

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement") is made and entered into between defendants palmOne, Inc. (formerly known as Palm, Inc.), for itself and its unincorporated department Solutions Group, and PalmSource, Inc. ("Palm"), on the one hand, and plaintiff Chet Taylor ("Class Representative"), individually and as a representative of the Plaintiff Settlement Class (as fully defined in Section II.7 below).

### I. RECITALS

These recitals are material terms of this Agreement. This Agreement is made for the following purpose and with reference to the following facts:

1. On July 16, 2003, Chet Taylor, as Class Representative, through his attorneys Gancedo & Nieves LLP and certain other Class Counsel, commenced an action against Palm in the Superior Court of California, County of Los Angeles, styled Taylor v. Palm, Inc., et al., Case No. BC 299134 (the "Action").

2. Class Representative brought the Action as a statewide class action, seeking relief on behalf of himself and a putative class of individuals and asserting claims for violation of Business and Professions Code section 17200, *et seq.*, violation of the Consumers Legal Remedies Act (California Civil Code section 1750, *et seq.*), Breach of Express Warranty, Breach of Implied Warranty, Fraud, and Negligent Misrepresentation.

3. Class Representative alleged in the Action that Palm's handheld personal digital assistant models m100, m105, and m125 were defective in that a user who followed Palm's instructions during the battery change process could lose data in the handheld unit, and that Palm allegedly committed unlawful business practices in the way it communicated and/or omitted to communicate and disclose certain facts and circumstances to its customers in connection therewith. Class Representative made the same allegations with respect to the Palm model m130, but withdrew those allegations upon learning that the model m130 does not contain customer accessible batteries.

4. Palm denies the allegations and contentions asserted in the Action and does not, by this Agreement, admit any liability whatsoever. Palm further denies that any member of the Plaintiff Settlement Class (as defined below) has suffered any harm or damage or is entitled to any monetary or equitable relief in connection therewith.

5. Nevertheless, without admitting or conceding any liability or wrongdoing, the parties desire to settle the Action on the terms and conditions set forth in this Agreement in order to avoid the burden, expense, and uncertainty of continuing litigation, and to put to rest all claims that were, or could have been, asserted in this or any other litigation based upon or arising from the facts alleged in the Action.

6. Plaintiffs' Counsel (as defined below) have conducted a thorough examination and investigation of the facts and law relating to the matters in the Action, including, but not limited to engaging in discovery, both formal and informal, examining Palm documents, requesting and receiving written discovery responses from Palm, and deposing Palm employees and former employees.

7. Class Representative and Class Counsel have analyzed and independently evaluated the merits of all parties' contentions and the effects of this Agreement upon the members of the Plaintiff Settlement Class. Based upon that analysis and evaluation, and recognizing the substantial risks of continued litigation and the likelihood that the Action, if not settled now, will be protracted and expensive, the Class Representative and Class Counsel are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action now and on the terms described herein is in the best interest of the Plaintiff Settlement Class.

8. The parties intend for this Agreement to bind Palm, Class Representative, and all members of the Plaintiff Settlement Class who do not request exclusion from the Settlement Class.

9. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties. Neither this Agreement nor any document referred to herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as, any admission or concession by or against any party on any point of fact or law, or of any alleged fault, wrongdoing, or liability whatsoever.

10. The parties have participated in substantial settlement negotiations, including private mediation, and as a result, have reached this Agreement, subject to the Court's approval.

11. This Agreement is expressly conditioned on satisfaction of every condition set forth in sections III, IV, and V below, and the survival of each of the Court orders described in section IV from any writs or appeals taken therefrom. The conditions set forth in sections III, IV, and V below are material, and failure to satisfy any or each of them shall be a material failure

of this Agreement. In the event of failure of any of these conditions, or should the Court fail to grant final approval on the terms stated herein, this Agreement (including, but not limited to, any agreement to certify a class for purposes of settlement) at the sole discretion of any party may be null and void, and may not be referred to or used as evidence or for any other purpose in this or any other proceeding unless the parties agree to modifications thereto in order to secure Court approval and such approval is granted.

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this Agreement, Chet Taylor as Class Representative, the Plaintiff Settlement Class, and Palm, themselves and through their undersigned counsel, agree to the settlement of the Action, subject to Court approval, under the following terms and conditions.

## II. DEFINITIONS

1. **Palm**. "Palm" means palmOne, Inc. (formerly known as Palm, Inc.), its formerly unincorporated department Solutions Group, PalmSource, Inc., and each of their parents, affiliates, subsidiaries, successors-in-interest, and/or predecessors-in-interest, directors, officers, employees, attorneys, partners, brokers, agents, representatives, insurers, and assigns.
2. **Class Representative**. "Class Representative" refers to Chet Taylor.
3. **Parties**. "Parties" means the Class Representative and Palm.
4. **Palm PDA**. "Palm PDA" means a Palm Handheld personal digital assistant unit model m100, m105, or m125.
5. **Court**. "Court" means the Superior Court of the State of California, County of Los Angeles.

