

1 IRA P. ROTHKEN (CA SBN 160029)  
ROTHKEN LAW FIRM  
2 1050 Northgate Drive, Suite 520  
San Rafael, CA 94903  
3 Telephone: (415) 924-4250  
Facsimile: (415) 924-2905  
4

5 Co-Lead Counsel For Plaintiffs  
[Additional Co-Lead Counsel Listed on Signature Page]

6 PENELOPE A. PREOVOLOS (CA SBN 87607)  
7 LORI A. SCHECHTER (CA SBN 139728)  
ROGER E. COLLANTON (CA SBN 178831)  
8 PPreovolos@mof.com  
LSchechter@mof.com  
9 RCollanton@mof.com  
MORRISON & FOERSTER LLP  
10 425 Market Street  
San Francisco, California 94105-2482  
11 Telephone: 415.268.7000  
Facsimile: 415.268.7522  
12

13 Attorneys for Defendant  
PALM, INC.

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION  
17

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

20 **This Document Relates To All Actions**

**Master File No.: C-05-03774 RMW**

**SETTLEMENT AGREEMENT AND  
RELEASE**

Complaint Filed: September 19, 2005  
Trial Date: None Set



1 D. "Final," with respect to the Judgment, means that the time for appeal or writ has  
2 expired or, if an appeal and/or petition for review is taken and the settlement is affirmed, the time  
3 period during which further petition for hearing, appeal or writ of certiorari can be taken has  
4 expired. If the Judgment is set aside, materially modified, or overturned by the trial court or on  
5 appeal, and is not fully reinstated on further appeal, the Judgment shall not become "Final."

6 E. The "Litigation" means *In re Palm Treo 600 and 650 Litigation*, Master File No. C-  
7 05-03774-RMW, and all actions consolidated therein.

8 F. "Plaintiffs' Co-Lead Counsel" shall mean:

9 Ira P. Rothken  
10 Rothken Law Firm  
11 3 Hamilton Landing, Suite 280  
12 Novato, CA 94949

13 Jonathan Shub  
14 Seeger Weiss LLP  
15 1515 Market Street, Suite 1380  
16 Philadelphia, PA 19102

17 Ralph M. Stone  
18 Thomas G. Ciarlone, Jr.  
19 Shalov Stone Bonner & Rocco  
20 485 Seventh Avenue, Suite 1000  
21 New York, NY 10018

22 Stan S. Mallison  
23 Hector R. Martinez  
24 Law Offices of Mallison & Martinez  
25 1042 Brown Avenue, Suite A  
26 Lafayette, Ca 94549

27 G. "Plaintiffs' Counsel" means Plaintiffs' Co-Lead Counsel and all other attorneys and  
28 law firms appearing on behalf of one or more named plaintiffs in the Litigation.

H. "Redemption Period" shall mean a time period commencing on the Effective Date and  
terminating six months thereafter.

I. "Released Claims" means any and all liabilities, claims, cross-claims, causes of action,  
rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement,  
costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether  
in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims  
asserted on a class basis or on behalf of the general public, whether known or unknown,

1 suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or  
2 unliquidated, whether under federal statutory law, federal common law or federal regulation, or  
3 the statutory or common laws or regulations of any and all states or subdivisions, which are  
4 alleged or could have been alleged in the Litigation relating to any alleged product defects of the  
5 Treo 600 and Treo 650 smartphones, the performance of the Treo 600 and Treo 650 smartphones,  
6 and/or any alleged misrepresentation or failure to disclose with respect to the Treo 600 and Treo  
7 650 smartphones, except for any claims raised in *Casaburi v. Palm, Inc.*, San Francisco Superior  
8 Court Case No. 04-435844. "Released Claims" shall not include personal injury claims.

9 J. "Released Parties" means Palm and each of its predecessors, successors, parents,  
10 subsidiaries and affiliates, and each of their respective past or present directors, officers,  
11 employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives,  
12 partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers,  
13 resellers, distributors, retailers, related companies, and divisions, and each of their predecessors,  
14 successors, heirs, and assigns.

#### 15 **RECITALS**

16 This Agreement is made for the following purpose and with reference to the following  
17 facts:

18 A. Plaintiffs Palza, Boulais, and Gay filed a complaint on September 14, 2005, in Santa  
19 Clara County Superior Court, *Palza, et al. v. Palm, Inc.*, Case No. C-05-4408 (the "*Palza*  
20 *Action*"). The *Palza Action* was removed to the United States District Court for the Northern  
21 District of California, San Jose Division. The *Palza Action*, filed on behalf of a purported  
22 nationwide class, alleges violation of the California Unfair Competition Law, Cal. Bus. & Prof.  
23 Code §§ 17200 *et seq.*, (the "UCL") violation of the California False Advertising Law, Cal. Bus.  
24 & Prof. Code §§ 17500 *et seq.*, (the "California False Advertising Law"), violation of the  
25 California Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the "CLRA"), breach of express  
26 warranty, and breach of the Song-Beverly Act, Cal. Civ. Code § 1790, *et seq.* The *Palza Action*  
27 alleges that Palm made misrepresentations and concealed material information in the marketing,  
28 advertising, sale and servicing of its Treo 600 and Treo 650 smartphones, and alleges that the

1 products were inherently defective, failed at unacceptably high rates, and were not of  
2 merchantable quality and workmanship. In particular, the *Palza* Action alleges that the Treo 600  
3 and Treo 650 smartphones had numerous defects, including poor sound quality, buzzing,  
4 choppiness, speakerphone problems, defective screens, camera problems, MP3 player problems,  
5 defective headset jack, SIM card problems, freezes, crashes, and electrical surges. The *Palza*  
6 Action also alleges that Palm replaced defective units with refurbished phones that were subject  
7 to identical problems.

