

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE DG FASTCHANNEL, INC.  
SECURITIES LITIGATION

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No. 10 Civ. 6523 (RJS)

**NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

**IF YOU PURCHASED OR OTHERWISE ACQUIRED THE PUBLICLY TRADED SECURITIES  
OF DG FASTCHANNEL (“DG” OR THE “COMPANY”) DURING THE PERIOD FROM FEBRUARY 16, 2010  
THROUGH AND INCLUDING AUGUST 29, 2010 (THE “CLASS PERIOD”)  
YOU MAY BE ELIGIBLE FOR A PAYMENT FROM A CLASS ACTION SETTLEMENT**

***A Federal Court authorized this Notice. This is not a solicitation from a lawyer.***

- Court-appointed lead plaintiff, the Norfolk County Retirement System (“Lead Plaintiff”), on behalf of the Class (as defined below), has reached a proposed settlement in the amount of \$2,000,000 in cash (the “Settlement”) that will resolve all claims against DG and Scott K. Ginsburg, Neil H. Nguyen, and Omar A. Choucair (the “Individual Defendants,” and together with DG, the “Defendants”) in this proposed class action (the “Litigation”).
- The Settlement resolves claims that the Defendants allegedly misled investors about DG’s business performance; avoids the costs and risks of continuing the Litigation, pays money to investors like you, and releases the Defendants from liability.
- This Notice explains important rights you may have, including your possible receipt of cash from the Settlement. **Your legal rights will be affected whether or not you act. Please read this Notice carefully!**
- The Court in charge of the Litigation still has to decide whether to approve the Settlement. Payments will be made if the Court approves the Settlement and after any appeals are resolved. Please be patient.

**YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:**

ACTIONS YOU MAY TAKE	EFFECT OF TAKING THIS ACTION
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN OCTOBER 24, 2011.</b>	This is the only way to get a payment.
<b>EXCLUDE YOURSELF FROM THE CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION POSTMARKED NO LATER THAN AUGUST 23, 2011.</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against the Defendants concerning the claims that were, or could have been, asserted in this case. It is also the <i>only</i> way for Class Members to remove themselves from the Class.
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION POSTMARKED NO LATER THAN AUGUST 23, 2011.</b>	Write to the Court and explain why you do not like the Settlement, the proposed Plan of Allocation, and/or the request for attorneys’ fees and reimbursement of expenses. You cannot object if you are not a Class Member or if you exclude yourself.
<b>GO TO THE HEARING ON SEPTEMBER 13, 2011 AT 3:30 P.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS POSTMARKED NO LATER THAN AUGUST 23, 2011.</b>	Ask to speak in Court about the fairness of the Settlement, the proposed Plan of Allocation, or the request for attorneys’ fees and reimbursement of expenses.
<b>DO NOTHING</b>	Get no payment. Remain a Class Member. Give up your rights.

## SUMMARY OF THIS NOTICE

### **I. Description of the Litigation and the Class**

This Notice relates to the proposed Settlement of a class action lawsuit against the Defendants. As explained in more detail below, the proposed Settlement, if approved by the Court, will settle claims of all persons and entities who purchased or otherwise acquired DG's publicly traded securities during the period from February 16, 2010 through and including August 29, 2010, and who were allegedly damaged thereby (the "Class").

### **II. Statement of the Plaintiffs' Recovery**

Subject to Court approval, and as described more fully below, Lead Plaintiff, on behalf of the proposed Class, has agreed to settle all claims related to the purchase or acquisition of the publicly traded securities of DG during the Class Period that were or could have been asserted against DG in the Litigation, in exchange for a payment of \$2,000,000 in cash (the "Settlement Amount") to be deposited into an interest-bearing escrow account (the "Settlement Fund"). Based on Lead Plaintiff's consulting damages expert's estimate of the amount of DG's publicly traded securities that may have been damaged as a result of the alleged misstatements and omissions by the Defendants, and assuming that all those shares participate in the Settlement, Lead Counsel estimates that the average recovery would be approximately \$0.18 per allegedly damaged share,<sup>1</sup> before the deduction of Court-approved attorneys' fees and expenses, taxes, and notice and administration costs. Class Members should note, however, that this is only an estimate based on the overall number of potentially damaged shares in the Class. Some Class Members may recover more or less than this estimated amount depending on, among other factors, when, where, and the prices at which their shares were purchased or sold. The Net Settlement Fund (the Settlement Fund less taxes, notice and administration costs, and attorneys' fees and litigation expenses awarded to Lead Counsel) will be distributed in accordance with a plan of allocation (the "Plan of Allocation") approved by the Court and will determine how the Net Settlement Fund shall be allocated to the members of the Class. The proposed Plan of Allocation is included in this Notice (see page 9 below).

