

ANDREW D. HUPPERT, P.C.

Andrew Huppert, Esq.
225 W. Broadway
Missoula, MT 59807
Telephone: 406/728-0011
Fax: 406/728-0877
andrew@huppertpc.com

HAGENS BERMAN SOBOL SHAPIRO LLP

Steve W. Berman
Andrew M. Volk
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: 206/623-7292
Fax: 206/623-0594
steve@hbsslaw.com
andrew@hbsslaw.com

BUXBAUM, DAUE & FITZPATRICK

Douglas A. Buxbaum
John M. Fitzpatrick
228 W. Main Street, Suite A
Missoula, MT 59802
Telephone: 406/327-8677
Fax: 406/829-9840
dbuxbaum@bdf-lawfirm.com
jfitzpatrick@bdf-lawfirm.com

BRANSTETTER, STRANCH & JENNINGS, PLLC

James G. Stranch, III
Jane B. Stranch
227 Second Avenue North, Fourth Floor
Nashville, TN 37201
Telephone: 615-254-8801
Fax: 615/255-5419
jims@branstetterlaw.com
janes@branstetterlaw.com

Attorneys for Plaintiffs

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

IN RE TOUCH AMERICA HOLDINGS, INC.
ERISA LITIGATION

No. CV-02-106-BU-SEH

PLAINTIFFS' UNOPPOSED MOTION FOR
FINAL APPROVAL OF SETTLEMENT

This Document Relates To: ALL ACTIONS

Plaintiffs Ross Buckingham, Warren Bellcour, Kim Moran, Torlief Pederson, and Charles Porter (“*Named Plaintiffs*”),¹ on behalf of themselves and the *Settlement Class*, hereby move the Court to grant final approval to the proposed *Settlement* of this long and hard-fought case.

The *Settling Parties*² to this ERISA action have achieved a global settlement with contributions totaling \$4.9 million (“*Class Settlement Amount*”) for the benefit of the *Settlement Class*. In addition to automatically receiving their *pro rata* share of the *Net Settlement Amount* in the ERISA action, many *Settlement Class* members will be eligible to participate in the *McGreevey* settlement³ and/or the securities settlement⁴—both of which are also pending before this Court, and

¹ Terms in this Memorandum that are italicized and capitalized have the meanings stated in the Agreement of Compromise and Settlement—ERISA Litigation (“*Settlement Agreement*”). The revised, fully executed version is attached as Exhibit A to the Declaration of James G. Stranch, III, in Support of Plaintiffs’ Motion for Final Approval of Settlement (“*Stranch Decl.*”).

² The “*Settling Parties*” are *Named Plaintiffs*; Defendants Robert P. Gannon, Jerrold P. Pederson, Pamela K. Merrell, Ellen M. Senechal (n/k/a Ellen M. Marbut), R.W. Cope, Tucker Hart Adams, Alan F. Cain, John G. Connors, R.D. Corrette, Kay Foster, John R. Jester, Carl Lehrkind, III, Deborah D. McWhinney and Noble E. Vosburg (“*Montana Power Company Defendants*”); Defendant The Northern Trust Company and affiliated entities (“*The Northern Trust Company*”); and Federal Insurance Company (“*Federal*”).

³ *Margaret A. McGreevey, et al. v. Montana Power Company, et al.*, Case No. CV-03001-BU-SEH (D. Mont.) and *Margaret McGreevey, et al. v. Associated Elec. & Gas Ins. Ltd.*, No. CV-04-16 BU-SHE (D. Mont).

⁴ *In re Touch America Holdings, Inc., Securities Litig.*, No. CV-02-0057-BU-SHE (D. Mont).

all of which are the subject of the *Master Settlement Agreement* designed to resolve all of the pending actions arising from the collapse of the stock of the Montana Power Company and Touch America. Indeed, the *Plan* itself will make claims under both the *McGreevey* and the securities settlements, the proceeds of which will redound to the benefit of the ERISA *Settlement Class* members.

The *Settling Parties* have established all necessary prerequisites for approval of the *Settlement*. The proposed *Settlement* is fair, reasonable, and adequate and is the product of arm's-length negotiations between counsel for the *Settlement Class* ("*Class Counsel*") and counsel for *Defendants* and *Federal*.

