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PALM, INC.

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16

17 **In re: PALM TREO 600 and 650**
18 **LITIGATION**

Master File No.: C-05-03774 RMW

19 **This Document Relates To All Actions**

[PROPOSED] ORDER
GRANTING CONDITIONAL
CERTIFICATION OF
SETTLEMENT CLASS,
APPROVAL OF FORMS AND
METHODS OF NOTICE, AND
PRELIMINARY APPROVAL OF
SETTLEMENT AGREEMENT
AND RELEASE

The Honorable Ronald M. Whyte

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CO-LEAD CLASS COUNSEL

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1 WHEREAS, this Court has reviewed the Settlement Agreement and Release
2 (“Agreement”) entered into by and among defendant Palm, Inc. (“Palm”), Mario Palza, Charles
3 Boulais, Nissa Gay, Paul Berliner, Trevor Loew, Stephanie Daniel, and Norm Sun, as individuals
4 and as “Class Representatives” (collectively, the “Parties” in the above-referenced “Action”),
5 together with all exhibits thereto, the record in this case, and the arguments of counsel;

6 WHEREAS, this Court preliminarily finds, for the purposes of settlement only, that the
7 class alleged in the Action meets all the prerequisites of Rule 23(a) of the Federal Rules of Civil
8 Procedure for class certification, including numerosity, commonality, typicality, and that Class
9 Representatives and Co-Lead Class Counsel are adequate representatives of the Settlement Class,
10 and that the class alleged in the Action meets all the prerequisites of Rule 23(b)(3) of the Federal
11 Rules of Civil Procedure for class certification, in that the questions of law or fact common to the
12 members of the class predominate over any questions affecting only individual members, and that
13 a class action is superior to other available methods for the fair and efficient adjudication of the
14 controversy;

15 IT IS HEREBY ORDERED AS FOLLOWS:

16 1. All terms and definitions used herein have the same meanings as set forth in the
17 Agreement.

18 2. The proposed settlement set forth in the Agreement is hereby preliminarily
19 approved as being within the range of reasonableness such that notice thereof should be
20 given to members of the Settlement Class (as defined in the following paragraph).

21 3. The Action is provisionally certified as a class action, for the purposes of
22 settlement only, pursuant to Rule 23 of the Federal Rules of Civil Procedure, which class is
23 defined as follows:

24 All United States residents who purchased in the United States a
25 new Treo 600 or Treo 650 smartphone for their own use and not for
26 resale. The Settlement Class excludes Palm; any entity in which
27 Palm has a controlling interest; Palm’s directors, officers, and
28 employees; Palm’s legal representatives, successors, and assigns;
any Judge to whom the Litigation is assigned and the members of
his or her immediate family; and all persons who timely and validly
request exclusion from the Settlement Class.

1 4. Class Counsel and Class Representatives are hereby found to be and are
2 therefore appointed as adequate representatives of the Settlement Class: Ira P. Rothken of
3 the Rothken Law Firm, 3 Hamilton Landing, Suite 280, Novato, CA 94949, Jonathan Shub
4 of Seeger Weiss LLP, 1515 Market Street, Suite 1380, Philadelphia, PA 19102, Ralph M.
5 Stone and Thomas G. Ciarlone, Jr. of Shalov Stone Bonner and Rocco, 485 Seventh Avenue,
6 Suite 1000, New York, NY 10018, Stan S. Mallison and Hector R. Martinez of the Law
7 Offices of Mallison & Martinez, 1042 Brown Avenue, Suite A, Lafayette, CA 94549, are
8 hereby appointed as Co-Lead Class Counsel, and Mario Palza, Charles Boulais, Nissa Gay,
9 Paul Berliner, Trevor Loew, Stephanie Daniel, and Norm Sun are hereby appointed as Class
10 Representatives.

11 5. Certification of the Settlement Class shall be solely for settlement purposes and
12 without prejudice to the Parties in the event that the Agreement is not finally approved by
13 this Court or otherwise does not take effect. Certification of the Settlement Class shall be
14 vacated and shall have no effect in the event that the Agreement is not finally approved by
15 this Court or otherwise does not take effect.

16 6. The Claim Form (including the Instructions, Claim Form, and Release); the
17 Repair Form (including the Instructions, Repair Form, and Release); the Notice of Pendency
18 and Proposed Settlement of Class Action ("Full Notice"); and the Summary Notice of
19 Settlement ("Summary Notice"); which are attached to the Agreement as Exhibits A, B, C
20 and D, respectively, are hereby approved as to form.