8 B. Plaintiff Richard Gans filed a complaint on September 19, 2005, in the United States  
9 District Court for the Northern District of California, San Jose Division, *Gans v. Palmone, Inc.*,  
10 Case No. C-05-03774, (the "*Gans* Action"). The *Gans* Action, filed on behalf of a purported  
11 nationwide class, alleges violation of the CLRA, violation of the UCL, and violation of the  
12 California False Advertising Law. The *Gans* Action alleges that Palm made misrepresentations  
13 and concealed material information regarding the capabilities of the Treo 650 smartphone, and  
14 asserted that the Treo 650 is inherently defective in that it allegedly failed to automatically  
15 download email messages as advertised.

16 C. Plaintiff Berliner filed a complaint on September 23, 2005, in the United States  
17 District Court for the Northern District of California, San Jose Division, *Berliner v. Palm, Inc.*,  
18 Case No. C-05-3854, (the "*Berliner* Action"). The *Berliner* Action, filed on behalf of a purported  
19 nationwide class, alleges violation of the CLRA, violation of the UCL, and violation of the  
20 California False Advertising Law. The *Berliner* Action alleges misrepresentation and product  
21 defect claims regarding the Treo 600 and Treo 650 smartphones that are virtually identical to  
22 those in the *Palza* Action.

23 D. Plaintiffs Loew, Daniel, and Sun filed a complaint on September 30, 2005, in the  
24 United States District Court for the Northern District of California, San Jose Division, *Loew, et*  
25 *al. v. Palm, Inc.*, Case No. C-05-3980, (the "*Loew* Action"). The *Loew* Action, filed on behalf of  
26 a purported nationwide class, alleges violation of the UCL, violation of the California False  
27 Advertising Law, violation of the CLRA, breach of express warranty, and breach of the Song-  
28 Beverly Act, Cal. Civ. Code § 1790, *et seq.* The *Loew* Action alleges misrepresentation and

1 product defect claims regarding the Treo 600 and Treo 650 smartphones that are virtually  
2 identical to those in the *Palza* Action.

3 E. Cesar Moya (“Moya”) filed a complaint on September 28, 2005, in the United States  
4 District Court for the Northern District of California, San Jose Division, *Moya v. Palm, Inc.*, Case  
5 No. C-05-3926, (the “*Moya* Action”). The *Moya* Action, filed on behalf of a purported  
6 nationwide class, alleges violation of the UCL, fraud, and negligent misrepresentation. The *Moya*  
7 Action alleges misrepresentation and product defect claims regarding the Treo 600 and Treo 650  
8 smartphones that are virtually identical to those in the *Palza* Action.

9 F. William Geisen (“Geisen”) filed a complaint on October 12, 2005, in the United States  
10 District Court for the Northern District of California, San Jose Division, *Geisen v. Palm, Inc.*,  
11 Case No. C-05-04120 (the “*Geisen* Action”). The *Geisen* Action, filed on behalf of a purported  
12 nationwide class, alleges violation of the UCL, violation of the CLRA, and violation of the  
13 California False Advertising Law. The *Geisen* Action alleges misrepresentation and product  
14 defect claims regarding the Treo 600 and Treo 650 smartphones that are virtually identical to  
15 those in the *Palza* Action.

16 G. On January 25, 2006, the Court signed Pretrial Order No. 1, consolidating the six  
17 aforementioned cases into a single action entitled, *In re Palm Treo 600 and 650 Litigation*,  
18 Master File No. C-05-03774-RMW, and ordering the filing of a Consolidated Amended  
19 Complaint to supersede each of the complaints in the *Palza*, *Gans*, *Berliner*, *Loew*, *Moya* and  
20 *Geisen* Actions. On January 31, 2006, a First Amended Consolidated Complaint was filed, *Palza*  
21 *et al. v. Palm, Inc. aka PalmOne, Inc.*, Master File No.: C-05-03774-RMW, superseding each of  
22 the six previous filed complaints (the “FACC”). The FACC incorporates and includes the factual  
23 and legal claims set forth in the complaints in the *Palza*, *Gans*, *Berliner*, *Loew*, *Moya* and *Geisen*  
24 Actions.

25 H. On or about, March 2, 2006, Palm timely filed an Answer to the FACC, responding to  
26 the allegations therein, and asserting various affirmative defenses.

27 I. Palm disputes the claims alleged in the Litigation and does not by this Agreement  
28 admit any liability or wrongdoing whatsoever. Palm has agreed to enter into this Agreement to

1 avoid the further expense, inconvenience, and distraction of burdensome and protracted litigation,  
2 and to be completely free of any further claim or controversy respecting the claims regarding the  
3 Treo 600 and Treo 650 smartphones set forth in the complaints filed in the Litigation, including,  
4 without limitation, all claims relating to any alleged product defects of the Treo 600 and Treo 650  
5 smartphones, the performance of the Treo 600 and Treo 650 smartphones, and/or any alleged  
6 misrepresentation or failure to disclose with respect to the Treo 600 and Treo 650 smartphones.

7 J. Plaintiffs' Counsel and the Class Representatives believe that the claims asserted in  
8 the Litigation possess merit and have examined and considered the benefits to be obtained under  
9 the proposed settlement set forth in this Agreement, the risks associated with the continued  
10 prosecution of this complex and potentially time-consuming litigation, and the likelihood of  
11 success on the merits of the Litigation. Plaintiffs' Counsel have conducted discovery of Palm,  
12 have fully investigated the facts and law relevant to the merits of the claims, and have concluded  
13 that the proposed settlement is fair and reasonable to the Settlement Class. In consideration of all  
14 of these circumstances, Class Representatives have concluded that the proposed settlement set  
15 forth in this Agreement is fair, adequate, reasonable, and in the best interests of the Settlement  
16 Class.