### **III. Statement of Potential Outcome of the Case**

The Parties do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiff were to prevail on the claims against the Defendants. The Defendants deny all liability and that any of DG's publicly traded securities were damaged as Lead Plaintiff has alleged. The issues on which the Parties disagree include, for example: (i) the amount by which the prices of DG's publicly traded securities were artificially inflated as a result of the alleged misstatements and omissions by the Defendants; (ii) the amount of any alleged damages suffered by purchasers or acquirers of DG's publicly traded securities; (iii) the appropriate economic models for determining the amounts by which DG's publicly traded securities were allegedly artificially inflated (if at all); and (iv) the effect of various market forces influencing the trading prices of DG's publicly traded securities.

### **IV. Statement of Attorneys' Fees and Litigation Expenses Sought**

Lead Counsel (as defined below) will apply to the Court for an award of attorneys' fees from the Settlement Fund in an amount not to exceed 30% of the Settlement Fund, which will include interest. In addition, Lead Counsel also will apply for the reimbursement of litigation expenses paid or incurred in connection with the prosecution and resolution of the Litigation, in an amount not to exceed \$75,000, plus interest from the date of funding at the same rate as earned by the Settlement Fund. If the Court approves Lead Counsel's attorneys' fee application in full, the average amount of fees and expenses will be approximately \$0.06 per allegedly damaged share.

### **V. Identification of Attorneys' Representatives**

Lead Plaintiff and the Class are being represented by Labaton Sucharow LLP, the Court-appointed Lead Counsel. Any questions regarding the Settlement should be directed to Jonathan Gardner, Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, Tel: (888) 219-6877, [www.labaton.com](http://www.labaton.com), [settlementquestions@labaton.com](mailto:settlementquestions@labaton.com).

### **VI. Reasons for the Settlement**

For Lead Plaintiff, the principal reason for the Settlement is the immediate benefit of a substantial cash recovery for the Class. This benefit must be compared to the risk that no recovery or a smaller recovery might be achieved after the Court decides any motions to dismiss the Complaint filed in the Litigation, fact and expert discovery are complete, summary judgment motions are made by the Defendants, and a contested trial and likely appeals are resolved, possibly years into the future. For the Defendants, who deny all allegations of liability and deny that any Class Members were damaged, the principal reason for the Settlement is to eliminate the burden, expense, uncertainty and risk of further litigation.

<sup>1</sup> An allegedly damaged share might have been traded more than once and this average recovery would be the total for all purchasers of that share.

## **BASIC INFORMATION**

### **1. Why did I get this notice package?**

You or someone in your family may have purchased or acquired DG's publicly traded securities during the period from February 16, 2010 through and including August 29, 2010.

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement. If approved, the Settlement will end all of the Class's claims against the Defendants. The Court will consider whether to approve the Settlement at a Settlement Hearing on September 13, 2011 at 3:30 p.m. If the Court approves the Settlement, and after any appeals are resolved and the Settlement administration is completed, the claims administrator appointed by the Court will make the payments that the Settlement allows.

The Court in charge of the case is the United States District Court for the Southern District of New York, and the case is known as *In re DG Fastchannel, Inc.*, No. 10 Civ 6523 (RJS) (S.D.N.Y.). This case was assigned to United States District Judge Richard J. Sullivan. The persons who are suing are called "plaintiffs" and the company and the persons being sued are called "defendants."

### **2. What is this lawsuit about and what has happened so far?**

Lead Plaintiff's claims in the Litigation are stated in the Complaint, dated January 24, 2011. Lead Plaintiff alleged that DG and the other Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") by making material misstatements and omissions regarding DG's advertisement delivery sales in the third quarter of 2010. On August 4, 2010, the Defendants released DG's second quarter earnings, but allegedly failed to disclose that third quarter revenues would be lower than analysts had forecast. In response to positive statements about DG's quarterly financial results, analysts immediately raised their estimates for DG's third quarter after the Company released its second quarter results and a report on the Company's third quarter performance to date. Lead Plaintiff alleges the Defendants failed to correct these analysts' estimates following their alleged misleading statements and omissions on August 4, 2010, thereby allegedly misleading the market into believing that they had endorsed the higher analyst estimates.

At an investor conference almost a week after the August 4, 2010 earnings call, Lead Plaintiff alleges the Defendants again did not correct the analysts' estimates, reassuring investors that the Company enjoyed good relationships with its customers, even though they allegedly knew that several large customers, including Ford and Coca-Cola, had already defected to competitors. As late as the third week of August, Defendants were adamant about business conditions remaining strong. Finally, on August 30, 2010, however, Lead Plaintiff claims Defendants issued guidance sharply below analysts' estimates.

This Litigation began on September 2, 2010 when the first of two proposed class actions was filed against the Defendants. On November 24, 2010, the Court issued an order consolidating these cases into the present Litigation and appointing Lead Plaintiff and Labaton Sucharow LLP as Lead Counsel to represent the Class.

Lead Plaintiff filed the Complaint on January 24, 2011. On February 23, 2011, the Defendants submitted a pre-motion letter (the "Defendants' Pre-Motion Letter") to the Court, which set forth the anticipated bases for the Defendants' motion to dismiss. On February 28, 2011, Lead Plaintiff submitted a letter to the Court responding to Defendants' Pre-Motion Letter (the "Plaintiff's Letter Response").