Federal's contribution of \$3,675,000 is nearly all that remains of the available insurance monies in this case, and it is far more than would be left if the parties litigated to a trial verdict. In addition to the insurance proceeds, the *Class Settlement Amount* includes payments on behalf of individual and institutional *Defendants*. The Plan Trust of Touch America Holdings, Inc. ("*Plan Trust*"), will contribute \$1,200,000 to the *Settlement* on behalf of certain *Montana Power Company Defendants* in the case at bar. *The Northern Trust Company* will also contribute \$25,000, despite the fact that it has been granted summary judgment. All of the *Settlement* proceeds are now in escrow accounts pending this Court's consideration of the proposed *Settlement*.

The notice program approved by this Court in its *Notice Order* has been implemented. Furthermore, the *Independent Fiduciary* appointed by the Court has approved the *Settlement*.

Under Section 2.2.4 of the *Settlement Agreement*, the other parties to this *Action* agreed to support entry of the Order of Final Judgment and Dismissal. Pursuant to Local Rule 7.1(c), the *Named Plaintiffs* have confirmed that the individual *Defendants* do not oppose this motion. At the time of filing, *The Northern Trust Company* had not responded to the *Named Plaintiffs'* inquiry.

In support of this motion, the *Named Plaintiffs* rely on the following:

- (1) the Declaration of Nashira Washington, attached hereto as Exhibit A;
- (2) the revised [Proposed] Order of Final Judgment and Dismissal, attached hereto as Exhibit B;⁵
- (3) the Report of Independent Fiduciary (Doc. 646-1), filed previously;
- (4) the Declaration of James G. Stranch, III, in Support of Final Approval of Settlement with exhibits, submitted herewith;
- (5) the memorandum of law submitted herewith; and
- (6) the remainder of the record in this matter.

⁵ This proposed order is substantially in the form of Exhibit J to the *Master Settlement Agreement*. The *Named Plaintiffs* have filled in blank spaces, corrected small errors, and made terminology consistent with that of other *Settlement* filings.

Respectfully submitted this 6th day of April, 2010.

/s/ James G. Stranch, III
JAMES G. STRANCH, III
JANE B. STRANCH
BRANSTETTER, STRANCH &
JENNINGS PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37201
(615) 254-8801

HAGENS BERMAN SOBOL SHAPIRO,
LLP
ANDREW M. VOLK
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
(206) 623-7292

ANDREW D. HUPPERT, P.C.
ANDREW D. HUPPERT
225 W. Broadway
Missoula, MT 59807
(406) 728-0011

BUXBAUM, DAUE & FITZPATRICK
DOUGLAS A. BUXBAUM
228 W. Main Street, Suite A
Missoula, MT 59802

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 6, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel listed below who have registered for CM/ECF filing. Additionally, a copy of the foregoing document was served by regular mail to the non-registered individuals by depositing a copy of the same in the U.S. Mail, postage pre-paid, addressed as follows:

/s/ James G. Stranch, III
JAMES G. STRANCH, III
JANE B. STRANCH
BRANSTETTER, STRANCH &
JENNINGS PLLC
227 Second Avenue North, Fourth Floor
Nashville, TN 37201
(615) 254-8801

Via CM/ECF Notification to Registered Counsel:

John M. Fitzpatrick, Esq.
Buxbaum, Daue & Fitzpatrick, PLLC
228 West Main, Suite A
P.O. Box 8209
Missoula, MT 59807

Andrew D. Huppert
Andrew D. Huppert, P.C.
225 W. Broadway
Missoula, MT 59807

Christopher Scheithauer
McDermott Will & Emery 257 West
18191 Von Karman Ave., Suite 400
Irvine, CA 92612

Nicole A. Diller, Esq.
Morgan Lewis & Bockius LLP
One Market Spear Street Tower
San Francisco, CA 94102

J. Jackson, Esq.
F. Matthew Ralph
Dorsey & Whitney
50 S. Sixth Street, Suite 1500
Minneapolis, MN 55402

Andrew M. Volk
Hagens Berman Sobol Shapiro, LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Via US Mail to Non-Registered Counsel:

Nancy G. Ross, Esq.
McDermott, Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606-5096