21 7. A copy of the Full Notice, together with the Claim Form (including the
22 Instructions, Claim Form, and Release), and Repair Form (including the Instructions, Repair
23 Form, and Release), shall be posted on a settlement website, www.palzasettlement.com (the
24 "Settlement Website"). The Full Notice and the Claim Form shall be downloadable from the
25 Settlement Website. Settlement Class Members who are unable to download the Full Notice,
26 Claim Form, and/or Repair Form may request that the Full notice, Claim Form and Repair
27 Form be mailed to them at no charge by sending an e-mail to an e-mail address to be
28 provided on the Settlement Website ("Settlement E-mail Address"). The Settlement Website

1 shall be mobile-browser viewable. In addition to the Full Notice, Claim Form and Repair
2 Form, copies of the Settlement Agreement, Summary Notice, and Court Orders shall also be
3 posted on the Settlement Website. A link to the Settlement Website shall be maintained on
4 the Palm home page for a two-week period commencing with the first publication of notice
5 of the settlement, and thereafter the link will be on Palm's website on the respective support
6 pages for the Treo 600 and Treo 650 devices throughout the Claims Period. Both links will
7 be labeled "Treo 600/Treo 650 Litigation."

8 8. A copy of the Summary Notice shall be published by Palm once in *USA Today*, a
9 newspaper of national circulation, and once in *PC Magazine*. The Summary Notice shall not
10 be less than 1/4 of a page in size. The Summary Notice shall include the address of the
11 Settlement Website and the Settlement E-Mail Address.

12 9. For each member of the Settlement Class for whom Palm has an e-mail address,
13 Palm shall send, by e-mail, an electronic copy of the Summary Notice.

14 10. For each member of the Settlement Class for whom Palm has a street address,
15 but not an e-mail address, Palm shall send, by United States mail, a hard copy of the
16 Summary Notice.

17 11. The Court finds that the forms of notice to the Settlement Class regarding the
18 pendency of the Action and of this settlement and Class Counsel's fee and expense
19 application set forth above, and the methods of dissemination to members of the Settlement
20 Class in accordance with the terms of this Order, constitute the best notice practicable under
21 the circumstances and constitute valid, due, and sufficient notice to all members of the
22 Settlement Class, complying fully with the requirements of Rule 23 of the Federal Rules of
23 Civil Procedure, the California and United States Constitutions, and any other applicable law.

24 12. Any member of the Settlement Class who does not, in connection with the
25 settlement notices, file a valid and timely request for exclusion will be bound by the Final
26 Judgment dismissing the Action on the merits and with prejudice.

27 13. A hearing (the "Final Hearing") shall be held by the Court on Friday, May 2,
28 2008 at 9:00 a.m., to consider and determine whether the requirements for certification of the

1 Settlement Class have been met and whether the proposed settlement of the Action on the
2 terms set forth in the Agreement should be approved as fair, reasonable, adequate, and in the
3 best interests of the Settlement Class Members; whether Class Counsel's fee and expense
4 application, included as part of the settlement, should be approved; and whether the Final
5 Judgment approving the settlement and dismissing the Action on the merits and with
6 prejudice against the Class Representatives and all Settlement Class Members should be
7 entered.

8 14. The Final Hearing may, from time to time, and without further notice to the
9 Settlement Class (except those who have filed timely and valid objections), be continued or
10 adjourned by Order of the Court.

11 15. Any Settlement Class Member who seeks to be excluded from the Settlement
12 Class must send a request by first class mail, postmarked on or before April 7, 2008, to
13 Designated Co-Lead Counsel, Ralph M. Stone, Shalov Stone Bonner and Rocco, 485
14 Seventh Avenue, Suite 1000, New York, NY 10018.

15 16. Objections by any Settlement Class Member to: (A) the certification of the
16 Settlement Class and the proposed settlement contained in the Agreement and described in
17 the Full Notice and Summary Notice; (B) the payment of fees and expenses to Class
18 Counsel; and/or (C) entry of the Final Judgment, shall be heard and any papers submitted in
19 support of said objections shall be considered by the Court at the Final Hearing only if, on or
20 before April 7, 2008, such objector files with the Court a notice of his, her or its objections,
21 submits documentary proof that he, she or it is a member of the Settlement Class, states the
22 basis for such objections, and serves copies of the foregoing and all other papers in support
23 of such objections on counsel for the Parties identified in the Class Notice. In order to be
24 considered for hearing, all objections must be actually received by the counsel identified in
25 the Class Notice on or before April 7, 2008.

26 17. No later than Tuesday, April 22, 2008, the Parties shall file all papers in support
27 of the application for final approval of the settlement, the application for payment of
28 attorneys' fees and expenses, and/or any papers in response to any valid and timely

1 objections with the Court, and shall serve copies of such papers upon each other and upon
2 any objectors who have complied with the provisions of paragraph 16 of this Order.

3 18. Settlement Class Members who wish to claim a rebate on the purchase of a new
4 Palm smartphone must mail their Claim Form and any required supporting documentation
5 postmarked on or before the last date of the Claims Period. The Claim Form must be
6 received by Palm no later than 21 days thereafter.

7 19. Counsel for the Parties are hereby authorized to utilize all reasonable
8 procedures in connection with the administration of the settlement which are not materially
9 inconsistent with either this Order or the terms of the Agreement.

10 Dated: 1/7, 08

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12 By: *Ronald M. Whyte*
13 The Honorable Ronald M. Whyte
14 Judge, United States District Court
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