On March 1, 2011, the Court acknowledged receipt of the Defendants' Pre-Motion Letter and Plaintiff's Letter Response, ordered the parties to appear at a pre-motion conference on April 5, 2011 (the "Conference"), and adjourned the Defendants' deadline to move to dismiss the Complaint pending the Conference. At the Conference, the Court heard arguments from the Parties regarding the relative merits of their positions on Defendants' anticipated motion to dismiss. The Court expressed its preliminary impression that the required element of scienter may be difficult to prove.

On May 5, 2011, Lead Plaintiff and the Defendants (collectively, the "Parties") met with mediator Jed Melnick, Esq. of JAMS to explore a potential negotiated resolution of the claims. This Settlement was reached at the conclusion of the negotiations on May 5, 2011, when the Parties agreed to a mediator's recommendation issued by Mr. Melnick to the Parties.

The Parties entered into the Stipulation and Agreement of Settlement (the "Stipulation") on June 16, 2011. On June 22, 2011, the Court preliminarily approved the Settlement, authorized this Notice to be sent to poten-

tial Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

The Defendants deny the claims and contentions alleged by Lead Plaintiff in this Litigation, deny any liability whatsoever, and maintain that they have meritorious defenses to all claims that were raised or could have been raised in the Litigation.

### **3. Why is this a class action?**

In a class action, one or more people called class representatives (in this case the Lead Plaintiff on behalf of the Class) sue on behalf of people or entities, known as “Class Members,” who have similar claims. A class action allows one court to resolve in a single case many similar claims that, if brought separately by individuals, might be economically so small that they would never be brought. One court resolves the issues for all class members, except for those who exclude themselves, or “opt out,” from the Class (see page 7 below).

### **4. Why is there a settlement?**

The Court did not decide in favor of Lead Plaintiff or the Defendants. The Settlement will end all the claims against the Defendants in the Litigation and avoid the uncertainties and costs of further litigation and any future trial. Affected investors will be eligible to get compensation immediately, rather than after the time it would take to resolve future motions to dismiss, conduct discovery, have a trial and exhaust all appeals.

The Settlement was reached after months of investigation and litigation. Lead Plaintiff, through Lead Counsel, conducted an extensive investigation of the claims, defenses and underlying events and transactions relating to the Litigation. This investigation included, among other things, reviewing and analyzing DG’s filings with the Securities and Exchange Commission (the “SEC”), securities analysts’ reports, public statements by Defendants, media reports about Defendants, and court records. Lead Counsel also located and interviewed numerous confidential witnesses, and consulted with an experienced damages expert. Further, Lead Counsel and Lead Plaintiff participated in rigorous arm’s-length negotiations and a mediation before an experienced mediator before entering into the Settlement.

The Defendants deny all allegations of liability contained in the Complaint and deny that they are liable to the Class. Defendants have denied and continue to deny each and all of the claims and contentions alleged by Lead Plaintiff in the Litigation. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. Defendants also have denied and continue to deny, *inter alia*, the allegations that Lead Plaintiff or the Class have suffered damage, that the price of DG securities was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, and that Lead Plaintiff or the Class were harmed by the conduct alleged in the Complaint. The Settlement should not be seen as an admission or concession on the part of the Defendants about any of the claims, their fault or liability for damages.

## **WHO IS IN THE SETTLEMENT**

### **5. How do I know if I am part of the Settlement?**

The Court determined, for the purposes of the Settlement only, that everyone who fits the following description, and is not excluded by definition from the Class (see Question 6 below), is a member of the Class, or a “Class Member,” unless they take steps to exclude themselves:

any person or entity who purchased or otherwise acquired the publicly traded securities of DG during the period from February 16, 2010 through and including August 29, 2010, and who were allegedly damaged thereby.

Receipt of this Notice does not mean that you are a Class Member. Please check your records or contact your broker to see if you purchased or otherwise acquired DG’s publicly traded securities during the Class Period as described above.

### **6. Are there exceptions to being included in the Class?**

There are some people who are excluded from the Class by definition. Excluded from the Class are: Defendants; members of the Individual Defendants’ immediate families; the officers and directors of DG from February 16, 2010 through and including August 29, 2010; the subsidiaries and affiliates of DG; any entity in which any Defendant has a controlling interest or which is related to, or affiliated with, any Defendant; and the legal representatives, heirs, successors-in-interest, or assigns of any such excluded party.

Also excluded from the Class are any proposed Class Members who properly exclude themselves by submitting a valid and timely request for exclusion in accordance with the requirements set forth in this Notice. If you do not want to be a Class Member — for example if you want to continue with or bring your own lawsuit against the Defendants at your own expense for the claims that are being released as part of the Settlement—you **must** exclude yourself by submitting a request for exclusion in accordance with the requirements explained in Question 13 below.

#### 7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help by writing to or calling the Claims Administrator: *In re DG Fastchannel, Inc.*, Claims Administrator, c/o Strategic Claims Services, 600 N. Jackson Street, Suite 3, Media, PA 19063, 866-274-4004, [www.strategicclaims.net](http://www.strategicclaims.net). Or you can fill out and return the Proof of Claim and Release form (“Proof of Claim”) described in Question 10, to see if you qualify.