6. **Person.** "Person" means any individual or legal entity residing or with its principal place of business in the United States (including the District of Columbia and territories and possessions) during the Settlement Class Period.

7. **Plaintiff Settlement Class.** "Plaintiff Settlement Class" shall be defined as all Persons who, for their own use and not for resale, owned a Palm PDA from June 1, 1999 to the present.

8. **Plaintiffs.** "Plaintiffs" means Chet Taylor and members of the Plaintiff Settlement Class.

9. **Plaintiffs' Counsel/Class Counsel.** "Plaintiffs' Counsel" or "Class Counsel" means the law firm of Gancedo & Nieves LLP, 144 W. Colorado Boulevard, Pasadena, California 91105.

10. **Preliminary Approval.** "Preliminary Approval" of this Agreement means that the Court has entered an order preliminarily approving the terms and conditions of this Agreement, including the manner of providing notice to the Plaintiff Settlement Class.

11. **Claims Period.** "Claims Period" means the six (6) month period after the Final Approval of this settlement.

12. **Claim Form.** "Claim Form" means a form in substantially the same form as that attached hereto as Exhibit A.

13. **Class Notice.** "Class Notice" means the Court-approved forms of notice to members of the Plaintiff Settlement Class, which will include notices in substantially the same form as Exhibits B and C, which will notify members of the Plaintiff Settlement Class of the conditional certification of the settlement class.

14. **Final Judgment and Order of Dismissal.** "Final Judgment and Order of Dismissal" shall refer to an order and judgment issued by the Court approving this settlement and this Agreement as binding upon the Parties, and dismissing the Complaint in this Action with prejudice, which Final Judgment and Order of Dismissal shall constitute a judgment respecting the Parties, within the meaning and for purposes of Code of Civil Procedure §§ 577, 581d, 904.1(a), and Rule 2 of the California Rules of Court.

15. **Effective Date or Final Approval.** The "Effective Date" or "Final Approval" of this Agreement shall be the first day after which all of the following events and conditions of this Agreement have been met or have occurred:

- (a) All of the Parties and their counsel have executed this Agreement;
- (b) The Court has conditionally certified the Plaintiff Settlement Class and provided Preliminary Approval;
- (c) The Court has signed the Final Judgment and Order of Dismissal;
- (d) The time for appeal or writ has expired or, if an appeal and/or petition for review is taken and the settlement is affirmed, the time period during which further petition for hearing, appeal or writ of certiorari can be taken has expired. If the Judgment is set aside, materially modified, or overturned by the trial court or an appeal, and is not fully reinstated on further appeal, the Judgment shall not become "final."

### III. **SETTLEMENT TERMS**

#### A. **Relief to the Class**

1. **Exchange of Product.** In full and final settlement of the Action, and contingent upon the satisfaction of all terms and conditions set forth herein, the settlement relief

shall consist of the following, which relief will be available to all members of the Plaintiff Settlement Class who submit valid proofs of claim, substantially in the form of Exhibit A, an affidavit establishing membership in the Plaintiff Settlement Class, and an allegedly defective Palm PDA, along with any other qualifying documentation and/or information required by the terms of this Agreement during the Claims Period:

For any member of the Plaintiff Settlement Class who submits to Palm a Palm PDA that allegedly lost data during the process of replacing batteries, despite the member's compliance with Palm's recommended procedure for replacing batteries, Palm will provide and ship to such member, at Palm's expense, a new or refurbished Palm PDA of the same or higher model, irrespective of any warranties that may apply or may have applied to such Palm PDA. Each claim shall be subject to validation by Palm.

2. **Processing of Claims**. Palm will administer and be responsible for the claims process, and Palm may employ the services of third-party subcontractors in connection therewith. Palm will determine the validity of claims and examine the proof submitted on claims using its records and other available information. The deadline for submitting any and all claims is six (6) months after Final Approval. No member of the Plaintiff Settlement Class may submit more than one (1) claim with respect to each Palm PDA owned by the member, and each claim must correspond to a separate Palm PDA. Palm reserves the right to inspect each Palm PDA submitted under this Agreement. If records of Palm, or other records or evidence or other information show that the cause of data loss during the battery exchange process is due to abuse, mishandling, or misuse of the Palm PDA by the member, the claim shall be denied.

Palm will identify to Plaintiffs' Counsel all claims that are denied. If Plaintiffs' Counsel concurs with Palm regarding the denial of a claim, no further action will be taken on the

claim. In the event that Plaintiffs' Counsel disputes the denial of a claim by Palm, the dispute will be brought to the Court for resolution.

B. Notice

1. **Cost of Notice and Administration.** Palm shall bear the cost of providing Class Notice to the Plaintiff Settlement Class of the pendency and settlement of the Action, in the manner described more fully below. In addition, Palm shall bear the cost of administering this Agreement and making the exchanges and distributions required under this Agreement, provided, however, that Palm shall not be required to reimburse Plaintiff's Counsel or their employees or clients (including Class Representative and members of the Plaintiff Settlement Class) for any taxes, penalties, costs or fees they may incur in connection with complying with state or federal tax laws and/or otherwise implementing this Agreement, other than any attorneys' fees, costs, and expenses that may be awarded by the Court pursuant to section III.C.1 below.