17 K. The Parties desire to settle the Litigation in its entirety with respect to all potential  
18 claims that were or could have been brought relating to any alleged product defects of the  
19 Treo 600 and Treo 650 smartphones, the performance of the Treo 600 and Treo 650 smartphones,  
20 and/or any alleged misrepresentation or failure to disclose with respect to the Treo 600 and Treo  
21 650 smartphones. The Parties intend this Agreement to bind Palm, Palza, Boulais, Gay, Loew,  
22 Berliner, Daniel, and Sun (both as Class Representatives and as individuals), and all members of  
23 the Settlement Class who do not request exclusion from the Settlement Class.

24 **NOW, THEREFORE**, in light of the foregoing, for good and valuable consideration, the  
25 Parties, and each of them, hereby warrant, represent, acknowledge, covenant, and agree, subject  
26 to approval by the Court, as follows:  
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1 **I. CERTIFICATION OF THE SETTLEMENT CLASS**

2 **A. Definition of the Settlement Class**

3 The "Settlement Class" shall be defined as follows:

4 All United States residents who purchased in the United States a new Treo 600 or  
5 Treo 650 Smartphone for their own use and not for resale. The Settlement Class  
6 excludes Palm; any entity in which Palm has a controlling interest; Palm's  
7 directors, officers, and employees; Palm's legal representatives, successors, and  
8 assigns; any Judge to whom the Litigation is assigned and the members of his or  
9 her immediate family; and all persons who timely and validly request exclusion  
10 from the Settlement Class.

11 **B. Stipulation Respecting Conditional Certification**

12 The Parties stipulate and agree that, subject to Court approval, the Settlement Class  
13 described in Section I.A above should be conditionally certified solely for purposes of the  
14 settlement embodied in this Agreement. If, for any reason, this Agreement is not approved by the  
15 Court, the stipulation for certification and all of the agreements contained herein shall be  
16 considered null and void and may not be referred to or used as evidence or for any other purpose  
17 whatsoever in the Litigation or any other action or proceeding.

18 **C. Definition of "Class Member" and "Settlement Class Member"**

19 "Class Member" shall mean each member of the Settlement Class. "Settlement Class  
20 Member" shall mean and include every Class Member who does not validly and timely request  
21 exclusion from the Settlement Class.

22 **II. CONSIDERATION FOR SETTLEMENT; CLAIMS PROCESS**

23 In full and complete settlement of all claims in the Litigation, the Parties agree as follows:

24 **A. Cash Rebate on Purchase of New Palm Smartphone**

25 Each Settlement Class Member who meets the following requirements is entitled to a cash  
26 rebate on the purchase of a new Palm Smartphone, as follows:

27 **1. Cash Rebate for Treo 600 or Treo 650 Repairs**

28 **a) Treo 600**

A Settlement Class Member who is the original purchaser of a Treo 600, and meets the  
conditions set forth in Section II.A.1.c. below, will be entitled to claim a \$75 rebate on the single  
purchase of a new Palm smartphone, made from any commercial vendor in the United States at

1 any time after September 30, 2005, through the end of the Redemption Period. Settlement Class  
2 Members shall be limited to one claim for a cash rebate per eligible Treo 600 owned.

3 **b) Treo 650**

4 A Settlement Class Member who is the original purchaser of a Treo 650, and meets the  
5 conditions set forth in Section II.A.1.c below, will receive a \$50 rebate on the single purchase of a  
6 new Palm smartphone, made from any commercial vendor in the United States during the  
7 Redemption Period. Settlement Class Members shall be limited to one claim for a cash rebate per  
8 eligible Treo 650 owned.

9 **c) Conditions for Cash Rebate**

10 To obtain a cash rebate on the single purchase of a new Palm smartphone, as set forth in  
11 Sections II.A.1.a and II.A.1.b above, a Settlement Class Member must follow the claims  
12 requirements and procedures set forth in Section II.A.2 below and:

- 13 (1) have experienced two or more repairs or replacements (replacement in lieu of  
14 repair) of his or her Treo 600 or Treo 650 smartphone;  
15 (2) have documentation of at least one repair or replacement (in lieu of repair) of  
16 his or her Treo 600 or Treo 650 smartphone;  
17 (3) have purchased a new Palm smartphone within the time frame referenced in  
18 Sections II.A.1.a. or II.A.1.b., as applicable;  
19 (4) submit a valid Claim Form during the Claims Period; and  
20 (5) return the original Treo 600 or Treo 650, as applicable, to Palm (at Palm's  
21 expense).

22 **2. Claims Process**

23 Palm will create and maintain a dedicated Settlement Website that will remain operational  
24 throughout the Claims Period. To be eligible for the cash rebate, Settlement Class Members must  
25 submit a Claim Form together with required supporting documentation as described below. The  
26 Claim Form shall include, among other required information:

- 27 (a) The Settlement Class Member's name, e-mail address, and mailing address.  
28 (b) The device owned, i.e. a Treo 600 or Treo 650 smartphone.

1 (c) The serial number of the Treo 600 or Treo 650 smartphone, as applicable.

2 (d) The approximate date the Treo 600 or 650 smartphone was purchased and the  
3 name and address of the entity from which the Treo 600 or 650 smartphone was  
4 purchased.

5 (e) A certification that the Settlement Class Member is the original purchaser of  
6 the Treo 600 or Treo 650 smartphone.

7 (f) A declaration under penalty of perjury that the Settlement Class Member has  
8 not previously made a claim for the same Treo 600 or Treo 650 smartphone as identified  
9 by the serial number.

10 (g) Proof of at least two repairs or replacements in lieu of repair of the original  
11 Treo 600 or Treo 650 smartphone, as follows: (i) a declaration attesting, under penalty of  
12 perjury, as to two repairs or replacements in lieu of repair, including a description of the  
13 nature of the repair or reason for replacement, the name of the entity that performed the  
14 repair or replacement, and the approximate date of the repair or replacement thereof; and  
15 (ii) documentation of at least one repair or replacement in lieu of repair of the Treo 600 or  
16 Treo 650 smartphone, meaning an invoice, receipt, credit statement or other document  
17 showing the nature of the repair or the fact of replacement, the name of the entity that  
18 performed the repair or replacement, and the date of the repair or replacement. If the  
19 documentation of repair or replacement in lieu of repair does not show on its face the  
20 repair or replacement of a Treo 600 or Treo 650 smartphone, the Settlement Class  
21 Member will be required to circle the relevant entry on the provided documentation and  
22 declare under penalty of perjury that the payment was for the repair or replacement in lieu  
23 of repair of a Treo 600 or Treo 650 smartphone.