Shane Coleman, Esq.
Dorsey & Whitney, LLP
Millenium Building
125 Bank Street, Suite 600
Missoula, MT 59802

Patrick T. Fleming, Esq.
Fleming & O'Leary, LLP
130 N. Main St.
Butte, MT 59703

Donald C. Robinson, Esq.
Ronald A. Thuesen, Esq.
Poore, Roth & Robinson, P.C.
1341 Harrison Avenue
P. O. Box 2000
Butte, MT 59702

Ellen M. Kelman, Esq.
Buescher, Goldhammer &
Kelman P.C.
1563 Gaylord Street
Denver, CO 80206

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

IN RE TOUCH AMERICA HOLDINGS, INC.
ERISA LITIGATION

Civil Action No. 02-106-BU-SHE

This Document Relates To: ALL ACTIONS

**DECLARATION OF NASHIRA WASHINGTON RE MAILING
OF THE NOTICE OF CLASS ACTION SETTLEMENT**

I, Nashira Washington, declare:

NOTICE

1. I submit this declaration in order to provide the Court and the parties to the above-captioned litigation with information regarding the mailing of the Notice of Proposed Settlement Of ERISA Class Action (the "Notice"). I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. I am employed by Gilardi & Co. LLC, located at 3301 Kerner Blvd., San Rafael, California. Gilardi was retained as the Notice Administrator in this matter. I oversaw the notice services Gilardi provided in accordance with the Order Approving Form and Manner of Notice and Scheduling Hearing on Fairness of Settlement, (the "Order"), dated February 10, 2010, and entered by the Court in this matter.

MAILING OF THE NOTICE

3. Gilardi obtained data files from Counsel and NorthWestern Energy, Inc., the successor Plan of the Montana Power Company 401k Retirement Savings Plan, f/k/a The Montana Power Company and Subsidiaries Employee Retirement Savings Plan, f/k/a The Montana Power Company Deferred Savings and Employee Stock Ownership Plan (the "Plan").

Gilardi extracted from the data files a list of the names and addresses of all participants and beneficiaries in the Plan for whose individual accounts the plan held an interest in the common stock of Montana Power Company between September 12, 1999 and November 1, 2001 (“Class Members”). Gilardi removed duplicates, processed the names and addresses through the National Change of Address Database to update any addresses on file with the United States Postal Service (“USPS”), and formatted the list for mailing purposes.

4. On or before March 22, 2010, I caused address labels prepared from that list to be affixed to envelopes containing copies of the Notice. I thereafter caused all of the envelopes to be posted for first-class mail and delivered to the United States Post Office located in Santa Rosa, California. The total number of Notices mailed to Class Members on March 22, 2010 was 3,159.

5. Since mailing the Notice to Class Members, Gilardi has received 578 Notices returned by the USPS with undeliverable addresses. Gilardi is in the process of obtaining updated addresses, if available, through a third party locator service. Gilardi will promptly remail the Notices to any updated addresses that are obtained.

6. My firm also supplied a toll-free number to accommodate participant inquiries. Class Members who called could listen to FAQ’s, request that a Notice to be sent to them, or speak with a live operator. This toll-free number, 1-877-571-8669, became operational on March 17, 2010. We have received a total of 171 telephone inquiries from March 17, 2010 through April 5, 2010.

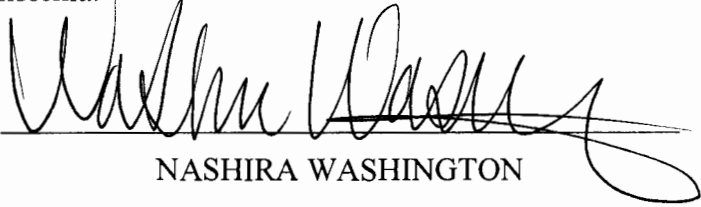
7. I also caused a copy of the Notice, the Agreement of Compromise and Settlement, the Unopposed Motion to Approve Settlement, the Memorandum in Support of Motion to Approve, the Order Approving Form and Manner of Notice, the Order Appointing Administrator and the Order Appointing Independent Fiduciary to be posted to our website, www.gilardi.com/TouchAmericaERISA, on or about March 19, 2010.