2. **Direct Notice to Identified Members of the Plaintiff Settlement Class.** Subject to the Court's approval, the Parties agree that notice to identified members of the Plaintiff Settlement Class shall be given by Palm, or its agent at its sole election, at the earliest practical date after the Court grants Preliminary Approval of this Agreement. Palm shall provide Class Notice (in the form of the Long Form Notice attached as Exhibit B) by e-mail to all members of the Plaintiff Settlement Class whose name and e-mail address are contained in Palm's database of customers who submitted purchasers' registration cards or who have contacted Palm for any reason. Palm will also provide Class Notice (in the form of the Long Form Notice)

by U.S. mail to owners of Palm PDAs who have contacted Palm, but for whom Palm has no e-mail address on record.

3. **Published Notice.** Promptly after the Court grants Preliminary Approval of this Agreement, Palm shall publish Class Notice (in the form of the Summary Notice attached as Exhibit C) once in *USA Today* (legal notice section). The notice shall be one-eighth of a newspaper page.

4. **Cost of Direct and Published Notice.** The cost of direct and published notice shall be paid by Palm.

C. **Payment of Attorneys' Fees and Reimbursement of Expenses to Class Counsel**

1. **Attorneys' Fees and Costs.** Plaintiffs' Counsel will apply to the Court for an award of their actual attorneys' fees, costs and expenses, not to exceed \$245,000 (attorneys' fees) and \$31,750 (costs and expenses), and without any multiplier. Palm will not oppose Plaintiffs' Counsel's application. Such award will be delivered to Plaintiffs' Counsel within twenty (20) business days after Final Approval. If for any reason Final Approval does not occur, then no attorneys' fees, costs, or expenses shall be payable to Plaintiffs' Counsel.

2. **Payment to Class Representative.** Plaintiffs will petition the Court for a service fee award of \$10,000.00 to the Class Representative in compensation for the time, effort and risk he undertook as representative of the Plaintiff Settlement Class. Palm will not oppose Plaintiff's petition. Any service fee awarded by the Court shall come out of, and not be in addition to, any Court approved award of attorneys' fees and reimbursement of expenses.

3. **No Additional Fees or Expenses.** Palm shall not be liable for any additional fees or expenses of the Class Representative, or any member of the Plaintiff

Settlement Class in connection with the Action. Plaintiffs' Counsel agree that they will not seek in this Action any additional fees or costs from Palm in connection with the settlement of this Action.

D. Processing of Claims

1. **Opt-Outs, Objections, and Requests to Intervene.** The Class Notice shall advise any prospective member of the Plaintiff Settlement Class of his or her right to (a) forego the benefits of this settlement and pursue an individual claim; (b) object to this settlement; and/or (c) request the opportunity to intervene in this Action.

(a) Opt-Outs

If any member of the Plaintiff Settlement Class wishes to be excluded from this settlement, he, she, or it may do so by mailing a valid opt-out notice, as described in the Class Notice, to Plaintiffs' Counsel. At least fifteen (15) business days prior to the final approval hearing, Plaintiffs' Counsel shall provide a copy of all Opt-Out Requests to counsel for Palm. To be valid, an Opt-Out Request must:

- (i) Be in writing and signed by the member of the Plaintiff Settlement Class requesting exclusion;
- (ii) Reference this Action by name and provide the member's name and address;
- (iii) Indicate in writing that the member does not wish to be part of the Plaintiff Settlement Class and excludes himself or herself from participation in any settlement approved in the Action; and

(iv) Be sent to Plaintiffs' Counsel by United States mail and be postmarked no more than forty-five (45) days and received by Plaintiffs' Counsel no more than sixty-five (65) days from the date on which Notice is sent to members of the Plaintiff Settlement Class pursuant to section III.B above.

Notwithstanding anything else contained in this Agreement, if more than 1,000 of the prospective Plaintiff Settlement Class members opt out, Palm may, at any time prior to such hearing, and at its sole discretion, notify Plaintiffs' Counsel of its election to terminate this Agreement. In that event, this Agreement shall become null and void; the litigation may continue; and pursuant to Section IV.2 of this Agreement, any order conditionally certifying or approving certification of a settlement class shall be vacated.

(b) Objections

If, within such time as is ordered by the Court and contained in the Class Notice, any member of the Plaintiff Settlement Class who has not opted out wishes to object to the settlement and/or be heard, he, she, or it must file a written notice of objection by the deadlines established by the Court and serve the same upon Plaintiffs' Counsel and Defendants' Counsel. Such objections shall:

- (i) Be in writing and state the name, address, and telephone number of the Plaintiff Settlement Class member;
- (ii) Provide documents establishing membership in the Plaintiff Settlement Class; and
- (iii) Provide a detailed statement of each objection asserted, including the grounds for each objection and reasons, if any, for requesting the opportunity to appear and be heard at the final approval hearing.