24 **3. Claims Period**

25 To be valid, claim forms must be submitted within the Claims Period. Claims must be  
26 postmarked as of the last date of the Claims Period and received by Palm no later than 21 days  
27 thereafter.

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**4. Rebate Process**

A process to enable Settlement Class Members to claim their rebates shall be implemented, and shall include the following elements:

**a) Proof of Purchase of a New Palm Smartphone**

The Settlement Class Member must submit proof that he or she purchased, from any commercial source in the United States, a new Palm smartphone during the applicable time frame, as set forth in Sections II.A.1.a. and II.A.1.b. above. This Proof of Purchase may take the form of a receipt or invoice showing purchase of a new Treo smartphone.

**b) Return of Original Treo 600 or Treo 650 Smartphone**

The Settlement Class Member must return the Treo 600 or Treo 650 for which he or she experienced two or more repairs or replacements and for which the claim is made.

**c) Pre-Paid Mailing Label**

The Settlement Class Member will be provided with a pre-paid mailing label or other method to send in the proof of new purchase and the Treo 600 or Treo 650 smartphone free of charge.

**d) Payment of Rebates**

Upon receipt of a timely and complete claim for a rebate, Palm will verify that all the conditions have been met and will mail a check to the Settlement Class Member for the designated rebate amount within the latter of 45 days of the receipt of a completed and valid claim or the Effective Date. Palm reserves the right to seek further documentation from the Settlement Class Member or to reject claims or rebate requests that do not contain sufficient documentation or are otherwise invalid. Claimants whose claims have been rejected shall be informed of the reason their claim was rejected and if such reason is curable shall be afforded one opportunity to cure any such deficiency within 45 days of mailing of the notice of the rejected claim. During the Claims Period, Palm shall submit to Plaintiffs' Designated Co-Lead Counsel a report each month of all rejected claims, identifying the claimant and the reason the claim was rejected.

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**5. Modification of Claims Process**

The parties may modify the claims process as necessary by mutual agreement without Court approval.

**6. Settlement Administration**

Palm shall, in good faith, administer the process of receiving, handling, processing, and paying claims, either directly or, at its sole option, through a third-party settlement administrator (“Administrator”). Plaintiffs’ Co-Lead Counsel shall have the right to inquire of Palm’s counsel respecting any aspect of implementation of the settlement, including but not limited to the settlement administration process and the treatment of individual Settlement Class Member’s claims under Section II of this Agreement. In no event shall material decisions be made by Administrator or Palm’s counsel with regard to the structure of the settlement administration process without prior consultation with Plaintiffs’ Designated Co-Lead Counsel. Palm shall have the right to reject any claims deemed to be fraudulent, insufficient or incomplete.

**7. Disputed Claims**

In the event that a claim is rejected based upon the timing of the request or the insufficiency of the information provided, Palm or the Administrator, as applicable, will notify the claimant and Plaintiffs’ Designated Co-Lead Counsel of the rejection. Plaintiffs’ Designated Co-Lead Counsel and counsel for Palm shall meet and confer regarding any disputed claims and will attempt in good faith to resolve such disputes. In the event the Parties cannot resolve the dispute, the Parties shall request the assistance of the Court.

**B. Right of Repair**

1. Each Settlement Class Member who was the original purchaser of a Treo 600 or Treo 650 smartphone from any source has a right of repair for hardware defects. This right of repair excludes (a) physical damage to the surface of the product, including cracks or scratches on the LCD touchscreen or outside casing; (b) damage caused by misuse, neglect, improper installation or testing, unauthorized attempts to open, repair, or modify the product, or any other cause beyond the range of the intended use; (c) damage caused by accident, fire, power changes,

1 other hazards, or acts of God; or (d) use of the product with any non- Palm device or service if  
2 such device or service causes the problem. The right of repair shall not extend to any third party  
3 products, including software, included with Palm products.

4 2. If the warranty on the device has expired by the Effective Date, the right of repair  
5 is valid for 120 days from the Effective Date. If the warranty on the device is still in effect on the  
6 Effective Date, the right of repair will extend for 120 days beyond the expiration of the warranty.

7 3. Settlement Class Members who desire a repair shall submit a Repair Form  
8 substantially in the form of Exhibit B hereto. The Repair Form shall include, among other  
9 required information:

10 (a) The Settlement Class Member's name, e-mail address, and mailing address.

11 (b) The device owned, i.e. a Treo 600 or Treo 650 smartphone.

12 (c) The serial number of the Treo 600 or Treo 650 smartphone, as applicable.

13 (d) The approximate date the Treo 600 or 650 smartphone was purchased and the  
14 name and address of the entity from whom the Treo 600 or 650 smartphone was  
15 purchased.

16 (e) A certification that the Settlement Class Member is the original purchaser of  
17 the Treo 600 or Treo 650 smartphone.

18 (f) The nature of the repair requested.

19 4. Settlement Class Members who submit a valid Repair Form shall receive  
20 instructions for sending the Treo 600 or 650 smartphone to Palm for repair. Palm will pay for any  
21 shipping costs associated with repairs sought under this provision.

22 5. If a Settlement Class Member sends in a Treo 600 for repair and Palm determines  
23 that the Treo 600 is not reasonably repairable, Palm will make available to the Settlement Class  
24 Member a \$50 rebate on the purchase of a new Palm phone from any commercial vendor in the  
25 United States (subject to the Settlement Class Member's submission of a valid Claim Form and  
26 proof of the new purchase within 90 days of being notified of eligibility).