### **THE SETTLEMENT BENEFITS—WHAT YOU MAY RECEIVE**

#### 8. What does the Settlement provide?

In the Settlement, DG has agreed to pay \$2,000,000 in cash, which will be deposited in an interest-bearing escrow account for the benefit of the Class (the “Settlement Fund”). The Settlement Fund will be divided, after deduction of Taxes, Court-awarded attorneys’ fees and expenses, and settlement administration costs, among all Class Members who timely submit valid Proofs of Claim that are accepted for payment by the Court (“Authorized Claimants”).

#### 9. How much will my payment be?

The Plan of Allocation, discussed on pages 9-12 below, explains how claimants’ “Recognized Losses” will be calculated. Your share of the Net Settlement Fund will depend on several things, including: (i) the quantity of DG’s publicly traded securities you bought; (ii) how much you paid for those securities; (iii) when you bought them; (iv) whether or when you sold them (and, if so, for how much you sold them); and (v) the amount of Recognized Losses of other Authorized Claimants.

It is unlikely that you will get a payment for your entire Recognized Loss, given the number of potential Class Members. After all Class Members have sent in their Proofs of Claim, the payment any Authorized Claimant will get will be their *pro rata* share of the Net Settlement Fund. An Authorized Claimant’s share will be his, her or its Recognized Loss divided by the total of all Authorized Claimants’ Recognized Losses and then multiplied by the total amount in the Net Settlement Fund. See the Plan of Allocation beginning on page 9 for more information.

Once all the Proofs of Claim are processed and claims are calculated, Lead Counsel, without further notice to the Class, will apply to the Court for an order authorizing distribution of the Net Settlement Fund to the Authorized Claimants. Lead Counsel will also ask the Court to approve payment of the Claims Administrator’s fees and expenses incurred in connection with administering the Settlement that have not already been reimbursed.

### **HOW YOU GET A PAYMENT—SUBMITTING A PROOF OF CLAIM**

#### 10. How can I get a payment?

To qualify for a payment, you must timely send in a valid Proof of Claim with supporting documents (DO NOT SEND ORIGINALS of your supporting documents). A Proof of Claim is enclosed with this Notice. You may also get copies of the Proof of Claim on the Internet at the websites for the Claims Administrator: [www.strategicclaims.net](http://www.strategicclaims.net), or Lead Counsel: [www.labat.com](http://www.labat.com). Please read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail it to the Claims Administrator by First-Class Mail, **postmarked on or before October 24, 2011**. *The Claims Administrator needs all of the information requested in the Proof of Claim in order to determine if you are eligible to receive a distribution from the Net Settlement Fund.*

#### 11. When will I get my payment?

The Court will hold a hearing on September 13, 2011 at 3:30 p.m., to decide whether to, among other things, approve the Settlement and the proposed Plan of Allocation. All Proofs of Claim must be submitted to the Claims Administrator, **postmarked on or before October 24, 2011**. If the Court approves the Settlement, there may still be appeals which would delay payment, perhaps for more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

## 12. What am I giving up by staying in the Class?

Unless you exclude yourself, you will stay in the Class, which means that as of the date that the Settlement becomes effective under the terms of the Stipulation (the “Effective Date”), you will forever give up and release all “Released Claims” (as defined below) against the “Released Defendant Parties” (as defined below). You will not in the future be able to bring a case asserting any Released Claim against the Released Defendant Parties.

“Released Claims” means all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, whether known or Unknown (as defined below), whether arising under federal, state, common or foreign law, that Lead Plaintiff or any other Class Member: (i) have asserted in the Litigation, including in the Complaint; or (ii) could have asserted in any forum, that arise out of or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the complaints filed in the Litigation, including the Complaint, and that relate to the purchase or acquisition during the Class Period of the publicly traded securities of the Company. Released Claims do not include: (i) claims to enforce the Settlement; or (ii) any governmental or regulatory agency’s claims asserted in any criminal or civil action against any of the Defendants.

“Released Defendants’ Claims” means all claims, rights and causes of action, duties, obligations, demands, actions, debts, sums of money, suits, contracts, agreements, promises, damages, and liabilities of every nature and description, whether known or Unknown, whether arising under federal, state, common or foreign law, or any other law, that the Defendants or any other Released Defendant Party asserted, or could have asserted, against any of the Released Plaintiff Parties that arise out of or relate in any way to the commencement, prosecution, settlement or resolution of the Litigation or the claims against the Released Defendant Parties (other than claims to enforce the Settlement).

“Released Defendant Parties” means the Defendants and their current or former trustees, officers, directors, principals, employees, agents, partners, insurers, auditors, heirs, attorneys, predecessors, successors or assigns, parents, subsidiaries, divisions, joint ventures, general or limited partners or partnerships, limited liability companies and any trust of which any Individual Defendant is the settlor or which is for the benefit of their immediate family members.