PUBLICATION OF THE PUBLISHED NOTICE

8. In accordance with the Orders, Gilardi caused the Published Notice to be published once in *Investor’s Business Daily* on March 18, 2010, and in *The Hamilton Ravalli Republic*, *Montana Standard*, *Great Falls Tribune*, *Helena Independent*, *Billings Gazette*,

Missoulian, *Daily Inter Lake* and *Bozeman Daily Chronicle* on March 18, 2010, and again on March 25, 2010, and over the *Businesswire* for thirty days.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed this 6th day of April 2010, at San Rafael, California.


NASHIRA WASHINGTON

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

IN RE TOUCH AMERICA HOLDINGS,
INC. ERISA LITIGATION

No. CV-02-106-BU-SEH

[PROPOSED] ORDER OF FINAL
JUDGMENT AND DISMISSAL

This Document Relates To: ALL
ACTIONS

This matter having come before the Court for hearing, pursuant to the *Notice Order* of this Court, dated February 10, 2010 (Doc. 643), on the application of the *Named Plaintiffs* for approval of the settlement set forth in the Agreement of Compromise and Settlement—ERISA Litigation, dated as of December 1, 2009 (the “*Settlement Agreement*” or the “*Agreement*”), and due and adequate notice having been given to the *Settlement Class* (as defined in the *Agreement*) as required in said *Notice Order*, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Order incorporates by reference the definitions in the *Agreement*, and all italicized terms herein shall have the same meanings as set forth in the *Agreement*.

2. This Court has jurisdiction over the subject matter of this action and over all members of the *Settlement Class*, except as contemplated in Section 9.2 of the *Settlement Agreement*.

3. The notice given to the *Settlement Class* of the *Settlement* and the other matters set forth in the *Agreement* was the best notice practicable under the circumstances, including individual notice to all members of the *Settlement Class* who could be identified through reasonable effort. Said notice provided due and adequate notice of these proceedings and of the matters set forth in the *Agreement*, including the proposed *Settlement*, to all persons entitled to such notice, and said notice fully satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the *Settlement* as set forth in the *Agreement*, finds that said *Settlement* is, in all respects, fair, reasonable and adequate with respect to the *Settlement Class*, and directs that the *Settlement* be consummated in accordance with the terms and conditions set forth in the *Agreement*.

5. The Court hereby dismisses this *Action* in its entirety as to Defendants Robert P. Gannon, Jerrold P. Pederson, Pamela K. Merrell, Ellen M. Senechal Marbut, 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*).

6. Upon the *Effective Date*, the *Named Plaintiffs* and each of the *Settlement Class* members, on behalf of themselves, their successors and assigns, and other *Persons* claiming (now or 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 this 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 *Releasee*.

7. Upon the *Effective Date*, the *Independent Fiduciary* on behalf of the *Plan* absolutely and unconditionally releases and forever discharges the *Releasees* from *Released Claims* that the *Plan* directly, indirectly, derivatively, or in any other capacity ever had, now has or hereafter may have.

8. Upon the *Effective Date*, all obligations of the *Releasees* to the *Named Plaintiffs* and the *Settlement Class Members* arising out of, based upon, or otherwise related to the transactions and occurrences that were alleged, or could

have been alleged, on behalf of the *Named Plaintiffs* and the *Settlement Class* members in this action shall be fully, finally, and forever discharged, and all *Settlement Class* members shall be permanently barred and enjoined from instituting, prosecuting, pursuing or litigating in any manner (regardless of whether such *Settlement Class* members purport to act individually, representatively, or in any other capacity and regardless of whether such *Persons* purport to allege direct claims, claims for contribution, indemnification, or reimbursement, or any other claims) any such obligations.

9. Upon the *Effective Date*, each of the *Defendants* shall be deemed to have, and by operation of this Order shall have, fully, finally and forever released, relinquished, and discharged each and all of the *Settlement Class* members and *Class Counsel* from all claims (including unknown claims) arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of this action or the *Released Claims* except to enforce the releases and other terms and conditions contained in the *Agreement*.

10. Upon the *Effective Date*, each *Defendant* absolutely and unconditionally releases and forever discharges each and every other *Defendant* from any and all *Claims* relating to the institution or prosecution of the *Action* or the settlement of any *Released Claims*, as well as any and all *Claims* for contribution, for indemnification, for breach of fiduciary duty relating to the *Plan*,

all *Claims* relating to or including the *Released Claims*, or any other *Claims* relating to payment of the *Class Settlement Amount*.

11. Effective upon *Federal's* payment of the \$3,675,000 referenced in Section 1.8 of the *Settlement Agreement*, and in consideration of such payment, among other things, the *Montana Power Company Defendants* hereby release and forever discharge *Federal*, its subsidiaries and affiliates, and all of their respective current and former agents, representatives, attorneys, successors, predecessors, owners, assigns, executors, administrators, principals, directors, officers, employees, insurers and reinsurers ("*Federal Parties*") from any and all actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, judgments and demands whatsoever in law or in equity, known or unknown, including but not limited to any action, proceeding or claim arising out of, relating to, or in connection with the *Action* or the *Federal Parties'* investigation, evaluation, handling or settlement of the *Action*, including any "bad faith," unfair claims handling practices or breach of any promise, oral or written, or breach of any duty grounded in law or in contract relating thereto (including claims under M.C.A. Sections 33-18-201 and 33-18-242 and California Insurance Code Section 790.03 and regulations promulgated thereunder, or other statutes or common law doctrine of similar effect), which the *Montana Power Company Defendants* have against the *Federal Parties*. In the

event that *Federal* expends its policy limit of \$10 million, the *Montana Power Company Defendants* do hereby further release and discharge *Federal*, and each of its present, former and future parent companies, divisions, subsidiaries, affiliates, associates, representatives, predecessors, successors, heirs, owners, assigns, executors, administrators and each of its present, former or future directors, agents, partners, principals, officers, employees, trustees, insurers and reinsurers, managers, representatives or any of them, and each of its lawyers and all persons acting by, through, under or in concert with them or any of them from any claim, cause of action, or demand, in law or in equity, of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which is based upon, arising from, relating directly or indirectly to or in any way connected with, or concerning the *Insurance Policy*. In the event that the settlement of the *Action* terminates for any reason, the releases provided herein to *Federal* shall be considered *void ab initio*.

12. Effective upon *Federal's* payment of the \$3,675,000 referenced in Section 1.8 of the *Settlement Agreement*, the *Federal Parties* hereby release and forever discharge the *Montana Power Company Defendants* from any and all actions, causes of action, suits, claims for sums of money, contracts, controversies, agreements, costs, attorneys' fees, expenses, damages, judgments and demands whatsoever in law or in equity, known or unknown, which the Underwriter Parties

have against the *Montana Power Company Defendants* arising out of, relating to, or in connection with the *Action*, and the coverage available under the *Insurance Policy* for the *Action*. In the event that the settlement of the *Action* terminates for any reason, the release provided herein to the *Montana Power Company Defendants* shall be considered *void ab initio*.

13. This Order is a final judgment in the *Action* as to all claims among the *Defendants*, on the one hand, and the *Named Plaintiffs* and all *Settlement Class* members, on the other. This Court finds, for purposes of Fed. R. Civ. P. 54(b), that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

14. The Court further finds the *Plan of Allocation* is fair and reasonable to all concerned, and hereby approves the *Plan of Allocation*.

15. The Court has considered *Class Counsel's* request for attorneys' fees and the reimbursement of the costs reasonably incurred in the prosecution of this *Action*, and hereby awards the following amounts: \$1,000,000 dollars in attorneys' fees and \$400,000 as reimbursement of costs.

16. The Court has also considered the request for *Named Plaintiffs' Service Awards*, and hereby awards the amount \$3,000 to each of the *Named Plaintiffs*.

17. Without affecting the finality of this Order in any way, this Court retains continuing jurisdiction over (a) implementation of the *Settlement*, (b) any award or distribution of the *Settlement Fund*, including interest thereon; and (c) all other proceedings related to the implementation and enforcement of the terms of the *Settlement Agreement*.

18. In the event that the *Effective Date* does not occur, this Order shall be rendered null and void, and shall be vacated *nunc pro tunc*.

19. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of the *Agreement*.

IT IS SO ORDERED.

DONE IN OPEN COURT THIS _____ day of _____, 2010.

HONORABLE SAM E. HADDON
United States District Court Judge