1 **III. ATTORNEYS' FEES AND COSTS**

2 A. Plaintiffs' Counsel agrees to make, and Palm agrees not to oppose, an application to  
3 the Court for attorneys' fees and costs in an amount not to exceed \$1,554,000. The Parties agreed  
4 to the payment of such fees and costs after reaching agreement upon all other material terms of  
5 this settlement.

6 B. Plaintiffs' Counsel also agrees to make, and Palm agrees not to oppose, an application  
7 to the Court for total incentive awards to the named plaintiffs in an aggregate amount not to  
8 exceed \$21,000.

9 C. Plaintiffs' Counsel agrees that \$1,575,000 shall be the maximum amount Palm shall  
10 be liable for attorneys' fees, costs and incentive awards under any circumstances and regardless  
11 of whether any additional counsel file separate fee petitions, or whether Plaintiffs' Counsel  
12 disagree among themselves as to the amount of fees and costs, or the allocation of fees and costs  
13 among Plaintiffs' Counsel. Plaintiffs' Counsel agrees not to seek from Palm any additional fees,  
14 costs, expenses, or incentive awards for any named plaintiff or any Settlement Class Member, and  
15 Palm shall not be liable for any additional fees, costs, expenses, or incentive awards.

16 D. No later than twenty (20) business days following the Effective Date, Palm will pay  
17 the fees and costs ordered by the Court in an amount up to \$1,554,000 and the incentive awards  
18 ordered by the Court in an amount up to \$21,000.

19 **IV. NOTICE**

20 The Parties agree to, and will request approval by the Court of, the following forms and  
21 methods of notice to the Settlement Class:

22 **A. Settlement Website**

23 1. A copy of the Notice of Pendency and Proposed Settlement of Class Action  
24 substantially in the form attached hereto as Exhibit C (the "Full Notice"), together with the Claim  
25 Form (including the Instructions, Claim Form and Release) substantially in the form attached  
26 hereto as Exhibit A, shall be posted on the Settlement Website. The Full Notice and Claim Form  
27 shall be downloadable from the Settlement Website. Settlement Class Members who are unable  
28 to download the Full Notice and/or Claim Form may request that the Full Notice and Claim Form

1 be mailed to them at no charge by sending an e-mail to an e-mail address to be provided on the  
2 Settlement Website ("Settlement E-Mail Address"). The Settlement Website shall be mobile-  
3 browser viewable. In addition to the Full Notice and Claim Form, copies of the Settlement  
4 Agreement, Summary Notice, and Court Orders shall also be posted on the Settlement Website.

5 2. A link to the Settlement Website shall be maintained on the Palm home page for a  
6 two week period commencing with the first publication of notice of the settlement, and thereafter  
7 the link will be on Palm's website on the respective support pages for the Treo 600 and Treo 650  
8 devices. Both links will be labeled "Treo 600/Treo 650 Litigation."

9 **B. Publication**

10 A copy of the Summary Notice of Settlement substantially in the form attached hereto as  
11 Exhibit D ("Summary Notice") shall be published by Palm once in *USA Today*, a newspaper of  
12 national circulation, and once in *PC Magazine*. The Summary Notice shall not be less than 1/4 of  
13 a page in size. The Summary Notice shall include the address of the Settlement Website and the  
14 Settlement E-Mail Address.

15 **C. E-Mail and U.S. Mail**

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

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

20 **D. Other**

21 1. Palm shall be solely responsible for making all arrangements necessary to  
22 effectuate the notice set forth above and for payment of the costs of such notice.

23 2. The Full Notice shall provide a procedure whereby Class Members may exclude  
24 themselves from the Settlement Class. Any Class Member who does not timely and validly  
25 request exclusion shall be a Settlement Class Member and shall be bound by the terms of this  
26 Agreement. The Full Notice shall also provide a procedure for Class Members to object to the  
27 proposed settlement and/or to the attorneys' fees and awards to Class Counsel; to intervene in the  
28 Action; and/or to be represented by counsel of their choice at their own expense. Requests for

1 exclusion shall be postmarked, and objections shall be served, filed, and received by counsel for  
2 the Parties as identified in the Full Notice, no later than 25 days prior to the Final Hearing.

3 **V. COURT APPROVAL, RELEASES AND CONSUMMATION OF THE**  
4 **SETTLEMENT AGREEMENT**

5 **A. Court Approval and Final Judgment**

6 1. Upon full execution of this Agreement, the Parties shall take all necessary steps to  
7 obtain an order of the Court substantially in the form attached hereto as Exhibit E (the  
8 “Conditional Order”), granting conditional certification of the Settlement Class, granting  
9 preliminary approval of this Agreement, and approving the forms and methods of notice to the  
10 Settlement Class set forth herein. The Conditional Order shall further set a date for a hearing  
11 (“Final Hearing”) at which the Court will determine whether the requirements for certification of  
12 the Settlement Class have been met; whether the proposed settlement should be finally approved  
13 as fair, reasonable, adequate, and in the best interests of the Settlement Class Members; whether  
14 the award of fees and expenses to Class Counsel should be approved; and whether a final  
15 judgment should be entered dismissing the Litigation on the merits and with prejudice against the  
16 Class Representatives and the Settlement Class Members.

17 2. Upon the Court’s approval of this Agreement and the settlement set forth herein, a  
18 judgment substantially in the form attached hereto to as Exhibit F (“Final Judgment”) shall be  
19 entered dismissing with prejudice the Litigation, and the claims of the Class Representatives and  
20 Settlement Class Members who do not file valid and timely requests for exclusion pursuant to the  
21 Full Notice above.

22 3. Should this Agreement not receive final Court approval for any reason, or if this  
23 Agreement is canceled or terminated or is overturned on appeal, or does not become Final as a  
24 result of further proceedings on remand, this Agreement shall be null and void and of no force  
25 and effect, and nothing herein shall be deemed to prejudice the position of any of the Parties with  
26 respect to the Litigation or otherwise, and neither the existence of this Agreement nor its contents  
27 shall be admissible in evidence, referred to for any purpose in the Actions or in any other  
28

1 litigation or proceeding, or be deemed a presumption, concession or admission by Palm of any  
2 fault, liability or wrongdoing.