“Unknown Claims” means any and all Released Claims, which the Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants’ Claims that the Defendants or any other Released Defendant Party does not know or suspect to exist in his, her or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Defendants’ Claims, the Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff and the Defendants shall expressly, and each other Class Member and each other Released Defendant Party shall be deemed to have, and by operation of the Judgment or Alternative Judgment shall have, expressly waived and relinquished any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff, the other Class Members, the Defendants or the other Released Defendant Parties may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and the Released Defendants’ Claims, but Lead Plaintiff and the Defendants shall expressly, fully, finally and forever settle and release, and each other Class Member and each other Released Defendant Party shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment or Alternative Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims and Released Defendants’ Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff and the Defendants acknowledge, and other Class Members and each other Released Defendant Party by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a key element of the Settlement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to keep any right you may have to sue or continue to sue the Released Defendant Parties on your own about the Released Claims, then you must take steps to exclude yourself from the Class. Excluding yourself is known as “opting out” of the Class. The Defendants may withdraw from and terminate the Settlement if potential Class Members who purchased in excess of a certain amount of DG’s publicly traded securities opt out from the Class.

### **13. How do I “opt out” (exclude myself) from the proposed Settlement?**

To “opt out” (exclude yourself) from the Class, you must deliver or mail a signed letter by First-Class Mail stating that you “request exclusion from the Class in *In re DG Fastchannel, Inc.*, No. 10-Civ-6523-RJS (S.D.N.Y.).” Your letter **must** state the date(s), price(s) and number of shares of all your purchases, acquisitions and sales of DG’s publicly traded securities during the Class Period. This information is needed to determine whether you are a Class Member. In addition, you must include your name, address, telephone number, and your signature. You must submit your request for exclusion addressed to *In re DG Fastchannel, Inc.—EXCLUSIONS*, c/o Strategic Claims Services, 600 N. Jackson Street, Suite 3, Media, PA 19063. The request for exclusion must be **delivered or postmarked on or before August 23, 2011. You cannot exclude yourself or opt out by telephone or by email.** Your request for exclusion must comply with these requirements in order to be valid. If you are excluded, you will not be eligible to get any payment from the Settlement proceeds and you cannot object to the Settlement, the proposed Plan of Allocation or the application for attorneys’ fees and reimbursement of expenses.

### **14. If I do not exclude myself, can I sue the Defendants and the other Released Defendant Parties for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Defendant Parties for all Released Claims. If you have a pending lawsuit, speak to your lawyer in that case **immediately**. You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is **August 23, 2011**.

### **15. If I exclude myself, can I get money from the proposed Settlement?**

No. If you exclude yourself, do not send in a Proof of Claim to ask for any money. But, you may exercise any right you may have to sue, continue to sue or be part of a different lawsuit against the Defendants and the other Released Defendant Parties.

## **THE LAWYERS REPRESENTING YOU**

### **16. Do I have a lawyer in this case?**

The law firm of Labaton Sucharow was appointed to represent all Class Members. These lawyers are called Lead Counsel. You will not be separately charged for these lawyers. The Court will determine the amount of Lead Counsel’s fees and expenses. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **17. How will the lawyers be paid?**

Lead Counsel has not received any payment for their services in pursuing the claims against the Defendants on behalf of the Class, nor have they been reimbursed for their litigation expenses. At the Settlement Hearing described below, or at such other time as the Court may order, Lead Counsel will ask the Court to award them, from the Settlement Fund, attorneys’ fees of no more than 30% of the Settlement Fund, which will include interest, and to reimburse them for their litigation expenses, such as the cost of experts, that they have incurred in pursuing the Litigation. The request for reimbursement of expenses will not exceed \$75,000, plus interest on the expenses from the date of funding at the same rate as may be earned by the Settlement Fund.

## **OBJECTING TO THE SETTLEMENT**

### **18. How do I tell the Court that I do not like something about the proposed Settlement?**

If you are a Class Member and do not “opt out,” you can object to any part of the Settlement, the proposed Plan of Allocation, and/or the application by Lead Counsel for attorneys’ fees and reimbursement of expenses. You must write to the Court setting out your objection, giving reasons why you think the Court should not approve any part or all of the Settlement.

To object, you must send a signed letter stating that you object to the proposed Settlement in the case known as "*In re DG Fastchannel, Inc.*, No. 10-Civ-6523-RJS (S.D.N.Y.)." You must include your name, address, telephone number and your signature; identify the date(s), price(s) and number of shares of all purchases, acquisitions and sales of DG's publicly traded securities during the Class Period; and state the reasons why you object to the Settlement. This information is needed to demonstrate your membership in the Class.

Unless otherwise ordered by the Court, any Class Member who does not object in the manner described in this Notice will be deemed to have waived any objection and will not be able to make any objection to the Settlement, the proposed Plan of Allocation, and/or the application for attorneys' fees and reimbursement of expenses in the future.

