Released Entity*.

Upon entry of the *Final Order*, the Court will dismiss this action in its entirety as to Defendants Robert P. Gannon, Jerrold P. Pederson, Pamela K. Merrell, Ellen M. Senechal, R. W. Cope, Tucker Hart Adams, Alan F. Cain, John G, Connors, R.D. Corette, Kay Foster, John R. Jester, Carl Lehrkind, III, Deborah D. McWhinney, Noble E. Vosburg, and The Northern Trust Company, with prejudice and without costs (except as otherwise provided in the *Agreement*).

15. All reasonable costs and expenses incurred in identifying and providing notice to *Settlement Class* members and in administering the *Settlement Fund* shall be paid as set forth in the *Agreement*.

16. The Court retains jurisdiction over all proceedings arising out of or related to the *Settlement Agreement*.

17. If for any reason the *Settlement Agreement* does not become effective in accordance with the terms of the *Settlement Agreement*, this *Notice Order* shall be rendered null and void and shall be vacated *nunc pro tunc*.

18. Without further order of the Court, the *Settling Parties* may agree to reasonable extensions of time to carry out any of the provisions of this *Preliminary Approval Order* or the *Agreement*, provided that the dates set forth in this *Notice Order* shall not be changed.

19. Pending final determination as to whether the *Settlement*, as set forth in the *Settlement Agreement*, should be approved, no *Settlement Class* member shall commence, prosecute, pursue, or litigate any *Released Claims* against any *Defendant*, whether directly, representatively, or in any other capacity, and regardless of whether or not any such *Settlement Class* member has appeared in the action.

IT IS SO ORDERED.

DONE IN OPEN COURT THIS 10th day of February, 2010.


HONORABLE SAM E. HADDON
United States District Court Judge