3 **B. Release of Claims**

4 1. Upon the Effective Date, the Class Representatives, for themselves and as  
5 representatives of the Settlement Class, and on behalf of each Settlement Class Member and their  
6 respective agents, successors, heirs, or assigns, shall be deemed to have, and by operation of the  
7 Final Judgment and Order of Dismissal, shall have fully, finally, and forever irrevocably released,  
8 relinquished and discharged with prejudice all Released Claims against the Released Parties. By  
9 operation of the Final Judgment and Order of Dismissal, all Settlement Class Members shall be  
10 deemed to have waived any and all provisions, rights, and benefits conferred by section 1542 of  
11 the California Civil Code or any comparable statutory or common law provision of any other  
12 jurisdiction with respect to the Released Claims. Section 1542 reads as follows:

13 *Certain Claims Not Affected By General Release: A general*  
14 *release does not extend to claims which the creditor does not know*  
15 *or suspect to exist in his favor at the time of executing the release,*  
*which if known by him must have materially affected his settlement*  
*with the debtor.*

16 Although the releases granted under the proposed settlement are not general releases, all  
17 Settlement Class Members nonetheless expressly acknowledge that they are waiving the  
18 protections of section 1542 and of any comparable statutory or common law provision of any  
19 other jurisdiction.

20 2. Upon the Effective Date, each of the Released Parties shall be deemed to have, and  
21 by operation of the Final Judgment and Order of Dismissal shall have, fully, finally and forever  
22 released, relinquished and discharged each and all of the Plaintiffs and Settlement Class Members  
23 and their attorneys from all claims arising out of the institution, prosecution, assertion, or  
24 resolution of the Actions.

25 **VI. ADDITIONAL TERMS**

26 **A. Stay of the Litigation**

27 The Parties agree that, except as necessary to consummate the settlement for which this  
28 Agreement provides, the Litigation will be stayed, unless otherwise ordered by the Court.

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**B. Protective Order**

The Parties agree that all confidential information will be treated in accordance with the Protective Order entered in the Litigation.

**C. Continuing Jurisdiction of the Court**

Notwithstanding the entry of Final Judgment, the Court shall retain jurisdiction of the Litigation until such time as the Court determines that the settlement is fully consummated according to the terms and conditions of this Agreement. The Parties will notify the Court once the Agreement has been fully performed.

**D. Press Releases**

Neither the Parties nor their counsel shall originate media attention or other publicity of any kind with respect to this settlement. However, in response to media inquiries, a copy of the Notice and the Complaint may be provided and counsel may provide comments explaining the terms and benefits of the settlement. The Parties may submit required regulatory filings regarding the settlement, and reasonably respond to inquiries by regulatory agencies on the subjects addressed in the statement. Furthermore, nothing in this paragraph restricts counsel from responding to inquiries from their clients, including Settlement Class Members, or from posting brief factual information concerning the Litigation and this settlement on Co-Lead Counsel's respective websites (including the Complaint, Full Notice, Summary Notice and the Court's Orders granting Preliminary and Final Approval of this settlement) in a form to be reviewed and approved by Palm in advance and which approval shall not be unreasonably withheld, to assist in responding to inquiries from Settlement Class Members. Nothing in this paragraph shall prevent the publication and dissemination of the Summary Notice, Full Notice or Claim Form to Settlement Class Members. Nothing in this paragraph restricts Palm from responding to Settlement Class Members' questions regarding the settlement relief described in section II above; or from discussing the Litigation or the terms of the settlement in the context of necessary business communications with, for example, prospective lenders, business partners, or stock analysts. The Parties and their counsel shall avoid disparaging each other concerning this

1 Litigation, but this provision does not prevent good faith advocacy, to the extent required, in the  
2 settlement briefing

3 **E. Extensions Of Time**

4 Unless otherwise ordered by the Court herein, the Parties may jointly agree to reasonable  
5 extensions of time to carry out any of the provisions of this Agreement.

6 **F. Integration**

7 This Agreement constitutes a single, integrated written contract expressing the entire  
8 agreement of the Parties relative to the subject matter hereof. No covenants, agreements,  
9 representations, or warranties of any kind whatsoever have been made by any party hereto, except  
10 as provided for herein.

11 **G. Governing Law**

12 The Agreement shall be construed in accordance with, and be governed by, the laws of the  
13 State of California, without regard to the principles thereof regarding choice of law.

14 **H. Survival of Warranties and Representations**

15 The warranties and representations of this Agreement are deemed to survive the date of  
16 execution hereof.

17 **I. Representative Capacity**

18 Each person executing this Agreement in a representative capacity represents and warrants  
19 that he or she is empowered to do so.

20 **J. Counterparts**

21 This Agreement may be executed in any number of counterparts, each of which shall be  
22 deemed an original, but all of which together shall constitute one and the same instrument, even  
23 though all Parties do not sign the same counterparts.

24 **K. Cooperation of Parties**

25 The Parties to this Agreement agree to prepare and execute all documents, to seek Court  
26 approvals, defend Court approvals, and to do all things reasonably necessary to complete the  
27 settlement described in this Agreement.

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**L. Execution Voluntary**

This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand the provisions of this Agreement and have relied on the advice and representation of legal counsel of their own choosing. Each of the Parties has cooperated in the drafting and preparation of this Agreement and has been advised by counsel regarding the terms, effects, and consequences of this Agreement. Accordingly, in any construction to be made of this Agreement, this Agreement shall not be construed as having been drafted solely by any one or more of the Parties.

**M. Modification and Amendment**

This Agreement may be amended or modified only by a written instrument signed by Counsel for Palm and Co-Lead counsel and approved by the Court.