Your objection must be filed with the United States District Court for the Southern District of New York by hand or by mail such that it is **received or postmarked on or before August 23, 2011** at the address set forth below. You must also serve the papers on Lead Counsel and Defendants' Counsel at the addresses set forth below so that the papers are **received or postmarked on or before August 23, 2011**.

**COURT:**

CLERK OF THE COURT  
United States District Court for the  
Southern District of New York  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312

**LEAD COUNSEL:**

LABATON SUCHAROW LLP  
Jonathan Gardner, Esq.  
140 Broadway  
New York, New York 10005

**COUNSEL FOR DEFENDANTS:**

LATHAM & WATKINS LLP  
c/o Kevin H. Metz, Esq.  
555 Eleventh Street, NW, Suite 1000  
Washington, DC 20004

**19. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement. You can still recover from the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

**THE COURT'S SETTLEMENT HEARING**

**20. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Settlement Hearing at 3:30 p.m. on September 13, 2011, in Courtroom 21C of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21C, New York, NY 10007-1312. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court also will consider the proposed Plan of Allocation for the proceeds of the Settlement and the applications for attorneys' fees and reimbursement of expenses. The Court will take into consideration any written objections filed in accordance with the instructions set out above in the answer to Question 18. We do not know how long it will take the Court to make these decisions.

You should also be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Class Members. If you want to come to the hearing, you should check with Lead Counsel before coming to be sure that the date and/or time has not changed.

**21. Do I have to come to the hearing?**

No. Lead Counsel will answer any questions the Court may have. But, you are welcome to come at your own expense. If you validly submit an objection, it will be considered by the Court. You do not have to come to Court to talk about it.

**22. May I speak at the hearing and submit additional evidence?**

If you file an objection, you may ask the Court for permission to speak at the Settlement Hearing. To do so, you must include with your objection (*see* Question 18 above) a statement that it is your "notice of intention to appear in *In re DG Fastchannel, Inc.*, No. 10-Civ-6523-RJS (S.D.N.Y.)" Persons who object and want to present



evidence at the Settlement Hearing must also include in their written objection the identity of any witness they may call to testify and exhibits they intend to introduce at the Settlement Hearing. You cannot speak at the hearing if you excluded yourself from the Class or if you have not provided written notice of your intention to speak at the Settlement Hearing according to the procedures described above and in the answer to Question 18.

## **IF YOU DO NOTHING**

### **23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement and you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against the Defendants and the Released Defendant Parties about the Released Claims in this case. To be eligible to share in the Net Settlement Fund you must submit a Proof of Claim (see Question 10). To start, continue or be a part of any *other* lawsuit against the Defendants and the other Released Defendant Parties about the Released Claims in this case you must exclude yourself from this Class (see Question 13).

## **GETTING MORE INFORMATION**

### **24. Are there more details about the proposed Settlement and the lawsuit?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation and Agreement of Settlement, dated as of June 16, 2011 (the “Stipulation”). You may review the Stipulation filed with the Court and all documents filed in the Litigation during business hours at the Office of the Clerk of the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, NY 10007-1312.

You also can call the Claims Administrator toll free at (866) 274-4004; call Lead Counsel: Labaton Sucharow at (888) 219-6877; write to *In re DG Fastchannel, Inc.*, No. 10-Civ-6523-RJS (S.D.N.Y.), c/o Strategic Claims Services, 600 N. Jackson Street, Suite 3, Media, PA 19063; or visit the websites [www.strategicclaims.net](http://www.strategicclaims.net) and [www.labaton.com](http://www.labaton.com), where you can download copies of this Notice and the Proof of Claim. **Please Do Not Call the Court or DG With Questions About the Settlement.**

## **PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

The Net Settlement Fund shall be distributed to each Class Member who timely submits a valid Proof of Claim to the Claims Administrator that is accepted for payment by the Court (“Authorized Claimant”). The Net Settlement Fund will not be distributed to Authorized Claimants until the Court has approved the Settlement and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by *certiorari* or otherwise, of the order(s) approving the Settlement and the plan of allocation has expired. The Defendants are not entitled to get back any portion of the Settlement Fund once the Effective Date of the Settlement has occurred.

The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any orders regarding a modification of the Plan of Allocation will be posted on the settlement website, [www.strategicclaims.net](http://www.strategicclaims.net).

Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiff, Lead Counsel, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulation, the Plan of Allocation, or further orders of the Court. Lead Plaintiff, the Defendants, their respective counsel, Lead Plaintiff’s damages expert, and all other Released Parties shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund consistent with the terms of the Stipulation, the Plan of Allocation, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

A “Recognized Loss” will be calculated using the formulas set forth below for each purchase or acquisition of DG’s publicly traded securities (or sale in the case of a put option) listed in the claim form that occurred during the Class Period and for which adequate documentation is provided. The Recognized Losses for a claimant’s transactions will be calculated by the Claims Administrator in consultation with Lead Counsel in accordance with the provisions of this Plan of Allocation, or another plan approved by the Court.

The Recognized Loss formula set forth below is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants.

## **I. CERTAIN DEFINITIONS**

A. The term “market loss” means the amount by which the actual purchase or acquisition price is greater than the actual sale or holding price of DG’s publicly traded securities.