Dated: JAN 7, 08

PALM, INC.



Andrew J. Brown  
Sr. Vice President and Chief Financial Officer

Dated: \_\_\_\_\_

MARIO PALZA

\_\_\_\_\_  
Mario Palza

Dated: \_\_\_\_\_

CHARLES BOULAIS

\_\_\_\_\_  
Charles Boulais

Dated: \_\_\_\_\_

NISSA GAY

\_\_\_\_\_  
Nissa Gay

Dated: \_\_\_\_\_

PAUL BERLINER

\_\_\_\_\_  
Paul Berliner

1 **L. Execution Voluntary**

2 This Agreement is executed voluntarily by each of the Parties without any duress or undue  
3 influence on the part, or on behalf, of any of them. The Parties represent and warrant to each  
4 other that they have read and fully understand the provisions of this Agreement and have relied  
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9 drafted solely by any one or more of the Parties.

10 **M. Modification and Amendment**

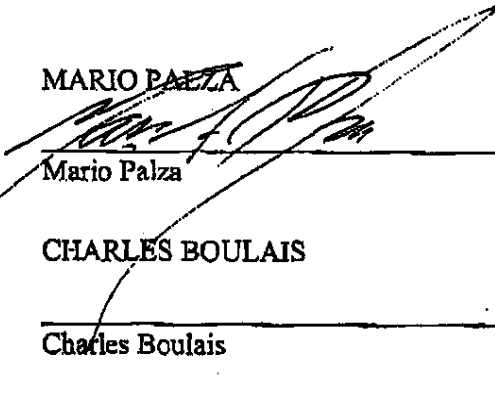
11 This Agreement may be amended or modified only by a written instrument signed by  
12 Counsel for Palm and Co-Lead counsel and approved by the Court.

13 Dated: \_\_\_\_\_ PALM, INC.

\_\_\_\_\_  
Andrew J. Brown  
Sr. Vice President and Chief Financial Officer

17 Dated: 1-7-08, \_\_\_\_\_

MARIO PALZA

  
\_\_\_\_\_  
Mario Palza

20 Dated: \_\_\_\_\_

CHARLES BOULAIS

\_\_\_\_\_  
Charles Boulais

23 Dated: \_\_\_\_\_

NISSA GAY

\_\_\_\_\_  
Nissa Gay

26 Dated: \_\_\_\_\_

PAUL BERLINER

\_\_\_\_\_  
Paul Berliner

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Dated: \_\_\_\_\_, \_\_\_\_\_ PALM, INC.  
  
\_\_\_\_\_  
Andrew J. Brown  
Sr. Vice President and Chief Financial Officer

Dated: \_\_\_\_\_, \_\_\_\_\_ MARIO PALZA  
  
\_\_\_\_\_  
Mario Palza

Dated: Jan. 14, 2008 CHARLES BOULAIS  
  
\_\_\_\_\_  
Charles Boulais

Dated: \_\_\_\_\_, \_\_\_\_\_ NISSA GAY  
  
\_\_\_\_\_  
Nissa Gay

Dated: \_\_\_\_\_, \_\_\_\_\_ PAUL BERLINER  
  
\_\_\_\_\_  
Paul Berliner

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**M. Modification and Amendment**

This Agreement may be amended or modified only by a written instrument signed by Counsel for Palm and Co-Lead counsel and approved by the Court.

Dated: \_\_\_\_\_, \_\_\_\_\_ PALM, INC.  
\_\_\_\_\_  
Andrew J. Brown  
Sr. Vice President and Chief Financial Officer

Dated: \_\_\_\_\_, \_\_\_\_\_ MARIO PALZA  
\_\_\_\_\_  
Mario Palza

Dated: \_\_\_\_\_, \_\_\_\_\_ CHARLES BOULAIS  
\_\_\_\_\_  
Charles Boulais

Dated: Jan. 8, 2008 NISSA GAY  
  
\_\_\_\_\_  
Nissa Gay

Dated: \_\_\_\_\_, \_\_\_\_\_ PAUL BERLINER  
\_\_\_\_\_  
Paul Berliner

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**M. Modification and Amendment**

This Agreement may be amended or modified only by a written instrument signed by Counsel for Palm and Co-Lead counsel and approved by the Court.

Dated: \_\_\_\_\_, \_\_\_\_\_

PALM, INC.

\_\_\_\_\_  
Andrew J. Brown  
Sr. Vice President and Chief Financial Officer

Dated: \_\_\_\_\_, \_\_\_\_\_

MARIO PALZA

\_\_\_\_\_  
Mario Palza

Dated: \_\_\_\_\_, \_\_\_\_\_

CHARLES BOULAIS

\_\_\_\_\_  
Charles Boulais

Dated: \_\_\_\_\_, \_\_\_\_\_

NISSA GAY

\_\_\_\_\_  
Nissa Gay

Dated: Dec. 27, 2007

PAUL BERLINER

  
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Paul Berliner

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Dated: Jan 11, 2008

TREVOR LOEW

  
Trevor Loew

Dated: \_\_\_\_\_

STEPHANIE DANIEL

\_\_\_\_\_  
Stephanie Daniel

Dated: \_\_\_\_\_

NORM SUN

\_\_\_\_\_  
Norm Sun

APPROVED AS TO FORM:

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Ira P. Rothken

IRA P. ROTHKEN (CA SBN 160029)  
ROTHKEN LAW FIRM  
3 Hamilton Landing, Suite 280  
Novato, CA 94949  
Telephone: (415) 924-4250  
Facsimile: (415) 924-2905

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Jonathan Shub

JONATHAN SHUB (CA SBN 237708)  
SEEGER WEISS LLP  
1515 Market Street, Suite 1380  
Philadelphia, PA 19102  
Telephone: (215) 553-7980  
Facsimile: (215) 851-8029

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Dated: \_\_\_\_\_

TREVOR LOEW

\_\_\_\_\_  
Trevor Loew

Dated: 10. January, 2008

STEPHANIE DANIEL

\_\_\_\_\_  
*Stephanie Daniel*  
Stephanie Daniel

Dated: \_\_\_\_\_

NORM SUN

\_\_\_\_\_  
Norm Sun

APPROVED AS TO FORM:

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Ira P. Rothken

IRA P. ROTHKEN (CA SBN 160029)  
ROTHKEN LAW FIRM  
3 Hamilton Landing, Suite 280  
Novato, CA 94949  
Telephone: (415) 924-4250  
Facsimile: (415) 924-2905

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Jonathan Shub

JONATHAN SHUB (CA SBN 237708)  
SEEGER WEISS LLP  
1515 Market Street, Suite 1380  
Philadelphia, PA 19102  
Telephone: (215) 553-7980  
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Dated: \_\_\_\_\_, \_\_\_\_\_

TREVOR LOEW

\_\_\_\_\_  
Trevor Loew


Dated: \_\_\_\_\_, \_\_\_\_\_

STEPHANIE DANIEL

\_\_\_\_\_  
Stephanie Daniel

Dated: \_\_\_\_\_, \_\_\_\_\_

NORM SUN

  
\_\_\_\_\_  
Norm Sun

APPROVED AS TO FORM:

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By: \_\_\_\_\_  
Ira P. Rothken

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By: \_\_\_\_\_  
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Dated: \_\_\_\_\_, \_\_\_\_\_

TREVOR LOEW

\_\_\_\_\_  
Trevor Loew

Dated: \_\_\_\_\_, \_\_\_\_\_

STEPHANIE DANIEL

\_\_\_\_\_  
Stephanie Daniel

Dated: \_\_\_\_\_, \_\_\_\_\_

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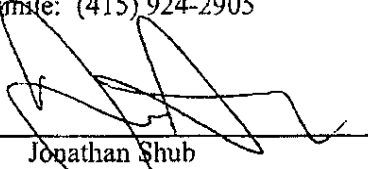
APPROVED AS TO FORM:

DATED: 1/04/2008

By:   
Ira P. Rothken

IRA P. ROTHKEN (CA SBN 160029)  
ROTHKEN LAW FIRM  
3 Hamilton Landing, Suite 280  
Novato, CA 94949  
Telephone: (415) 924-4250  
Facsimile: (415) 924-2905

DATED: 1/04, 08

By:   
Jonathan Shub

JONATHAN SHUB (CA SBN 237708)  
SEGER WEISS LLP  
1515 Market Street, Suite 1380  
Philadelphia, PA 19102  
Telephone: (215) 553-7980  
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DATED: December, 27, 2007 By: Ralph M Stone  
Ralph M. Stone

RALPH M. STONE (pro hac vice)  
THOMAS G. CIARLONE, JR. (pro hac vice)  
SHALOV STONE & BONNER LLP  
485 Seventh Avenue, Suite 1000  
New York, NY 10018  
Telephone: (212) 239-4340  
Facsimile: (212) 239-4310

DATED: \_\_\_\_\_, \_\_\_\_\_ By: \_\_\_\_\_  
Stan S. Mallison

STAN S. MALLISON (CA SBN 184191)  
HECTOR R. MARTINEZ (CA SBN 206336)  
LAW OFFICES OF MALLISON & MARTINEZ  
1042 Brown Avenue, Suite A  
Lafayette, Ca 94549  
Telephone: (925) 283-3842  
Facsimile: (925) 283-3426

*Co-Lead Counsel for Plaintiffs*

DATED: \_\_\_\_\_, \_\_\_\_\_ MORRISON & FOERSTER LLP  
By: \_\_\_\_\_  
Penelope A. Prevolos

Penelope A. Prevolos  
Lori A. Schechter  
Roger E. Collanton  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

*Attorneys for Defendant*

1 DATED: \_\_\_\_\_,

By: \_\_\_\_\_  
Ralph M. Stone

RALPH M. STONE (pro hac vice)  
THOMAS G. CIARLONE, JR. (pro hac vice)  
SHALOV STONE & BONNER LLP  
485 Seventh Avenue, Suite 1000  
New York, NY 10018  
Telephone: (212) 239-4340  
Facsimile: (212) 239-4310

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7 DATED: 1/11/08

By: \_\_\_\_\_  
Stan S. Mallison

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1042 Brown Avenue, Suite A  
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Telephone: (925) 283-3842  
Facsimile: (925) 283-3426

*Co-Lead Counsel for Plaintiffs*

15 DATED: \_\_\_\_\_,

MORRISON & FOERSTER LLP

By: \_\_\_\_\_  
Penelope A. Prevolos

Penelope A. Prevolos  
Lori A. Schechter  
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MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

*Attorneys for Defendant*

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DATED: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
Ralph M. Stone

RALPH M. STONE (pro hac vice)  
THOMAS G. CIARLONE, JR. (pro hac vice)  
SHALOV STONE & BONNER LLP  
485 Seventh Avenue, Suite 1000  
New York, NY 10018  
Telephone: (212) 239-4340  
Facsimile: (212) 239-4310

DATED: \_\_\_\_\_, \_\_\_\_\_

By: \_\_\_\_\_  
Stan S. Mallison

STAN S. MALLISON (CA SBN 184191)  
HECTOR R. MARTINEZ (CA SBN 206336)  
LAW OFFICES OF MALLISON & MARTINEZ  
1042 Brown Avenue, Suite A  
Lafayette, Ca 94549  
Telephone: (925) 283-3842  
Facsimile: (925) 283-3426

*Co-Lead Counsel for Plaintiffs*

DATED: Jan. 3, 2008

MORRISON & FOERSTER LLP

By: *Penelope A. Prevolos*  
Penelope A. Prevolos

Penelope A. Prevolos  
Lori A. Schechter  
Roger E. Collanton  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, CA 94105  
Telephone: (415) 268-7000  
Facsimile: (415) 268-7522

*Attorneys for Defendant*