B. The term “market profit” means the amount by which the actual purchase or acquisition price is less than the actual sale or holding price of DG’s publicly traded securities.

C. The terms “net market loss” and “net market profit” mean any market loss or profit that occurs from the trading of DG’s publicly traded securities during the Class Period, as discussed in “Computation of Net Recognized Loss for Each Class Member” below.

D. The term “Recognized Loss,” as used herein, is not market loss or net market loss. It is a calculation to arrive at a loss figure for purposes of calculating an Authorized Claimant’s *pro rata* participation in the Net Settlement Fund as described below.

E. The term “Net Settlement Fund” has the same meaning as in the Stipulation of Settlement.

F. The date of a purchase or sale of DG’s publicly traded securities (“Transaction Date”) will be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. Any person or entity that sold DG Fastchannel common stock “short” shall have no Recognized Loss with respect to the related purchase or cover of said short sale during the Class Period.

## **II. GENERAL PROVISIONS**

### **A. Allocation of Net Settlement Fund**

Purchases of DG Fastchannel common stock from February 16, 2010 through and including August 3, 2010 (“Early Disclosure Period”) will be allocated not more than 10% of the Net Settlement Fund. Purchases of DG Fastchannel common stock from August 4, 2010 through and including August 29, 2010 (“Late Disclosure Period”) will be allocated at least 85% of the Net Settlement Fund. Transactions in DG Fastchannel call and put options from February 16, 2010 through and including August 29, 2010 will be allocated not more than 5% of the Net Settlement Fund.

### **B. Computation of Loss Per Share for Common Stock Purchases Or Acquisitions**

Computation of the Loss Per Share reflects price changes of DG Fastchannel common stock in reaction to certain public announcements regarding DG Fastchannel, adjusting for price changes that were attributable to market and industry influences, or other company information unrelated to the alleged fraud, based on Plaintiffs’ allegations in the Consolidated Amended Class Action Complaint.

### **C. Use of “FIFO” Methodology for Computation of Recognized Losses for Class Members Who Made Multiple Transactions in DG’s Publicly Traded Securities During the Class Period**

For Class Members who made multiple purchases, acquisitions or sales of DG’s publicly traded securities during the Class Period, the earliest subsequent sale of the same type of security shall be matched first against the claimant’s closing position in the same securities on the day before the first day of the Class Period, and then matched chronologically thereafter against each purchase or acquisition made during the Class Period.<sup>2</sup>

For transactions in DG’s options, each Recognized Loss calculated below is based on each FIFO matched purchase and sale or written, repurchased or closeout of DG Fastchannel option contracts, and cannot be less than zero.<sup>3</sup>

### **D. No Recognized Losses for Certain Purchases, Acquisitions and Sales**

Purchases or acquisitions of DG’s publicly traded securities before February 16, 2010 will have a Recognized Loss of zero. This is because any purchases or acquisitions before the first day of the Class Period are not impacted by the alleged wrongdoing.

Purchases or acquisitions of DG’s common stock that are matched to sales prior to August 30, 2010 will have a Recognized Loss of zero. This is because any losses prior to the first corrective disclosure cannot be caused by that disclosure, but rather by other market forces.

Purchases or acquisitions of DG’s call options, and written put options, that are not open on August 30, 2010 will have a Recognized Loss of zero. This is because any losses prior to the first corrective disclosure cannot be caused by that disclosure, but rather by other market forces or non-fraud information.

<sup>2</sup> Matching will be based on the expiration date, exercise price and contract type of each option matched.

<sup>3</sup> Option prices are in per share amounts, not per contract. Exchange traded option contracts are generally for 100 shares per contract.

#### **E. Acquisition by Gift, Inheritance or Operation of Law**

If a Class Member acquired DG's publicly traded securities during the Class Period by way of gift, inheritance or operation of law, such a claim will be computed by using the Transaction Date and price of the original purchase and not the date and price of transfer. To the extent those shares or options were originally purchased prior to commencement of the Class Period, the Recognized Loss for that acquisition shall be zero.

#### **F. Payments Less Than \$10**

A payment to any Class Member that would amount to less than \$10.00 in total will not be included in the calculation of the Net Settlement Fund, and no payment will be made to those Class Members.

### **III. CALCULATION OF RECOGNIZED LOSSES FOR COMMON STOCK**

#### **A. Recognized Loss for Purchases or Acquisitions of DG Fastchannel Common Stock**

For shares of DG Fastchannel common stock purchased or otherwise acquired during the Class Period, and:

- i. Sold on or before August 29, 2010, the Recognized Loss Per Share is \$0;
- ii. Still held at the end of the day on August 29, 2010 and sold prior to the close of trading on August 30, 2010, the Recognized Loss Per Share is the lesser of: (i) the purchase price minus the sale price; or (ii) \$9.01 per share.
- iii. Still held at the close of business on August 30, 2010, the Recognized Loss Per Share is the lesser of: (i) the purchase price minus \$15.11; or (ii) \$9.01 per share.

### **IV. CALCULATION OF RECOGNIZED LOSSES FOR OPTIONS**

#### **A. Call Options**

For call options on DG Fastchannel common stock *purchased*<sup>4</sup> during the Class Period, and:

- i. *open* at the end of the calendar day on August 29, 2010, the Recognized Loss per call option is the price paid for the option less the option price at the close of business August 30, 2010.
- ii. *not open* at the end of the calendar day on August 29, 2010, the claim per call option is \$0.

#### **B. Put Options**

For put options on DG Fastchannel common stock *written*<sup>5</sup> during the Class Period, and:

- i. *open* at the end of the calendar day on August 29, 2010, the Recognized Loss per put option is the difference between the price of the option at the close of business August 30, 2010 and the initial proceeds received when the option was written.
- ii. *not open* at the end of the calendar day on August 29, 2010, the Recognized Loss per put option is \$0.

Shares of DG Fastchannel common stock acquired during the Class Period through the exercise of a call option shall be treated as a purchase on the date of exercise for the exercise price plus the cost of the call option, and any Recognized Loss or Market Loss arising from such transaction shall be computed as provided for other purchases of DG Fastchannel common stock as set forth herein.

For DG Fastchannel put options that were sold or written during the class period that were "put" to the Claimant (*i.e.* exercised), the common stock shall be treated as a purchase on the date of exercise for the exercise price less the proceeds received when the put contract was written, and any Recognized Loss or Market Loss arising from such transaction shall be computed as provided for other purchases of DG Fastchannel common stock as set forth herein.

The combined recovery for DG Fastchannel call options and the put options shall not exceed 5% of the Settlement Fund.

### **V. COMPUTATION OF NET RECOGNIZED LOSS FOR EACH CLASS MEMBER**

The Recognized Loss or Gain with respect to a purchase or acquisition of DG Fastchannel security is calculated by multiplying the number of units of each security by the appropriate recognized loss for a single unit of that security, as set forth above Sections III and IV. A Recognized Loss cannot be less than zero.

<sup>4</sup> For call options on DG Fastchannel common stock *written* during the Class Period, the Recognized Loss per call option is \$0.

<sup>5</sup> For put options on DG Fastchannel common stock *purchased* during the Class Period, the Recognized Loss per put option is \$0.

The Net Recognized Loss for each Class Member is calculated by: (1) adding the Recognized Losses for each DG Fastchannel security purchased or acquired by the Class Member during the Class Period (i.e. adding all Recognized Losses for stocks and/or options); and (2) subtracting any recognized gains for each DG Fastchannel security purchased or acquired by the Class Member during the Class Period (i.e. subtracting all recognized gains for stocks and/or options).

**NOTE:** All market profits shall be subtracted from all market losses on all transactions in DG's publicly traded securities during the Class Period to determine the net market loss of each Class Member.

If, during the class period, a Class Member made a net market profit in DG Fastchannel common stock, the amount of the Class Member's claim shall be zero.

If, during the Class Period, a Class Member has a net market loss in DG Fastchannel common stock that is less than his, her or its net recognized loss, the Class Member's claim shall be limited to the Class Member's net market loss.

## **VI. DISTRIBUTION OF THE NET SETTLEMENT FUND**

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. Following an initial distribution of the Net Settlement Fund, if Lead Counsel, in consultation with the Claims Administrator, determined that it is cost-effective to do so, the Claims Administrator will conduct a redistribution of any funds remaining in the Net Settlement Fund by reason of returned or uncashed checks or otherwise, to Authorized Claimants who have cashed their initial distribution checks, after payment from the Net Settlement Fund of any unpaid Taxes and costs or fees incurred in administering the funds, including for such redistribution. Additional redistributions may occur thereafter to Authorized Claimants if Lead Counsel, in consultation with the Claims Administrator, determines that additional redistribution is cost-effective. When it is determined that the redistribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance of the Net Settlement Fund shall be contributed to a non-sectarian, not-for-profit organization.

Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Southern District of New York with respect to his, her or its Claim Form.

## **SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased or otherwise acquired DG's publicly traded securities during the Class Period for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN SEVEN (7) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE, you either: (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased or otherwise acquired DG's publicly traded securities during such time period (preferably in an MS Excel data table, setting forth (i) title/registration, (ii) street address, (iii) city/state/zip; or electronically in MS Word or WordPerfect files; or on computer-generated mailing labels) or; (b) request additional copies of this Notice and the Proof of Claim form, which will be provided to you free of charge, and within seven (7) calendar days of receipt of such copies send them by First-Class directly to the beneficial owners of those DG securities.

If you choose to follow alternative procedure (b), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Those expenses will be paid after request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*In re DG Fastchannel, Inc.*  
Claims Administrator  
c/o Strategic Claims Services  
600 N. Jackson Street, Suite 3  
Media, PA 19063  
Phone: 866-274-4004; Fax: 610-565-7985  
info@strategicclaims.net  
www.strategicclaims.net

Dated: July 5, 2011

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK