

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZeoBIT LLC, a California limited liability
company,

Defendant.

Case No. 2-14-cv-00578-JFC

Judge: Joy Flowers Conti

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF RENEWED MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

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I. INTRODUCTION

On April 16, 2015, the Court held a preliminary approval hearing to determine whether Plaintiff Holly Yench's ("Yench" or "Plaintiff") and Defendant ZeoBIT LLC's ("ZeoBIT" or "Defendant") (together, the "Parties") proposed class action settlement was within the range of possible approval. During the hearing, the Court raised concerns regarding the claims for which Plaintiff sought certification, the specificity of the notice documents, and how Settlement Class members¹ can exercise their rights under the settlement agreement.

As it relates to the claims for which Plaintiff sought class certification for settlement purposes, the Court noted that Plaintiff's fraud-based claims are not suitable for class certification due to the fact that they require proof of individual reliance. The Court also instructed the Parties to discuss whether certification was appropriate for Plaintiff's unjust enrichment claim. Since the hearing, Plaintiff has filed an amended complaint withdrawing her fraud-based claims (*see* Dkt. 34) and the Parties have conferred and agreed that certification for settlement purposes of Plaintiff's unjust enrichment claim is appropriate.

As to the proposed notice documents, the Court directed the Parties to, *inter alia*, (i) include additional language in the notice regarding the total number of Settlement Class members and anticipated payments to claiming Settlement Class members based on historical claims rates, (ii) specifically direct Settlement Class members to the release language in the Settlement Agreement, (iii) make clear that the Court "appointed" Plaintiff as the Settlement Class representative, and (iv) provide additional online publication notice to account for those Settlement Class members who have changed their email addresses since purchasing ZeoBIT's

¹ As described in Section IV, *infra*, the Settlement Class includes all Persons in the United States and its territories who purchased MacKeeper on or before the date of entry of the Preliminary Approval Order.

MacKeeper software (“MacKeeper” or the “Software”). The Parties have made each of these changes to the notice documents and agreed on a new online banner advertisement campaign as well.² (See Exhibits A-D to the Stipulation of Class Action Settlement [“Settlement Agreement” or “Agreement”], attached hereto as Exhibit 1; *see also* Declaration of Tore Hodne [“Hodne Decl.”] of Rust Kinsella (describing online banner advertising campaign), attached hereto as Exhibit 2.)

Finally, the Court instructed the Parties to allow Settlement Class members to opt out of the Settlement Class via email (in addition to U.S. mail) and to remove from the Settlement Agreement any requirement that Settlement Class members provide notice of their intent to appear at the final approval hearing. To that end, the Parties have amended the settlement documents to make clear that Settlement Class members may request to be excluded from the settlement by sending an email to *info@yenchasoftwaresettlement.com* (see Agreement § 4.5; Exhibit 1-C) and to remove any requirement that Settlement Class members file a notice of intent to appear at the final approval hearing. (See Agreement § 4.3; Exhibit 1-C.)

With those revisions having been made to the proposed Settlement Agreement and notice documents, and given the relief afforded to the Settlement Class, the Court can be confident that the proposed Settlement is fair, reasonable, and adequate, and well within the range of possible approval. Indeed, and as Plaintiff previously explained, the proposed \$2 million non-reversionary settlement is consistent with settlements reached with ZeoBIT’s industry competitors that have been approved by state and federal courts throughout the country—most recently in the cases of

² For ease of reference, in addition to attaching a copy of the Parties’ fully-executed revised Agreement (and its exhibits), Plaintiff has also attached redlined copies of the original Agreement and its exhibits, which clearly identify each of the specific changes the Parties made. (See Redlined Settlement Agreement, attached hereto as Exhibit 3.)

Hall v. TuneUp Corp., No. 13-cv-1804, Dkt. 87 (N.D. Ill. Dec. 16, 2014) and *Rottner v. AVG Techs.*, No. 12-cv-10920, Dkt. 116 (D. Mass. May 5, 2014).

For these reasons and as described further below, Plaintiff Holly Yencha respectfully requests that the Court enter an order (1) certifying the proposed Settlement Class, (2) appointing Yencha as Class Representative, (3) appointing Rafey S. Balabanian, Benjamin H. Richman and Courtney C. Booth of Edelson PC as Class Counsel, (4) granting preliminary approval of the Settlement, (5) approving the proposed notice plan, and (6) scheduling a final fairness hearing.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Yencha's Allegations

On May 6, 2014, Yencha filed her class action complaint alleging that Defendant deceptively designed and marketed the MacKeeper software to entice consumers into purchasing it with promises that it could repair and enhance Mac computers suffering from various maladies. (*See* Dkt. 1 (“Compl.”) ¶¶ 1-2.) Specifically, Yencha alleged that MacKeeper was advertised as capable of increasing computer speed and performance, removing harmful errors, increasing computer stability, and protecting users’ privacy. (*Id.* ¶¶ 4-7, 13-28.) Yencha further claimed that to convince consumers of the Software’s supposed utility, and to encourage them to purchase the full version of MacKeeper, Defendant recommended consumers download a free-trial version of the Software (valid for 15 days) and conduct a free “diagnostic scan” to detect issues and other problems existing on their computers. (*Id.* ¶¶ 2-6, 19-20, 23, 27.)

According to Yencha, despite ZeoBIT’s representations, the free-trial version of MacKeeper did not accurately identify errors, severe threats, or other problems on a user’s computer, nor was it designed to do so. (*Id.* ¶¶ 2-7, 13-16, 21-34.) Upon investigation into MacKeeper’s true functionality, Yencha, through counsel, uncovered that by design, MacKeeper

invariably reported the existence of numerous issues afflicting a user's Mac—without ever performing a true diagnostic scan. (*Id.* ¶¶ 4-7, 23-34.) Yenchu further alleged that after the so-called scan, MacKeeper informed users that the trial version will only “fix” a limited number of the issues, and that to fully repair the Mac, the consumer must purchase the full version of MacKeeper for \$39.95. (*Id.* ¶¶ 2, 21-24, 26-27.) That's because, according to Plaintiff's allegations, ZeoBIT intentionally designed MacKeeper to use arbitrary metrics to invariably report a Mac's “System Status” as “Critical” in order to scare the user into believing that the computer was damaged and that the purchase and continued use of the full version of MacKeeper was necessary. (*Id.* ¶¶ 16, 22-32.)

Additionally, Yenchu alleged that once purchased, the full version of MacKeeper operated in a nearly identical and deceptive manner and thus, lulled consumers into a false sense of security that it was functioning as advertised by, for example, identifying and then “fixing” supposed errors. (*Id.* ¶¶ 2, 6, 7, 13-22, 26-27, 31-34.) But in reality, MacKeeper was incapable of fixing any of the errors or problems it identified because, at its core, MacKeeper performs just two main functions: (1) it provides limited antivirus and firewall protection and (2) deletes “superfluous” temporary files in whole and in part. (*Id.* ¶ 21.) Yenchu alleged that these operations do not come close to squaring with ZeoBIT's sweeping representations about MacKeeper's functionality since neither will appreciably improve a computer's speed or boot time, prevent the common causes of system freezes, nor otherwise provide the benefits ZeoBIT promises. (*Id.* ¶¶ 6, 7, 20-21.) Defendant has at all times denied Plaintiff's allegations and has steadfastly taken the position that the Software functions as advertised.

B. The Parties' Settlement Discussions

At the Parties' September 29, 2014 scheduling conference, the Court advised the Parties to designate a third-party neutral with whom they would discuss class certification through a court-mandated early neutral evaluation conference. On October 20, 2014, the Parties identified the Honorable Edward A. Infante (ret.) of JAMS (San Francisco) as their early neutral evaluator. (Dkt. 20.) On January 6, 2015, the Parties proceeded with the early neutral evaluation to discuss their respective positions on the claims and defenses at issue, as well as their suitability for class certification. (*See* Declaration of Benjamin H. Richman ("Richman Decl.") ¶ 3, attached as Exhibit 4.) The early neutral evaluation and mediation proved informative for both sides and ultimately resulted in the settlement of this action. (*Id.* ¶ 4.) Indeed, after multiple rounds of negotiation with the assistance of Judge Infante, the Parties reached the key terms of the class-wide settlement and executed a memorandum of understanding. (*Id.*) And after months of further negotiations and several exchanges of a draft settlement agreement, the Parties were finally able to execute the original Stipulation of Class Action Settlement. (*Id.* ¶ 5.)

C. Plaintiff's Initial Motion for Preliminary Approval, the Court's Stated Concerns, and the Parties' Modifications of the Settlement Agreement and Notice Documents

On March 12, 2015, Plaintiff Yenchu filed her original motion for preliminary approval of the Parties' proposed class action settlement. (Dkt. 28.) On April 16, 2015, the Court held a hearing on Plaintiff's motion to determine whether the settlement was fair, reasonable, and adequate and thus, whether preliminary approval should be granted. (*See* Apr. 16, 2015 Minute Entry.) During the hearing, the Court expressed concerns about the claims for which Yenchu requested class certification for settlement purposes, the specificity of the notice documents, and

how Settlement Class members could exercise their rights under the Agreement. (*See* Transcript of April 16, 2015 Hearing [“April 16, 2015 Transcript”], attached as Exhibit 5.)

As it relates to the claims for which Plaintiff sought class certification for settlement purposes, the Court noted that Plaintiff’s fraud-based claims are not suitable for class certification due to the fact that they require proof of individual reliance. (*See* April 16, 2015 Transcript at 5:13–6:1.) The Court also instructed the Parties to discuss whether certification was appropriate for Plaintiff’s unjust enrichment claim. (*Id.* at 15:25–16:5.) Since the hearing, Plaintiff has filed an amended complaint withdrawing her fraud-based claims (*see* Dkt. 34), and the Parties have conferred and agreed that certification of Plaintiff’s unjust enrichment claim is appropriate for settlement purposes. (*See* Richman Decl. ¶ 7.)

As to the proposed notice documents, the Court directed the Parties to, *inter alia*, (i) include additional language in the notice regarding the total number of Settlement Class members and anticipated payments to claiming Settlement Class members based on historical claims rates, (ii) specifically direct Settlement Class members to the release language in the Settlement Agreement, (iii) make clear that the Court “appointed” Plaintiff as the Settlement Class representative, and (iv) provide additional online publication notice to account for those Settlement Class members who have changed their email addresses since purchasing ZeoBIT’s MacKeeper software. (*See* April 16, 2015 Transcript at 5:7-12; 12:10-16; 13:4-5; 14:1-2; 17:3-9, 20:22-25.) The Parties have made each of these changes to the notice documents and agreed on a new online banner advertisement campaign as well. (*See* Exhibits A-D to the Agreement; *see also* Hodne Decl. ¶ 4.)

Finally, the Court instructed the Parties to allow Settlement Class members to opt out of the Settlement Class via email (in addition to U.S. mail) and to remove from the Settlement

Agreement any requirement that Settlement Class members provide notice of their intent to appear at the final approval hearing. (*See* April 16, 2015 Transcript at 17:24–18:1; 19:2-7.) To that end, the Parties have amended the settlement documents to make clear that Settlement Class members may request to be excluded from the settlement by sending an email to *info@yenchasoftwaresettlement.com* (*see* Agreement § 4.5; Exhibit 1-C) and to remove any requirement that Settlement Class members file a notice of intent to appear at the final approval hearing. (Agreement § 4.3; Exhibit 1-C.)

III. TERMS OF THE SETTLEMENT

A copy of the Settlement Agreement is attached as Exhibit 1. The key terms of the Agreement are briefly summarized below:

A. Class Definition: The Settlement Class includes all persons in the United States and its territories who, prior to the date on which the Court enters an order preliminarily approving the settlement, purchased a paid license to use MacKeeper. (Agreement § 1.29.)

B. Monetary Relief: Defendant has agreed to create a non-reversionary \$2 million settlement fund (“Settlement Fund”). (*Id.* § 1.31.) Each Settlement Class member that submits a valid claim form will be entitled to receive a *pro rata* cash payment in an amount up to their full purchase price of the Software, or \$39.95. (*Id.* § 2.1(a).) No unused portion of the Settlement Fund will revert to Defendant. (*Id.* §§ 1.31, 2.1.)

C. Compensation for Class Representative: Defendant has agreed to pay, from the Settlement Fund and subject to Court approval, an incentive award to Yencha as Class Representative in the amount of \$1,000. (*Id.* § 8.3.)

D. Payment of Attorneys’ Fees and Expenses: Class Counsel has committed to seek no more than one-third of the Settlement Fund as payment for attorneys’ fees and expenses.

(*Id.* § 8.1.)

E. Payment of Notice and Administrative Expenses: Defendant has agreed to pay all notice and administration expenses out of the Settlement Fund. (*Id.* § 1.31.)

F. Cy Pres Awards: If after accounting for payment of all notice and settlement administration expenses, individual settlement payments to Settlement Class members for the full purchase price of the Software, the incentive award and the fee award, there are still monies remaining in the Settlement Fund, all such monies shall be distributed to appropriate *cy pres* recipients proposed by Yencha and approved by the Court. (*Id.* § 2.1.) No portion of the Settlement Fund will revert to Defendant. (*Id.* §§ 1.31, 2.1.)

G. Release: In exchange for the monetary relief described above, Defendant will be released, acquitted and forever discharged from any and all claims relating to the design, marketing and performance of the Software. (*See id.* § 3 for complete release language.)

IV. THE PROPOSED CLASS SHOULD BE CERTIFIED.

Before granting preliminary approval of the proposed class action settlement, the Court must determine whether certification of the proposed Settlement Class is appropriate. *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Manual for Complex Litigation* § 21.632 (4th ed. 2004). Because Plaintiff is moving for both certification of the Settlement Class and preliminary approval of the Settlement, this Court “should make a preliminary determination that [Plaintiff’s] proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b).” *Manual for Complex Litigation* § 21.632; *see also Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 296 (3d Cir. 2011); *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333, 341 (3d Cir. 2010).

Rule 23(a) requires that (i) the proposed settlement class be so numerous that joinder of all individual settlement class members is impracticable (numerosity); (ii) there are questions of law or fact common to the settlement class members (commonality); (iii) the claims of the plaintiff are typical of those of the settlement class (typicality); and (iv) plaintiff will fairly and adequately protect the interests of the settlement class (adequacy). *Sullivan*, 667 F.3d at 296; *see also Amchem*, 521 U.S. at 613; Fed. R. Civ. P. 23(a). “Upon finding each of these prerequisites satisfied, a district court must then determine that the proposed class fits within one of the categories of class actions enumerated in Rule 23(b).” *Sullivan*, 667 F.3d at 296.

Where, as here, certification is sought under Rule 23(b)(3), the proponent of class certification must show (i) that common questions of law or fact predominate over questions affecting only individual settlement class members and (ii) that a class action is superior to other available methods of resolving the controversy. Fed. R. Civ. P. 23(b)(3); *Sullivan*, 667 F.3d at 296. “These twin requirements are commonly referred to as predominance and superiority.” *Id.*

In this Circuit, “[courts hold] the parties to their bargain, [showing...] ‘strong judicial policy in favor of class action settlement.’” *Rodriguez v. Nat’l City Bank*, 726 F.3d 372, 379 (3d Cir. 2013) (citation omitted). Because Yencha is seeking certification of a class for settlement purposes, the “[C]ourt need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.” *In re Pet Food Prods.*, 629 F.3d at 341; *Sullivan*, 667 F.3d at 303-04 (citing *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 299 (3d Cir. 2005)) (“[T]he proposed settlement...obviates the difficulties inherent in proving the elements of varied claims at trial.”) (quotation omitted).

Here, Yencha respectfully requests that the following Settlement Class be certified for settlement purposes: All Persons in the United States and its territories who purchased

MacKeeper on or before the date of entry of the Preliminary Approval Order. (Agreement § 1.29.)

A. The Numerosity Requirement is Satisfied.

The first requirement of Rule 23(a), numerosity, is satisfied where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). There is “[n]o single magic number [that] satisf[ies] the numerosity requirement.” *Logory v. Cnty. of Susquehanna*, 277 F.R.D. 135, 140 (M.D. Pa. 2011) (quoting *Florence v. Bd. of Chosen Freeholders*, No. 05-cv-3619, 2008 WL 800970, at *6 (D.N.J. Mar. 20, 2008)). “However, the Third Circuit has opined that while there is technically no minimum class size; ‘generally, if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.’” *Logory*, 277 F.R.D. at 140 (quoting *Stewart v. Abraham*, 275 F.3d 220, 226–27 (3d Cir. 2001)). Here, Defendant’s records indicate that approximately 513,000³ persons purchased MacKeeper. (See Richman Decl. ¶ 9.) Consequently, the Settlement Class clearly exceeds forty, and the numerosity requirement of Rule 23(a)(1) is satisfied.

B. There are Common Questions of Law and Fact.

The second requirement of Rule 23(a), commonality, is satisfied where “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). This requires a “common contention . . . of such a nature that it is capable of class-wide resolution [meaning] . . . that determination of its truth or falsity will resolve an issue that is central to the validity of each one

³ Though not an express requirement under Rule 23, the proposed Settlement Class is also sufficiently ascertainable inasmuch as (i) the Settlement Class is defined with reference to objective criteria (i.e., consumers’ purchase of MacKeeper) and (ii) “there is a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition” (i.e., ZeoBIT’s sales records). See *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 355 (3d Cir. 2013) (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012)).

of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). ““The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.”” *Stewart*, 275 F.3d at 227 (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). The “bar is not a high one...the focus of the commonality inquiry is not on the strength of each plaintiff’s claim, but instead is ‘on whether the defendant’s conduct was common as to all of the class members.’” *Rodriguez*, 726 F.3d at 382 (quoting *Sullivan*, 667 F.3d at 299); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d at 528; *Baby Neal*, 43 F.3d at 57 (considering whether the defendant “engag[ed] in a common course of conduct toward” the settlement class).

The proposed Settlement Class here satisfies the commonality requirement of Rule 23(a). Yenchu alleges that ZeoBIT uniformly marketed and advertised MacKeeper’s functionality and that it designed MacKeeper to function (or fail to function) in the same manner on each Settlement Class member’s computer. Yenchu, therefore, has identified an alleged pattern of standardized conduct that raises several issues of fact common to the proposed Settlement Class, including whether (as alleged): (i) ZeoBIT intentionally designed MacKeeper to falsely report the existence of errors on users’ computers; (ii) MacKeeper invariably and uniformly exaggerates the severity of errors detected on users’ computers; (iii) ZeoBIT intended to induce the Settlement Class into purchasing the full version of MacKeeper; and (iv) Yenchu and the proposed Settlement Class overpaid for MacKeeper as a result. Those common factual questions raise several legal questions common to the proposed Settlement Class as well, including whether Defendant’s alleged design and marketing of MacKeeper constitutes a breach of contract or unjust enrichment.

Thus, Rule 23(a)’s commonality requirement is satisfied as well.

C. Yencha's Claims are Typical of the Settlement Class's Claims.

The third Rule 23(a) requirement, typicality, is satisfied where “the claims. . . of the representative parties are typical of the claims . . . of the class.” Fed. R. Civ. P. 23(a)(3). To evaluate typicality, courts must determine “whether the named plaintiffs’ claims are typical, in common-sense terms....thus suggesting that the incentives of the plaintiffs are aligned with those of the class.” *Baby Neal*, 43 F.3d at 55. “‘Factual differences will not render a claim atypical if the claim arises from the [] same event or practice or course of conduct that gives rise to the claims of the [absent] class members, and if it is based on the same legal theory.’” *Stewart*, 275 F.3d at 227-28 (quoting *Hoxworth v. Blinder, Robinson & Co., Inc.*, 980 F.2d 912, 923 (3d Cir. 1992)); *see also Baby Neal*, 43 F.3d at 58 (“[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims.”).

Here, Yencha's interests are directly aligned with, and thus typical of, the proposed Settlement Class. Yencha and the Settlement Class members share the same legal theories premised upon the same set of facts: they all purchased MacKeeper based on the same representations that Defendant designed in order to induce them to purchase the full version, even though ZeoBIT knew the Software did not function as promised. As a result of Defendant's alleged standardized conduct, they all have identical claims for breach of contract and unjust enrichment.

Accordingly, by pursuing her own claims against Defendant, Yencha will advance the interests of the Settlement Class, and Rule 23(a)(3)'s typicality requirement is likewise satisfied.

D. Yencha and Her Counsel Have and Will Continue to Adequately Represent the Settlement Class.

The final Rule 23(a) requirement, adequacy, requires that Yencha and her counsel “fairly

and adequately represent the interests of the class.” *See* Fed. R. Civ. P. 23(a)(4); *In re Warfarin*, 212 F.R.D. at 250. “The adequacy requirement has two components: (1) concerning the experience and performance of class counsel; and (2) concerning the interests and incentives of the representative plaintiffs.” *Dewey v. Volkswagen Aktiengesellschaft*, 681 F.3d 170, 181 (3d Cir. 2012) (citing *In re Cmty. Bank*, 418 F.3d at 303). First, courts must determine whether the representative plaintiff has the incentive and ability to vigorously represent the claims of the class and ensure that he or she has no interests antagonistic to the class. *Wallace v. Powell*, No. 09-cv-0291, 2013 WL 2042369, at *7 (M.D. Pa. May 14, 2013) (citation omitted). Second, courts must consider proposed class counsel's ability to fairly and adequately represent the class's interests based upon several non-exclusive factors “including: (1) ‘the work counsel has done in identifying or investigating potential claims in the action,’ (2) ‘counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action,’ (3) ‘counsel's knowledge of the applicable law,’ and (4) ‘the resources that counsel will commit to representing the class.’” *Id.* at *8 (citing Fed. R. Civ. P. 23(g)(1)(A); Fed. R. Civ. P. 23(g)(1)(B)).

First, as it relates to Yench, her interests are directly aligned with the interests of the Settlement Class—i.e., each has an interest in recouping the monies she, he, or it paid for the Software that allegedly failed to function as promised. In addition to having virtually the same interests as other Settlement Class members, Yench does not have any individual interests in this case that would be antagonistic to those of the Settlement Class and her pursuit of this Action demonstrates as much. (Richman Decl. ¶ 10.)

Second, as to proposed Class Counsel, the lawyers at Edelson PC are well respected members of the legal community with significant experience litigating class actions of similar size, scope, and complexity to the instant Action. (*Id.* ¶ 11.) They have regularly engaged in

major complex litigation involving consumer technology issues, have the resources necessary to conduct litigation of this nature, and have frequently been appointed lead class counsel by courts throughout the country. (*Id.*; *see also* Firm Resume of Edelson PC, attached as Exhibit A to the Richman Declaration.) To date, proposed Class Counsel have also diligently investigated, prosecuted, and dedicated substantial resources to the claims in this Action, and they will continue to do so throughout its pendency. (Richman Decl. ¶ 11.) And with respect to specific experience handling class actions of this sort, Class Counsel have prosecuted and settled (and are currently prosecuting) numerous class actions related to the alleged design and marketing issues of software products similar to those at issue here. *See, e.g., Rottner*, No. 12-cv-10920-RGS (D. Mass.); *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.); *Webb v. Cleverbridge*, No. 11-cv-04141 (N.D. Ill.); *Ledet v. Ascentive*, No. 11-cv-00294 (E.D. Pa.); *Hall*, No. 13-cv-1804 (N.D. Ill.); *Worley v. Avanquest N. Am., Inc.*, No. 12-cv-4391-WHO (N.D. Cal.).

Because both Plaintiff and her counsel have and will continue to adequately represent and advocate on behalf of the Settlement Class, Rule 23(a)(4)'s adequacy requirement is satisfied.

E. The Proposed Settlement Class Satisfies Rule 23(b).

In addition to meeting all four of Rule 23(a)'s prerequisites for certification, the proposed Settlement Class must also fall within one of the subsections of Rule 23(b). *Wallace*, 2013 WL 2042369, at *10. Relevant here, "[u]nder Rule 23(b)(3), two additional requirements must be met in order for a class to be certified: (1) common questions must 'predominate over any questions affecting only individual members' (the 'predominance requirement'), and (2) class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy' (the 'superiority requirement')." *In re Warfarin*, 391 F.3d at 527. The proposed settlement satisfies both of Rule 23(b)(3)'s prerequisites.

1. Common Questions of Law and Fact Predominate.

For the first requirement of Rule 23(b)(3), predominance, courts consider “whether [the] proposed class [is] sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at 623. At its most basic, Rule 23(b)(3)’s predominance requirement “is meant to help courts identify cases in which aggregate treatment would be efficient.” William B. Rubenstein, *Newberg on Class Actions* § 4:49 (5th ed. 2013). Because predominance requires that common questions of law and fact predominate, commonality is a “guidepost” for the predominance inquiry, as it “is informed by the defendant’s conduct as to all class members and any resulting injuries common to all class members.” *Sullivan*, 667 F.3d at 297.

All of the questions of law and fact identified in Section IV.B, *supra*, predominate over any individual ones. In order to establish Defendant’s liability, each Settlement Class member will need to make the exact same showings: that (i) Defendant designed MacKeeper to exaggerate the existence and severity of errors and other problems on users’ computers, (ii) Defendant intentionally created its marketing materials and designed MacKeeper itself to misrepresent the Software’s actual functional capabilities, (iii) MacKeeper did not and could not provide the repairs and enhancements to users’ computers as advertised, and (iv) as a result, Yencha and each member of the proposed Settlement Class overpaid in the same amount for MacKeeper. *See Sullivan*, 667 F.3d at 302 (finding the predominance requirement was satisfied for a settlement class because the defendants engaged in standardized conduct that violated laws common to the settlement class). The evidence needed to establish these claims will be the same for every proposed Settlement Class member—e.g., the source code underlying the Software, Defendant’s internal records regarding the sales, the marketing and design decisions upon which the Software is based, and expert analyses regarding each of these categories of information.

Accordingly, common issues will predominate over any individualized ones, and Rule 23(b)(3)'s predominance requirement is satisfied as well.

2. *This Class Action is the Superior Method for Adjudicating this Controversy.*

To satisfy the second prong of Rule 23(b)(3), superiority, courts must find that “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). “Specifically, the superiority requirement asks a trial court to ‘balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication.’” *Wallace*, 2013 WL 2042369, at *19 (quoting *Danvers Motor Co. v. Ford Motor Co.*, 543 F.3d 141, 149 (3d Cir. 2008); *Georgine v. Amchem Prods.*, 83 F.3d 610, 632 (3d Cir. 1996)).

Given the uniformity of claims, the small amount of damages suffered by Yenchu and the Settlement Class members relative to the costs of litigating their claims, and the corresponding low interest of Settlement Class members to pursue individual litigation, a class action is by far the superior method of adjudicating this matter. If Settlement Class members were to bring suit individually, each would be required to provide exactly the same legal and factual arguments and adduce the same evidence to prove their common claims. This would result in approximately 513,000 trials at enormous expense to the Settlement Class, Defendant, and the courts. Considering that each Settlement Class member is seeking to recover just a *portion* of the Software's purchase price (\$39.95), it is clear that they would lack both the incentive and the means to pursue individual claims. *In re Warfarin*, 391 F.3d at 533-34; *In re Gen. Motors Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995), *cert. denied*, 516 U.S. 824 (1995).

Consequently, the superiority requirement is satisfied as well.

V. PLAINTIFF’S COUNSEL SHOULD BE APPOINTED CLASS COUNSEL FOR THE PROPOSED SETTLEMENT CLASS.

In addition to certifying the Settlement Class pursuant to Rule 23, this Court must also appoint class counsel who will fairly and adequately represent the interests of the Settlement Class. *See* Fed. R. Civ. P. 23(g)(1), (2), (4). In appointing class counsel, courts should focus upon proposed class counsel’s (1) work in identifying or investigating potential claims; (2) experience in handling class actions, other complex litigation, and the types of claims asserted in the case; (3) knowledge of the applicable law; and (4) the resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

Here, each of these factors weigh in favor of appointing Rafey S. Balabanian, Benjamin H. Richman and Courtney C. Booth of Edelson PC as class counsel. Proposed Class Counsel have extensively investigated the Software at issue, identified the claims asserted against ZeoBIT, prosecuted the Action, and ultimately negotiated a Settlement providing *up to full relief* for the proposed Settlement Class. (Richman Decl. ¶¶ 12, 20.) Additionally, Edelson PC has been recognized as a pioneer in consumer technology class actions and has been named a “top national plaintiff’s class action firm” in the areas of “technology, privacy, and telecommunications” by the U.S. Chamber Institute for Legal Reform.⁴ And as described in Section IV.D, *supra*, they also have particular experience prosecuting and resolving similar cases against ZeoBIT’s industry competitors. (*See* Richman Decl. ¶¶ 11, 19; Ex. 4-A.) Accordingly, they can be appropriately appointed as Class Counsel here.

⁴ *See* U.S. Chamber Institute for Legal Reform, *The New LawsUIT Ecosystem: Trends, Targets and Players* at 16 (October 2013), available at http://www.instituteforlegalreform.com/uploads/sites/1/The_New_LawsUIT_Ecosystem_pages_web.pdf.

Having satisfied the requirements of both Rule 23(a) and 23(b)(3), Yenchu respectfully requests that the Court certify the proposed Settlement Class for settlement purposes, and further, that the Court appoint her as Class Representative and her counsel as Class Counsel.

VI. THE PROPOSED SETTLEMENT WARRANTS PRELIMINARY APPROVAL.

After courts determine that conditional certification of the proposed class is proper for settlement purposes, they look to whether the settlement warrants preliminary approval. The decision to approve a settlement is committed to the sound discretion of the court and generally occurs in two steps. *In re Warfarin*, 391 F.3d at 535. In the first step, “the [] parties submit the proposed settlement to the court, which must make [a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms by conducting] ‘a preliminary fairness evaluation.’” *In re Nat’l Football League Players’ Concussion Injury Litig.*, 961 F. Supp. 2d 708, 714 (E.D. Pa. 2014) (“*In re NFL*”); *Manual for Complex Litigation* § 21.632 (4th ed. 2004). “If the proposed settlement is preliminarily acceptable, the court then directs that notice be provided to all class members who would be bound by the proposed settlement in order to afford them an opportunity to be heard on, object to, and opt out of the settlement.” *In re NFL*, 961 F. Supp. 2d at 714; *see also* Fed. R. Civ. P. 23(c)(3), (e)(1), (e)(5). In the second step, “after class members are notified of the settlement, the court holds a formal fairness hearing where class members may object to the settlement.” *In re NFL*, 961 F. Supp. 2d at 714; *see also* Fed. R. Civ. P. 23(e)(1)(B). “If the court [then] concludes that the settlement is ‘fair, reasonable and adequate,’ the settlement is given final approval.” *In re NFL*, 961 F. Supp. 2d at 713-714. And in this Circuit, “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re Gen. Motors*, 55 F.3d at 805.

Preliminary approval should be granted, “[w]here the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.” *Mazon v. Wells Fargo Bank, N.A.*, No. 10-cv-700, 2011 WL 6257149, at *1 (D.N.J. Dec. 14, 2011) (quoting *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *Manual for Complex Litigation*, § 30.41 (3d ed. 1995)); see also *In re NFL*, 961 F. Supp. 2d at 714 (holding “[a]t the preliminary approval stage, the bar to meet the ‘fair, reasonable and adequate’ standard is lowered,” and the court is only required to determine whether the proposed settlement appears to fall within the range of possible approval). For the reasons described below, the settlement is well within the range of possible approval and warrants preliminary approval.

A. The Proposed Settlement is Entitled to a Presumption of Fairness.

An initial presumption of fairness may attach to a proposed settlement “when the court finds that (1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.”⁵ *In re Gen. Motors*, 55 F.3d at 785–86. “This examination is generally ‘made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by parties.’” *In re NFL*, 961 F. Supp. 2d at 714 (quotation omitted).

First, courts presume that class-wide settlements—like this one—are fair when negotiations occurred at arm’s length and proposed counsel are experienced in similar litigation.

⁵ Because the Court has not yet granted preliminary approval and the Settlement Class has therefore, not yet received notice of the settlement, this fourth factor should not be weighed at this time. See *In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 349 (N.D. Ill. 2010) (finding that the settlement class’s reaction is not typically assessed at the preliminary approval stage before notice of the settlement has been disseminated).

See In re Gen. Motors, 55 F.3d at 785 (finding that arm's-length negotiations and experienced counsel warranted an initial presumption of fairness); *see also* Alba Conte & Herbert Newberg, *Newberg on Class Actions* § 11.41 90 (4th ed. 2002); *Manual for Complex Litigation* § 30.42 (3d ed. 1995). In fact, as long as the investigation, litigation and settlement discussions “were appropriately focused on the question critical to the merits of the case,” settlements are presumed fair even if “factual inquiry was neither exhaustive nor protracted.” *Klingensmith v. Max & Erma's Restaurants, Inc.*, No. 07-cv-0318, 2007 WL 3118505, at *4 (W.D. Pa. Oct. 23, 2007); *see also In re Gen. Motors*, 55 F.3d at 813; *In re Prudential Ins. Co. Am. Sales Pracs. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998) (explaining that the court looks to whether counsel had an “adequate appreciation of the merits of the case”). That’s because when evaluating a proposed settlement, “the professional judgment of counsel involved in the litigation is entitled to significant weight.” *Klingensmith*, 2007 WL 3118505, at *5 (citation omitted).

Here, the Court should have great confidence in the fact that the settlement is the product of arm's-length negotiations. Indeed, at the outset of the case, the Parties began a dialogue regarding their respective views of the claims and defenses in question. (Richman Decl. ¶ 14.) That led the Parties to convene a meeting between their counsel and a representative of ZeoBIT in Pittsburgh on September 29, 2014. (*Id.*) During that meeting, Plaintiff’s counsel presented the findings of their forensic investigation into the Software and related marketing materials, and the Parties continued their dialogue regarding their views on the merits of the case. (*Id.*) The Parties also discussed potential neutrals to preside over the Early Neutral Evaluation ordered by the Court. (*Id.*)

Ultimately, the Parties selected (and the Court endorsed) the Honorable Edward A. Infante (ret.) of JAMS (San Francisco)—a former Magistrate Judge for the Northern District of

California who has extensive experience mediating complex class actions—as the early neutral evaluator and proceeded with a full-day ENE and mediation before him on January 6, 2015.

(Richman Decl. ¶ 15.) During the ENE/mediation, Judge Infante led substantive discussions on the strengths and weaknesses of the Parties’ respective claims and defenses, the likelihood of obtaining class certification, and the settlements and dispositions in similar actions against ZeoBIT’s industry competitors. (*Id.*) With the benefit of those discussions (and Judge Infante’s views) as well as an exchange of certain additional information (e.g., information regarding ZeoBIT’s sales of the Software and the fact that the company no longer owns nor markets it), the Parties also discussed the potential resolution of the Action. (*Id.* ¶ 16.)

Ultimately, with Judge Infante’s assistance, the Parties were able to reach a settlement in principle on a class-wide basis that is consistent with other settlements reached with ZeoBIT’s industry competitors. (*Id.* ¶ 17.) From there, the Parties spent several weeks’ time exchanging drafts of their proposed Settlement Agreement and negotiating the specific terms of that Agreement. (*Id.*) Thus, there can be no question that the settlement is the result of arm’s-length settlement negotiations presided over by a neutral mediator that was informed by the Parties’ respective investigations into the underlying facts and law and informational exchanges.

A presumption of fairness should also attach to the settlement based on proposed Class Counsel’s substantial experience in consumer class action cases, generally, and cases against ZeoBIT’s industry competitors, specifically. *See supra* Section V. That experience—coupled with their investigation and information uncovered in this case—has allowed proposed Class Counsel to gain a superior understanding of the factual and legal bases of the claims at issue, rendering them best equipped to ensure that the Settlement Class receives the best relief possible under the circumstances. As a result, they were able to fully weigh the risks and rewards of

further litigation as compared to the settlement, and they believe the Agreement represents the best option for obtaining meaningful recovery for the Settlement Class. (Richman Decl. ¶ 18.)

In the end, the settlement was reached (i) by experienced counsel (ii) with a solid understanding of the legal and factual issues before the Court (iii) and only after obtaining the assistance of a well-respected mediator. Accordingly, the settlement should be presumed fair.

B. The Proposed Settlement Falls Within the Range of Possible Approval.

In addition to considering whether a settlement may be presumed fair, courts focus primarily on “plaintiffs’ expected recovery balanced against the value of the settlement offer” to determine whether a settlement “falls within the range of possible approval.” *In re NFL*, 961 F. Supp. 2d at 714 (citing *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007)); *see also Harlan v. Transworld Systems, Inc.*, 302 F.R.D. 319, 325 (E.D. Pa. 2014) (quoting *In re Prudential*, 148 F.3d at 317) (identifying additional factors that may be considered at the preliminary approval stage, including (i) the complexity, expense and likely duration of the litigation, (ii) the stage of the proceedings, (iii) the risks of maintaining the class action through trial, and (iv) the likely recovery under the circumstances of the case); *see also McDonough v. Toys R Us, Inc.*, Nos. 06-cv-0242, 09-cv-6151, 2015 WL 263562, at *5-6 (E.D. Pa. Jan. 21, 2015) (collecting factors courts must consider in approving settlements). In addition to warranting a presumption of fairness, the settlement easily satisfies these considerations as well.

1. The Proposed Settlement Provides up to Full Recovery to Each Settlement Class Member.

Perhaps most indicative of its fairness and reasonableness, the settlement provides substantial—if not *full*—relief to the Settlement Class. To be clear, Yencha’s theory of this case has always been that while any design flaws in MacKeeper’s ability to diagnose, report and repair various errors and problems on users’ Macs reduced its value, it was not that the Software

lacked utility altogether. (Richman Decl. ¶ 20.) Thus, Yencha originally sought to obtain just a portion of the purchase price—i.e. the amount individuals overpaid for the Software—in relief when filing and litigating the Action. Nevertheless, the Parties’ Settlement allows each Settlement Class member that submits a valid claim to recover up to the *full purchase price* they paid for MacKeeper. Given that Plaintiff didn’t even seek to recover the full purchase price of the Software, this result is substantial, to say the least.

Not surprisingly, courts throughout the country have found similar relief to be fair and reasonable in the context of other class action settlements—two good examples being the class-wide settlements reached by proposed Class Counsel with ZeoBIT’s competitors, AVG Technologies and TuneUp Corporation, in the matters captioned *Rottner v. AVG Technologies CZ, s.r.o., et al.*, No. 12-cv-10920 (D. Mass.) and *Hall v. TuneUp Corporation*, No. 13-cv-1804 (N.D. Ill.). In those cases, the parties reached class-wide settlements materially identical to the settlement reached here: individual class members had the opportunity to obtain *up to full relief* for their purchase of the software at issue, with any additional funds being distributed to *cy pres* recipients whose interests aligned with the settlement classes. With overwhelmingly positive reactions from the settlement classes, both settlements received final approval.

Thus, the identical—and potentially *full*—relief here is likewise fair, reasonable and adequate, and warrants preliminary approval.

2. *The Complexity, Expense, and Length of Continued Litigation—Coupled with the Risks Associated with Such Protracted Litigation—Favor Approval of the Settlement.*

It is not just the strength of the individual recovery that warrants approval. The risks inherent in, and cost and complexity of, continued litigation in this matter also support a finding that the settlement is fair and reasonable, and thus warrants preliminary approval. While

proposed Class Counsel are confident in the strength of Plaintiff's claims, litigation is inherently uncertain. As the Court's stated views on class certification at the preliminary approval hearing recognized, the potential for a battle over class certification; the future availability of witnesses (many of whom are likely located in Europe, where the Software was developed, and thus outside of the subpoena power of this Court); the preservation of evidence; and the depreciated value of future recovery compared to immediate relief all present risks to obtaining a full recovery for the Settlement Class after trial. (Richman Decl. ¶ 21.) Likewise, in light of the complexity of the issues presented here and the amount in controversy, the defeated party would likely appeal, further delaying any recovery by the Settlement Class. In light of these risks, the immediate and substantial relief provided by the settlement supports preliminary approval.

3. *The Parties Had Sufficient Information to Assess the Proposed Settlement.*

Finally, the settlement also warrants approval based on the stage of the proceedings and amount of discovery completed. This factor is relevant because it determines how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims, with the pertinent inquiry being whether the parties "appropriately focused on the question critical to the merits of the case," *Klingensmith*, 2007 WL 3118505, at *4, even if "factual inquiry was neither exhaustive nor protracted." *Id.*; see also *In re Prudential Ins. Co.*, 148 F.3d at 319 (explaining that the court looks to whether counsel had an "adequate appreciation of the merits of the case"); *In re Gen. Motors*, 55 F.3d at 813.

Here, Plaintiff conducted substantial factual investigation into the bases of the Settlement Class's claims and ZeoBIT's likely defenses. (Richman Decl. ¶ 22.) In particular, Plaintiff and proposed Class Counsel had a computer forensic analysis performed on the Software and received information from members of the proposed Settlement Class about their experiences.

(*Id.*) The Parties also exchanged information regarding the Software, pricing, and size of the proposed Settlement Class, and had the benefit of an early neutral evaluation of their respective positions from a well-respected former Magistrate Judge. (*Id.*) Drawing on all of that, the Parties negotiated a valuable settlement for the proposed Settlement Class, which is consistent with others previously approved by courts throughout the country. (*Id.*) Consequently, this factor—like the others—weighs in favor of preliminary approval.

VII. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED.

When, as here, a settlement class is certified under Rule 23(b)(3), the court must direct to settlement class members “the best notice that is practicable under the circumstances” informing them of the nature of the class action and their right to opt-out of the class. Fed. R. Civ. P. 23(c)(2)(B). The best notice practicable includes “individual notice to all members who can be identified through reasonable effort.” *Id.*⁶ In addition, where parties seek to settle an action on a class-wide basis, courts must direct notice “in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1).

Here, the proposed three-part notice plan is more than sufficient.⁷ First, the settlement administrator, Rust Consulting, will send direct notice via email to the last known email address of each Settlement Class member. (Agreement § 4.1.(a).)⁸ This initial email notice will be followed by a second “reminder” notice approximately two weeks before the deadline to file objections and/or exclusions. (*Id.*) Direct email notice is expected to be particularly effective in

⁶ A notice plan that reaches 70-95% of the class is deemed reasonable. *See* Federal Judicial Center, *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010).

⁷ The proposed notice plan is described in detail in the Agreement (Agreement § 4.)

⁸ In the event an email “bounces back” or is shown to be undeliverable, the settlement administrator will resend the notice to account for issues that might render it temporarily undeliverable (e.g., server problems). (Agreement § 4.1(a).)

this case—and has been in similar cases—given that Settlement Class members who purchased MacKeeper were required to provide their email addresses before they could complete their purchases of the Software. (Richman Decl. ¶ 24.) Furthermore, the proposed notice is both neutral in tone and easy to understand and will allow each member of the Settlement Class to make an informed decision as to his, her or its rights under the settlement.

Second, the settlement administrator will disseminate publication notice through internet and mobile banner advertisements. (*See* Hodne Decl. ¶ 4.) In particular, the online publication notice will be placed through Xaxis and Facebook.com,⁹ and targeted to Mac and/or Apple users or a similar audience across a wide range of sites and social platforms. (*Id.*) A total estimate of 16,000,000 impressions will be purchased and delivered to reach the Settlement Class in this case. (*Id.*)

Third, the settlement administrator will launch and maintain a settlement website that allows for 24-hour access to relevant Court documents—including a copy of the notice, a downloadable claim form, the Settlement Agreement, the Preliminary Approval Order entered by the Court, the operative complaint, and ZeoBIT's answer. (Agreement § 4.1(b).) Settlement Class members will also have the option of filling out and submitting a claim form online or downloading the form and submitting it by mail to the settlement administrator.¹⁰ (*Id.* § 1.3; 4.1(b).) In addition to the settlement website, the settlement administrator will maintain a toll-free telephone line through which Settlement Class members can obtain additional information about the Settlement and request a claim form. (*See* Agreement, Exs. A-D.) Finally, the

⁹ Xaxis is a global digital media platform that programmatically connects advertisers and publishers to audiences across all addressable channels. Facebook.com is one of the most widely used online social networking services on the Internet. (Hodne Decl. ¶ 4.)

¹⁰ The proposed notice documents and claim form are attached to the Agreement as Exhibits A-D.

settlement administrator will provide a mailing address where Settlement Class members can make written inquiries regarding the settlement. (*See id.*)

Because the notice plan calls for individual direct notice to all Settlement Class members (identified by Defendant's records), online publication notice and the maintenance of a dedicated settlement website, it is reasonable and the best notice practicable. This Court should thus approve the proposed notice plan.

VIII. CONCLUSION

For the reasons discussed above, Plaintiff Holly Yench a respectfully requests that this Court enter an order (1) certifying the proposed Settlement Class for settlement purposes, (2) naming Plaintiff as Class Representative, (3) appointing Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC as Class Counsel, (4) granting preliminary approval to the Settlement, (5) approving the proposed notice plan, (6) scheduling a final fairness hearing, and (7) providing such further relief as the Court deems just and proper.¹¹

Respectfully submitted,

HOLLY YENCH A, individually, and on behalf of
a class of similarly situated individuals,

Dated: June 17, 2015

By: /s/ Benjamin H. Richman
One of Plaintiff's Attorneys

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¹¹ A proposed preliminary approval order was submitted with Plaintiff's renewed motion for preliminary approval.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2015, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Benjamin H. Richman

Exhibit 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZeoBIT LLC, a California limited liability
company,

Defendant.

Case No. 14-cv-00578

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement (the “Agreement” or “Settlement”) is entered into by and among Plaintiff Holly Yench a (“Yench a”), for herself individually and on behalf of the Settlement Class, and Defendant ZeoBIT, LLC (“ZeoBIT”; and Yench a and ZeoBIT are referred to collectively as the “Parties” or individually as a “Party”). This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

RECITALS

WHEREAS, on May 6, 2014, this action was filed in the United States District Court for the Western District of Pennsylvania by Yench a, who alleged claims for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*, fraudulent inducement, breach of contract, and unjust enrichment and sought damages, injunctive, and declaratory relief against ZeoBIT, (*see* Dkt. 1);

WHEREAS, on July 14, 2014, ZeoBIT filed its answer and affirmative defenses to Yench a’s complaint, (Dkt. 8);

WHEREAS, on September 29, 2014, the Parties appeared before the Court for an initial scheduling conference. The Court entered the Parties' proposed discovery plan (*see* Dkt. 15) and advised the Parties to designate a neutral to conduct an early neutral evaluation ("ENE") conference and discuss class certification;

WHEREAS, following the scheduling conference, the Parties met and conferred regarding their respective views of the claims and defenses asserted in the Action, and Plaintiff's counsel presented the underlying forensics investigation their expert performed into the software at issue;

WHEREAS, the Parties selected the Honorable Edward A. Infante (ret.) of JAMS as the early neutral evaluator in this Action;

WHEREAS, on October 22, 2014, the Court appointed Judge Infante as the early neutral evaluator in this Action (*see* Dkt. 20);

WHEREAS, on January 6, 2015, the Parties convened the ENE before Judge Infante at JAMS in San Francisco, California;

WHEREAS, as the ENE proceeded, the Parties also discussed the potential to resolve the Action on a class-wide basis;

WHEREAS, as a result of their discussions at the ENE and with Judge Infante's assistance, the Parties were able to reach a proposed class-wide resolution of the Action, as outlined in this Agreement;

WHEREAS, Yencha is withdrawing her claims for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*, and fraudulent inducement;

WHEREAS, on May 20, 2015, Yencha filed her First Amended Class Action Complaint,

withdrawing her claims for Defendant's alleged violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*, and fraudulent inducement, and asserting claims only for breach of contract and, in the alternative, unjust enrichment;

WHEREAS, Yench and Class Counsel have conducted a comprehensive examination of the law and facts relating to the matters at issue in the Action regarding Yench's claims and ZeoBIT's potential defenses;

WHEREAS, the Parties engaged in extensive arms-length settlement negotiations, including with the assistance of a third-party neutral appointed by the Court;

WHEREAS, based on an analysis of the facts and the law applicable to Yench's claims in the Action, and taking into account the burdens and expense of such litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Yench and Class Counsel have concluded that this settlement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate, and in the best interest of Yench and the Settlement Class; and

WHEREAS, ZeoBIT denies any liability or wrongdoing, but has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending protracted litigation, and to resolve finally and completely the pending and potential claims of Yench and the Settlement Class;

NOW, THEREFORE, the Parties stipulate and agree that any and all Released Claims against ZeoBIT and all other Released Parties, shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval, as a fair, reasonable and adequate settlement.

AGREEMENT

1. DEFINITIONS

Unless otherwise defined above, the following definitions shall define these terms for purposes of this Agreement:

1.1 “*Action*” means the case captioned *Yencha v. ZeoBIT, LLC*, No. 14-cv-00578, currently pending in the United States District Court for the Western District of Pennsylvania.

1.2 “*Approved Claim*” means a Claim Form, submitted by a Settlement Class Member that (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement; (b) is fully and truthfully completed and executed, with all of the information requested in the Claim Form by a Settlement Class Member; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is verified by the Settlement Administrator pursuant to Section 5.

1.3 “*Claim Form*” means the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment pursuant to this Agreement, shall be available for submission in electronic and paper format.

1.4 “*Claims Deadline*” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Final Approval Hearing. The date of the Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.5 “*Class Counsel*” means attorneys Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC.

1.6 “*Class Representative*” means the named plaintiff in the Action, Holly Yencha.

1.7 “Court” means the United States District Court for the Western District of Pennsylvania, the Honorable Joy Flowers Conti presiding, or any judge of this court who shall succeed her as the Judge assigned to this Action.

1.8 “Cy Pres Recipients” means the Carnegie Mellon CyLab Usable Privacy and Security Laboratory, and the National Consumer Law Center

1.9 “Defendant” means Defendant ZeoBIT, LLC.

1.10 “Defendant’s Counsel” means Barbara A. Scheib of Cohen and Grigsby P.C., and Matthew D. Brown and Matthew D. Caplan of Cooley LLP.

1.11 “Email Notice” means the legal notice summarizing the terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to the Settlement Class via electronic mail (as further provided for in Section 4 below). The Email Notice shall be substantially similar to the form attached hereto as Exhibit B.

1.12 “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

1.13 “Fee Award” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.14 “Final Approval Hearing” means the hearing before the Court where the Parties will request that the Final Judgment be entered by the Court approving this Settlement

Agreement, the Fee Award, and any incentive award to the Class Representative. The Final Approval Hearing shall be no earlier than seventy (70) days after the Notice Date or such other time as the Court shall set.

1.15 “Final Judgment” means the final judgment to be entered by the Court approving the class settlement of the Action in accordance with this Agreement after the Final Approval Hearing.

1.16 “Final Settlement Date” means one business day after the Final Judgment becomes “Final.” For purposes of this Section, “Final” means that all of the following have occurred: (i) the time expires for filing or noticing any appeal of the Court’s Final Judgment approving this Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.17 “MacKeeper” means any version of MacKeeper software, whether partial or complete, including all updates thereto, sold by ZeoBIT or by any other entity on or before the date of entry of the Preliminary Approval Order.

1.18 “Notice” means notice of this proposed settlement and the Final Approval Hearing, consisting of Email Notice and Website Notice.

1.19 “Notice Date” means the day by which the Notice set forth in Section 4, other than the second “final notice” email, is complete, which shall be a date no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

1.20 “Objection/Exclusion Deadline” means the date by which a written objection to this Agreement must be filed with the Court or a request for exclusion by a Person within the Settlement Class must be postmarked or delivered to the Settlement Administrator, which shall be designated as a date forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

1.21 “Person” means, without limitation, any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

1.22 “Plaintiffs” (singular “*Plaintiff*”) means Holly Yench and the Settlement Class Members, collectively.

1.23 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice, a proposed version of which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

1.24 “Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, contracts or agreements, expenses, costs,

attorneys' fees and/or obligations (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims) against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions, or failures to act regarding the design, use, marketing, advertising, functionality, operation, and/or performance of MacKeeper, including all claims that were brought or could have been brought in the Action, belonging to any and all Plaintiffs and Releasing Parties.

1.25 *"Released Parties"* means ZeoBIT and any and all of its present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliated and related entities, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, insurers, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, other individuals or entities in which ZeoBIT has a controlling interest or which is affiliated with any of them, or any other representatives of any of these Persons and entities. The definition of Released Parties specifically excludes Kromtech Alliance Corp.

1.26 *"Releasing Parties"* means Plaintiff Yenchu and the Settlement Class Members who do not validly and timely request to be excluded from the proposed settlement (whether or not such Settlement Class Members submit claims) and all of the their present, former, and

future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees. To the extent a Settlement Class Member is not an individual, Releasing Parties also includes all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, and predecessors-in-interest.

1.27 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, objections, and requests for exclusion, establishing and maintaining the settlement website and Escrow Account, administering payments for Approved Claims (including costs of mailing checks), and any costs incurred in sending the CAFA notices described in Section 4.2 below.

1.28 “Settlement Administrator” means Rust Consulting, a third-party settlement administrator selected by the Parties, subject to the Court’s approval, to oversee the distribution of Notice, oversee the distribution of the CAFA notices, and conduct the processing and payment of Approved Claims to Settlement Class Members as set forth in this Agreement.

1.29 “Settlement Class” means all Persons in the United States and its territories who purchased MacKeeper on or before the date of entry of the Preliminary Approval Order. Excluded from the Settlement Class are: (1) the Judge presiding over the Action and members of her family; (2) ZeoBIT, ZeoBIT's subsidiaries, parent companies, successors, predecessors, and any entity in which ZeoBIT or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Settlement Class in accordance with Section 4.5 below; (4) Class Counsel and Defendant’s counsel; (5) any Person whose claims in the Action have been finally adjudicated or otherwise released; and (6) the legal representatives, successors or assigns of any

such excluded Persons.

1.30 “Settlement Class Member(s)” means a Person who falls within the definition of the Settlement Class as set forth above.

1.31 “Settlement Fund” means a non-reversionary cash settlement fund to be established by Defendant in the amount of two-million dollars (\$2,000,000.00), which shall be paid into the escrow account in two equal installments of one-million dollars (\$1,000,000) each as follows: the first installment to be paid within twenty-eight (28) days after entry of the Preliminary Approval Order, and the second installment to be paid within twenty-eight (28) days after the Final Settlement Date. The Settlement Fund shall be used for payments to Settlement Class Members, including Approved Claims and any payment to *Cy Pres* Recipients, all Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings.

1.32 “Unknown Claims” means claims that could have been raised in the Action and that Plaintiff and/or the Settlement Class Members do not know or suspect to exist, which, if known by him, her, or it, might affect his, her or its agreement to release the Released Parties of the claims specified herein or might affect his, her or its decision to agree, object, or not object to the settlement. Upon the Final Settlement Date, for the purpose of the Released Claims, Settlement Class Members and Plaintiff shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, and any law or legal principle of similar

effect in any jurisdiction, whether federal or state. Section 1542 of the California Civil Code provides as follows:

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.

1.33 “Website Notice” means the legal notice of terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to Settlement Class Members on a website to be established by the Settlement Administrator (as further provided for in Section 4.1(b) below). The Website Notice shall be substantially similar to the form attached hereto as Exhibit C.

2. SETTLEMENT RELIEF

2.1 Monetary Payments to Settlement Class Members

(a) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim will be paid a *pro rata* share of the amount in the Settlement Fund, after payment of Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative, up to a maximum payment of thirty nine dollars and ninety five cents (\$39.95) per Settlement Class Member with an Approved Claim.

(b) To the extent that any funds remain in the Settlement Fund after all payments to Settlement Class Members with Approved Claims have been made, such funds shall be distributed to the *Cy Pres* Recipients *pro rata*.

(c) Within fifty-six (56) days after the Final Settlement Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all

Approved Claims by check, which will be mailed to the claimants of the Settlement Class via first-class mail. All cash payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

(d) To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Settlement Fund for distribution to the *Cy Pres* Recipients. In no event will the funds represented by an uncashed check constitute abandoned or unclaimed property.

3. RELEASES

3.1 Settlement Class Members' Release. Upon the Final Settlement Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.

3.2 Class Representative's Release. Upon the Final Settlement Date, Plaintiff Yenchu and her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees fully, finally and forever release, relinquish, and discharge the Released Parties from all Released Claims, Unknown Claims, and any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, claims, contracts or agreements, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the

UCL or other federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims).

Plaintiff Yench, individually and on behalf of each of her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff Yench and/or her counsel to be true and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts. Plaintiff Yench acknowledges and agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the settlement would not have been accepted.

4. NOTICE TO THE CLASS

4.1 Notice to the Settlement Class will be disseminated as follows:

(a) *Direct Notice.* The Settlement Administrator shall send Email Notice, which shall be substantially similar to the form attached as Exhibit B, which shall include an electronic link to the Claim Form, to each Person in the Settlement Class for whom ZeoBIT has a valid email address no later than the Notice Date, or on such other date determined by the Court. For emails that immediately result in a bounce-back or are otherwise undeliverable, the Settlement Administrator shall attempt to re-send the Email Notice prior to the Notice Date. Further, fourteen (14) days prior to the Objection/Exclusion Deadline, the Settlement Administrator will disseminate another copy of the Email Notice, adding to the subject line of the email "FINAL NOTICE." All Email Notice shall inform the Settlement Class how to file

claims and objections and how to request exclusion.

(b) *Settlement Website.* Starting no later than the start of the dissemination of Email Notice to the Settlement Class, the Website Notice shall also be provided on a website, which shall be established by the Settlement Administrator and shall include the ability to electronically file Claim Forms online. The Website Notice shall be substantially similar to the form attached as Exhibit C.

(c) *Online Media Campaign.* The Settlement Administrator will design and implement an online media campaign, which shall include Internet ads to be delivered through Facebook and Xaxis. Such ads will be substantially in the form attached hereto as Exhibit D.

4.2 *CAFA Notice.* Not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall serve upon the relevant government officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715.

4.3 All objections and any papers submitted in support of such objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the Person making the objection (1) either files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court or, if represented by counsel, files copies of such papers through the Court's Case Management/Electronic Case Filing (CM/ECF) system, and (2) sends copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendant's counsel. Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name, address, email address, and contact phone number; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the

objection, including all citations to legal authority and evidence supporting the objection; and (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”).

4.4 Any Settlement Class Member who fails to timely mail or file a written objection with the Court in accordance with the terms of Section 4.3 and as detailed in the Notice shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his, her or its objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.5 A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked, or email sent, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator (via mail or email) providing his or her name, address, email address, phone number, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of this information, or that is sent to an address or email address other than that designated in the Notice, or that is not postmarked or sent within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any Person in the Settlement Class who properly excludes themselves from the Settlement Class in accordance with the terms of this Agreement shall not: (i) be bound by any

orders of the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.

5. SETTLEMENT ADMINISTRATION

5.1 The Settlement Administrator shall, under the Court's supervision, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall ensure that all such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Receive objections, requests to be excluded from the Settlement Class, and other requests from Settlement Class Members and promptly provide to Class Counsel and Defendant's Counsel copies thereof upon receipt. If the Settlement Administrator receives any objections, requests for exclusion, or other requests from Settlement Class Members after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(b) Provide reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received and the amount of the payments sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(c) Make available for inspection by Class Counsel and Defendant's Counsel Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator may reject a Claim Form, or any part of a claim for a payment reflected therein, where the Person submitting the Claim Form does not appear to be a Settlement Class Member. In addition, the Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to comply with the instructions thereon or the terms of this Agreement, after giving the claimant a reasonable opportunity to provide any requested missing information. In no event shall any Settlement Class Member have more than twenty-one (21) days after being noticed by the Settlement Administrator of any question or deficiency in the submitted Claim Form to answer such question or cure such deficiency.

6. TERMINATION OF SETTLEMENT

6.1 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Judgment on any modifications of this Settlement

Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Judgment, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, then (a) the Preliminary Approval Order, and the Final Judgment (if applicable) and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, vacating conditional appointment of Plaintiff Yench as class representative, and vacating conditional appointment of Class Counsel as counsel to the class, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, and (c)(i) no term or draft of this Settlement Agreement, (ii) nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), (iii) nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Judgment), will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the settlement or enter the Final Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendant shall retain all its rights, for example, to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other purpose.

6.2 Treatment of Settlement Fund if Settlement Terminated. Unless otherwise ordered by the Court, in the event the Settlement Agreement is terminated for any reason, then within ten (10) business days after the Parties have provided the Court with notice that they are

invoking this Section 6.2, the Settlement Administrator shall return the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed or incurred, including taxes and tax expenses, to Defendant pursuant to written instructions from Defendant's Counsel. At the request of Defendant's Counsel, the Settlement Administrator or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Defendant.

6.3 Termination Clause. If, prior to the Final Approval Hearing, any Persons who would otherwise be Settlement Class Members have timely requested exclusion from the Settlement Class in accordance with the provisions of this Agreement, the Preliminary Approval Order, and the Notice given pursuant thereto, and the number of such Persons seeking exclusion exceeds one thousand (1,000), ZeoBIT shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement. ZeoBIT may terminate the Settlement Agreement by serving written notice of termination on the Court and Class Counsel by hand delivery or overnight courier within five (5) business days after being informed in writing by the Settlement Administrator that there are one thousand (1,000) or more such requests for exclusion timely filed. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (iii) no term or draft of this Settlement Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation will have any affect or be admissible into evidence, for any purpose, in this Action or any other proceeding.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of a Preliminary Approval Order of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination, substantially in the form attached as Exhibits A, B and C.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth in this Agreement.

7.3 After Notice is given, Class Counsel, on behalf of the Class Representative, shall request from the Court a Final Judgment. The Final Judgment will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all attached exhibits;

(b) approve the Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is

reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clauses of the United States Constitution, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and class action claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the releases set forth in Section 3, make the releases effective as of the Final Settlement Date, and forever discharge the Released Parties as set forth in this Agreement;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) as (1) shall be consistent in all material respects with the Final Judgment, or (2) do not limit the rights of Settlement Class Members; and

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD

8.1 Class Counsel is entitled to petition the Court for reasonable attorneys' fees and expenses from the Settlement Fund. Class Counsel shall file, and the Settlement Administrator shall post to the settlement website referenced in Section 4.1(b), its papers supporting the Fee Award fourteen (14) days before the Objection/Exclusion Deadline. Class Counsel has agreed to limit their request for attorneys' fees and expenses to no more than one-third (1/3) of the Settlement Fund. ZeoBIT may oppose Class Counsel's petition for attorneys' fees and expenses.

8.2 The Settlement Administrator, within five (5) days after the later of (a) the Final Settlement Date or (b) receipt of wire instructions from Class Counsel, pay Class Counsel from the Settlement Fund the Fee Award via electronic transfer to an account designated by Class Counsel. Class Counsel is solely responsible for distributing the Fee Award to any attorney that may claim entitlement to attorneys' fees or costs in the Action. Defendant is not responsible for Class Counsel's allocation of the Fee Award. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

8.3 Class Counsel has agreed to limit its request for any incentive award for Plaintiff Yencha to one thousand dollars (\$1,000.00). ZeoBIT may oppose Class Counsel's petition for an incentive award. Class Counsel shall file, and the Settlement Administrator shall post to the

settlement website referenced in Section 4.1(b), its papers supporting any incentive award fourteen (14) days before the Objection/Exclusion Deadline.

8.4 The Settlement Administrator, within five (5) days after the Final Settlement Date, shall pay from the Settlement Fund the amount of any Court-approved incentive award for Plaintiff Yencha via check, to be sent care of Class Counsel. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

9.1 If the Final Settlement Date does not occur for any reason, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated then this Agreement shall be canceled and terminated subject to Section 9.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement. Notwithstanding anything in this Agreement, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees or incentive award sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.2 If this Agreement is terminated or fails to become effective for any reason, the Parties and the Settlement Class Members shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order, including but not limited to certifying any class for settlement purposes, entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties and the Settlement Class Members shall be returned to the *status quo ante*

with respect to the Action as if they had never entered into this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties, Class Counsel, and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provisions of this Agreement.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by the Releasing Parties and each or any of them, on the one hand, against the Released Parties, and each or any of them, on the other hand.

10.4 The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.

10.5 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have

read and understand fully this Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.6 Whether or not the Final Settlement Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained in this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the fee award, or of any alleged wrongdoing, liability, negligence or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered, or received against the Settlement Class as an admission, concession, or evidence of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement

is approved by the Court and the Final Settlement Date occurs, any of the Parties or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff Yench, the Settlement Class or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff Yench, the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff Yench's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.7 The headings used in this Agreement are used for the purpose of convenience only and are not meant to have legal effect.

10.8 The Recitals are incorporated by this reference and are part of the Settlement Agreement.

10.9 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.10 The Parties must execute and deliver any additional papers, documents, and other

assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

10.11 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matter set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

10.13 Except as otherwise provided in this Agreement, each Party shall bear its own fees and costs.

10.14 Plaintiff Yenchu represents and warrants that she has not assigned, granted, or transferred any claim or right or interest therein as against the Released Parties to any other Person and that she is fully entitled to release the same.

10.15 Nothing in this Agreement, the negotiations, and the mediation relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.

10.16 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any party to this Agreement warrants and represents that such Person has the full authority to do so and has the authority to take

appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.17 This Agreement may be executed in one or more counterparts. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of the Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.18 This Settlement Agreement shall be binding on, and inure to the benefit of, the successors and assigns of the Parties to this Agreement and the Released Parties except to the extent expressly stated.

10.19 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties to this Agreement submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.20 This Settlement Agreement and any claim, cause of action, or dispute among the Parties arising out of or relating to this Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict-of-law principles that may otherwise provide for the application of the law of another jurisdiction.

10.21 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms'-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

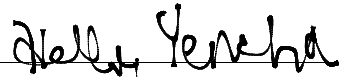
10.22 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to Class Counsel and Defendant's Counsel.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

HOLLY YENCHA

Dated: 05/18/2015

By (signature): 

Name (printed): Holly Yench

ZEOBIT, LLC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

APPROVED AS TO FORM BY COUNSEL:

Dated: May ___, 2015

EDELSON PC
Attorneys for Plaintiff Yench and the
Settlement Class

By: _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Dated: May ___, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By: _____
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.

HOLLY YENCHA

Dated: _____

By (signature): _____

Name (printed): _____

ZEObIT, LLC

Dated: MAY 20, 2015

By (signature): _____

Name (printed): Vladimir Kolomeichuk

Its (title): Director

APPROVED AS TO FORM BY COUNSEL:

Dated: May ___, 2015

EDELSON PC
Attorneys for Plaintiff Yench and the
Settlement Class

By: _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Dated: May 20, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By: ME
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.

HOLLY YENCHA

Dated: _____

By (signature): _____

Name (printed): _____

ZEOBIT, LLC

Dated: _____

By (signature): _____

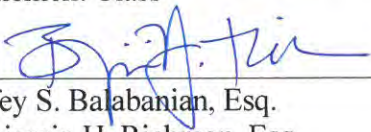
Name (printed): _____

Its (title): _____

APPROVED AS TO FORM BY COUNSEL:

Dated: May 20, 2015

EDELSON PC
Attorneys for Plaintiff Yench and the
Settlement Class

By:  _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Dated: May ___, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By: _____
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.

Exhibit A

MacKeeper Settlement Claim Form

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (that was used in connection with purchase): _____

Phone Number (Optional. The Settlement Administrator may call you for additional information to process your claim, if necessary): _____

The Parties have the right to audit all claims for accuracy, truthfulness, and compliance with the terms and conditions of the Settlement Agreement.

Class Member Affirmation: By submitting this Claim Form and checking the box below, I declare that I believe I am a member of the Settlement Class and that the following statement is true (each box must be checked to receive payment):

☐ I purchased MacKeeper software or before [date of preliminary approval].

☐ I have not received a full refund for my purchase of MacKeeper.

Dated: _____, 20____.

All Claim Forms must be submitted or postmarked by [claims deadline]

Your claim will be submitted to the Settlement Administrator for review. Any payments will be made after the Court approves the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. Please be patient. The amount of any payment, not to exceed \$39.95, will depend upon the number of valid claims submitted.

For more detail, please see the notice located on the settlement website at www.YenchaSoftwareSettlement.com.

Questions, visit www.YenchaSoftwareSettlement.com or call 1-877-315-1149.

Exhibit B

FROM: MACKEEPERSETTLEMENT@[SETTLEMENTADMIN].COM
TO: JOHNQCLASSMEMBER@GMAIL.COM
RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU PURCHASED MACKEEPER SOFTWARE BEFORE [DATE], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit against ZeoBIT LLC, the makers of MacKeeper software. The lawsuit alleges that ZeoBIT deceptively advertised and sold MacKeeper as capable of enhancing a Macintosh computer's speed, performance, and security by detecting and eliminating harmful errors and threats, but that it does not and cannot perform all of the functions advertised. ZeoBIT denies any wrongdoing, and the settlement does not establish that any law has been broken. The lawsuit is called *Yencha v. ZeoBIT LLC*, No. 14-cv-00578 and is in U.S. District Court for the Western District of Pennsylvania. You need not live in Pennsylvania to participate.

- **Why Am I Being Contacted?** Our records show you may be a "Settlement Class Member" entitled to payment under the Settlement. Settlement Class Members are those people who live in the United States or its territories and purchased MacKeeper on or before [the date of entry of the Preliminary Approval Order].

- **What Can I Get From the Settlement?** Settlement Class Members can submit a valid claim by [date] to receive a payment of up to \$39.95 from a \$2,000,000 Settlement Fund, after payment of the costs of administering the settlement, the attorneys' fee award, and any incentive award to the plaintiff. The amount of the payment to Settlement Class Members depends upon the number of valid claims filed. There are approximately 513,000 individuals in the Settlement Class. Based upon class member participation in other similar settlements, the Parties anticipate that each Settlement Class Member that submits an approved claim in this case will receive a payment of \$39.95. If, however, the amount required to pay each class member exceeds the amount of the Settlement Fund (after paying fees and expenses), then each Settlement Class Member who filed a valid claim will receive a proportionally reduced share of the Settlement Fund. If there is still money left in the Settlement Fund after all payments are made, the money will be donated to non-profit organizations. File your claim online here at www.YenchaSoftwareSettlement.com by [date]. To request a paper copy, call toll-free 1-877-315-1149.

- **How Do I Get My Payment?** Just click [here](#) and complete the short and simple Claim Form. More information is available at www.YenchaSoftwareSettlement.com. You can also call 1-877-315-1149 to request a paper copy of the Claim Form. *All Claim Forms must be received by [claims deadline].*

- **What Are My Options?** You can do nothing, submit a Claim Form, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing or submit a Claim Form, you won't be able to sue ZeoBIT in a future lawsuit about the claims addressed in the Settlement. If you exclude yourself, you won't get a payment—but you'll keep your right to sue ZeoBIT on the issues the settlement concerns. You must contact the settlement administrator by mail or e-mail to exclude yourself. You can also object to the settlement if you disagree with any of its terms. *All Requests for Exclusion and Objections must be received by [exclusion/objection deadline].* For a more detailed description of the claims that you will be releasing if you do not request to exclude yourself from the Settlement, see **paragraph 1.24 on pages 7–8** of the Settlement Agreement.

- **Do I Have a Lawyer?** Yes. The Court has appointed lawyers from Edelson PC to represent you as "Class Counsel." You will not be charged for these lawyers. You can hire your own lawyer, but you'll need to pay your own legal fees. The Court has also appointed Holly Yencha—a class member like you—to represent the Class.

- **When Will the Court Consider the Proposed Settlement?** The Court will hold a hearing to determine the fairness of the settlement at [time] on [date] at the United States Courthouse, Pittsburgh Division, 700 Grant Street, Pittsburgh, Pennsylvania 15219 in Courtroom 5A before Judge Joy Flowers Conti. At that hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses up to one-third (1/3) of the Settlement Fund and an award for the Class Representative of up to \$1,000. The Court may award less than these amounts. The hearing may be postponed to a different date or time without notice, so check www.YenchaSoftwareSettlement.com for updates. You are not required to come to this hearing.

- **Want More Information?** This notice is a summary. For a detailed notice or to see the Settlement Agreement and other court documents, go to www.YenchaSoftwareSettlement.com, call the settlement administrator at 1-877-315-1149 or call Class Counsel at 1-866-354-3015. The Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the U.S. District Court of the Western

District of Pennsylvania, Pittsburgh Division, located at the United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219. Do not contact the Court or MacKeeper with questions.

By Order of the Court Dated: [Date]

Exhibit C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

If you live in the United States or its territories and purchased MacKeeper Software on or before [date of preliminary approval], a class action settlement may affect your rights.

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against software developer ZeoBIT LLC. The class action lawsuit involves whether or not ZeoBIT's MacKeeper software performed certain functions as advertised.
- You are included if you live in the United States or its territories and purchased MacKeeper software on or before [date of preliminary approval].
- If you are included in the settlement, you are eligible to submit a claim to receive a payment of up to \$39.95 from a \$2,000,000 settlement fund, after the payment of the costs of administering the settlement, the attorneys' fee award, and any incentive award to the plaintiff. The amount of the payment will depend on the number of claims received.
- Please read this notice carefully. Your legal rights are affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY [DATE]	The only way to receive a payment.
EXCLUDE YOURSELF BY [DATE]	You will receive no payment, but you will retain any rights you currently have to sue ZeoBIT about the claims in this case.
OBJECT BY [DATE]	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	You won't get a share of the settlement benefits and will give up your rights to sue ZeoBIT about the claims in this case.

These rights and options—and the deadlines to exercise them—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the settlement. Payments will be provided only after any issues with the settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice?

A court authorized this notice to let you know about a proposed settlement of a class action lawsuit with ZeoBIT LLC. You have legal rights and options that you may act on before the Court decides

whether to approve the proposed settlement. This notice explains the lawsuit, the settlement, and your legal rights.

Judge Joy Flowers Conti of the U.S. District Court for the Western District of Pennsylvania is overseeing this class action. The case is known as *Yencha v. ZeoBIT LLC*, No. 14-cv-00578 (the “Action”). The person who sued is called the “Plaintiff.” The company she sued, ZeoBIT LLC, is called the “Defendant.” You need not live in Pennsylvania to participate.

2. What is a class action lawsuit?

In a class action, one or more people called “Class Representatives” sue on behalf of a group of people who have similar claims. Together, these people are called a “Class” or “Class Members.” In a class action, the court resolves the issues for all Class Members, except for those who exclude themselves from the Class. After the parties reached an agreement to settle this case, the Court recognized it as a case that should be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit alleges that ZeoBIT deceptively advertised and sold MacKeeper software as capable of enhancing an Apple Macintosh computer’s speed, performance, and security by detecting and eliminating harmful errors and threats, but that it does not and cannot perform all of the functions advertised. The lawsuit seeks damages for breach of contract and unjust enrichment. ZeoBIT denies Plaintiff’s claims of wrongdoing or liability against it and asserts that its conduct was lawful.

More information about Plaintiff’s complaint and Defendant’s answer to the claim are available in the “Court Documents” section of the settlement website at www.YenchaSoftwareSettlement.com.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, the parties have agreed to settle the claims against Defendant—that is, reach a compromise—by entering into a written settlement agreement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation now rather than, if at all, years from now.

The Class Representative and her attorneys (“Class Counsel”) believe that the settlement is in the best interest of the Class Members.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits this description is a member of the **Settlement Class**:

All Persons in the United States and its territories who purchased MacKeeper on or before [the date of entry of the Preliminary Approval Order].

If you meet that definition, you are a member of the Settlement Class.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Defendant has agreed to create a \$2,000,000 Settlement Fund. Settlement Class Members can submit a claim for up to \$39.95 for their purchase of MacKeeper. In addition to paying for valid claims of Class Members, the Settlement Fund will be used to pay the costs to administer the settlement, any Court-ordered award to Class Counsel for reasonable fees and expenses, and any incentive award to the Class Representative. The amount each claimant will be paid depends upon the number of valid claims submitted. There are approximately 513,000 individuals in the Settlement Class. Based upon class member participation in other similar settlements, the Parties anticipate that each Settlement Class Member that submits an approved claim in this case will receive a payment of \$39.95. If the amount required to pay each class member with a valid claim exceeds the amount of the Settlement Fund (after paying fees and expenses), then each Settlement Class Member who filed a valid claim will receive a proportionally reduced share of the Settlement Fund.

On the other hand, if there is still money left in the Settlement Fund after providing payments to every Settlement Class Member with a valid claim, paying the costs to administer the Settlement, the award of attorneys' fees and expenses, and any incentive award to the Class Representative, the remaining money will be donated to the following nonprofit organizations:

- Carnegie Mellon CyLab: Carnegie Mellon University's CyLab establishes public-private partnerships to develop new technologies for measurable, available, secure, trustworthy, and sustainable computing and communications systems, as well as to educate individuals at all levels equipping them to meet the demands and challenges of being responsible computer users and cybercitizens. For more information visit www.cylab.cmu.edu.
- National Consumer Law Center: The NCLC has dedicated itself to consumer justice issues since its founding in 1969 and has taken a leadership role in the development of laws aimed at protecting consumers, such as the Credit CARD Act of 2009. The NCLC also works closely with nonprofit organizations, legal service organizations, attorneys, policymakers, and state and federal governments to stop exploitive consumer practices, help consumers build and retain wealth, and advance economic fairness. The NCLC's expertise has focused on a broad range of consumer issues, including deceptive acts and practices, and privacy rights. For more information visit www.nclc.org.

HOW TO GET BENEFITS

7. How do I get benefits?

If you are a Class Member and you want to participate in the settlement, you must complete and submit a Claim Form **online or by mail postmarked by [claims deadline]**.

You can submit an electronic Claim Form online at, or obtain a copy of the Claim Form by downloading it from, www.YenchaSoftwareSettlement.com, by writing to the Settlement Administrator at MacKeeper Settlement Administrator, c/o Rust Consulting, Inc., PO Box 2242,

Faribault, MN 55021-1642, or by calling toll-free 1-877-315-1149. You cannot submit a claim if you already received a refund for the MacKeeper software you purchased.

If you submit a Claim Form, you won't be able to sue ZeoBIT in a future lawsuit about the claims addressed in the Settlement. For a more detailed description of the claims that you will be releasing if you do not request to be excluded from the Settlement, see **provision 1.24 on pages 7–8** of the Settlement Agreement.

8. When will I get my payment?

If you submitted a valid and approved claim, you should receive a check from the Settlement Administrator within approximately 60-90 days after the Settlement has been finally approved and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement is scheduled for **[Fairness Hearing Date]**. All checks will expire and become void 90 days after they are issued.

Please also note that if, prior to the fairness hearing, more than 1,000 Class Members exclude themselves from the settlement, ZeoBIT shall have the option to terminate the settlement. If ZeoBIT terminates the settlement, you will not receive a payment.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes, the Court has appointed lawyers Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC as Class Counsel. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to one-third (1/3) of the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel. The Court may award less than the amount requested.

Class Counsel will also request a service award (also known as an "incentive" award) for the Class Representative of up to \$1,000 from the Settlement Fund for her services as Class Representative and her efforts in bringing this case. The Court will determine what amount will be paid to the Class Representative. The Court may award less than the amount requested.

Class Counsel will file with the Court and post on the settlement website their request for attorneys' fees and expenses and request for an incentive award to the Class Representative two weeks before the objection deadline of **[date 2 weeks before objection deadline]**.

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If you do nothing, you will receive no payment under the Settlement, you will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments

of the Court. Also, unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

12. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you can't claim any money or receive any benefits as a result of the Settlement. You will keep your right to start your own lawsuit against Defendant for the same legal claims made in this lawsuit. You will not be legally bound by the Court's judgments related to the Settlement Class and Defendant in this class action.

13. How do I ask to be excluded?

To exclude yourself from the Settlement Class, you must send a letter or email saying that you want to be excluded from the Settlement Class in *Yencha v. ZeoBIT LLC*, Case No., 14-cv-00578. Your letter or email must also include your name, address, the e-mail address you used in connection with your purchase of MacKeeper, your phone number, and your signature. If you choose to exclude yourself by mail, your request for exclusion must be postmarked no later than **[objection / exclusion deadline]**, and sent to:

MacKeeper Settlement Administrator
c/o Rust Consulting, Inc.
PO Box 2242
Faribault, MN 55021-1642

If you choose to exclude yourself by email, your request for exclusion must be sent to **info@yenchasoftwaresettlement.com** no later than **[objection / exclusion deadline]**.

You cannot exclude yourself by phone.

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement. For a more detailed description of the claims that you will be releasing if you do not request to be excluded from the Settlement, see **paragraph 1.24 on pages 7–8** of the Settlement Agreement.

15. If I exclude myself, can I get anything from this Settlement?

No, if you exclude yourself, do not submit a Claim Form to ask for a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you like or don't like any part of it. You can give reasons why you think the Court should not approve it by filing an objection. The Court will consider your views. Your objection must be filed with the Court or postmarked to the Court's address below no later than **[date]**. You must also send a copy to attorneys for the Parties at the addresses below. If you are represented by an attorney, your objection must be filed through the Court's Case Management/Electronic Case Filing (CM/ECF) system.

Court	Class Counsel	Defendant's Counsel
Clerk of the Court United States Courthouse W.D. of Pennsylvania, Pittsburgh Division 700 Grant Street Pittsburgh, Pennsylvania 15219	Benjamin H. Richman EDELSON PC 350 North LaSalle, Suite 1300 Chicago, Illinois 60654	Matthew D. Brown Cooley LLP 101 California Street, 5th Floor San Francisco, California 94111

The objection must be in writing and include the case name *Yencha v. ZeoBIT LLC*, Case No. 14-cv-00578. It must also include (a) your name, (b) your address, (c) the e-mail address that you used in connection with your purchase of MacKeeper, (d) your phone number, (e) an explanation of the basis upon which you claim to be a Settlement Class Member, (f) the specific grounds for the objection (including all arguments, citations, and evidence supporting the objection), (g) the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection or who may profit from the pursuit of your objection, and (h) your physical signature. The Court will consider all properly filed objections from Settlement Class Members.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

18. When and where will the Court hold a hearing on the fairness of the Settlement?

A hearing has been set for [date] at [time], before The Honorable Joy Flowers Conti at the United States Courthouse, Pittsburgh Division, 700 Grant Street, Pittsburgh, Pennsylvania 15219 in Courtroom 5A. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative. You do not need to attend this hearing. You also do not need to attend to have an objection considered by the Court.

Note: The date and time of the fairness hearing are subject to change by Court Order, but any changes will be posted at www.YenchaSoftwareSettlement.com or through the Court's Public Access to Court Electronic Records (PACER) system.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed and mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

20. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may speak at the hearing.

GETTING MORE INFORMATION

21. Where can I get additional information?

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.website.com], by contacting Class Counsel at 1-866-354-3015, by accessing the Court docket in this case through the Court's PACER system, or by writing to the Settlement Administrator at MacKeeper Settlement Administrator, c/o Rust Consulting, Inc., PO Box 2242, Faribault, MN 55021-1642 or calling toll-free 1-877-315-1149. The Settlement Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the U.S. District Court of the Western District of Pennsylvania, Pittsburgh Division, located at the United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH
QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.**

Exhibit D



MacKeeper Settlement

yenchasoftwaresettlement.com

Purchased MacKeeper software? You may be entitled to money from a class action settlement.

If you purchased
Mackeeper software,
*you may be entitled to money
from a class action settlement.*

For more information,
click here or visit
www.YenchaSoftwareSettlement.com.

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHIA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ZeoBIT LLC, a California limited liability
company,

Defendant.

Case No. 2-14-cv-00578-JFC

Judge: Joy Flowers Conti

**DECLARATION OF TORE HODNE IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF PROPOSED CLASS ACTION SETTLEMENT**

I, Tore Hodne, declare as follows:

1. I am a Senior Project Administrator for Rust Consulting, Inc. ("Rust Consulting"), and I have been employed at Rust Consulting since December 8, 1997. Counsel has engaged Rust Consulting as the third-party administrator ("Settlement Administrator") to provide notification and claim administration services for the settlement in the above-referenced case (the "Settlement"). I am responsible for supervising the services provided by Rust Consulting for this matter. My business address is 625 Marquette Avenue, Suite 880, Minneapolis, Minnesota 55402.

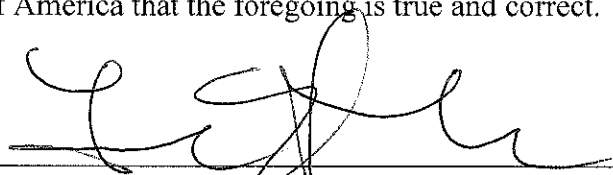
2. I am over twenty-one years of age, and I am legally competent and authorized to make this affidavit on behalf of Rust Consulting. I make this affidavit of my own personal knowledge and, if called as a witness, could and would testify competently thereto.

3. Rust Consulting is a nationally known settlement administration company and has extensive experience in the administration of class action matters, having provided services in

class action cases ranging in size from 100 to 100 million class members and involving a wide range of issues. We have provided notification and/or claims administration services in more than 5,000 matters.

4. In addition to providing notice and claim administration services, counsel has further engaged Rust Consulting to include publication of the notice through internet and mobile banner advertisements to notify Class Members of the terms of the Settlement and their rights in respect to the Settlement. In response, Rust Consulting will cause notice of the Settlement to be broadcast online via internet and mobile banner advertisements beginning with the Notice Date pursuant to the Preliminary Approval of the Stipulation of Class Action Settlement. Online placement will be targeted to Mac and/or Apple users or a similar audience across a wide range of sites and social platform. A total estimate of 16,000,000 impressions will be purchased and delivered to reach this audience. Placement will be made through providers such as Xaxis and Facebook.com. Xaxis is a global digital media platform that programmatically connects advertisers and publishers to audiences across all addressable channels. Facebook.com is a widely used online social networking service. Examples of the internet and mobile banner ads are attached as Exhibit A.

I declare under penalty of perjury under the laws of the State of Pennsylvania and the United States of America that the foregoing is true and correct.



Tore Hodne, as Agent for Rust Consulting, Inc.
Executed in Minneapolis, MN this 18th day of May, 2015.

EXHIBIT A

EXHIBIT A
Yencha v. ZeoBIT LLC
Prepared By Rust Consulting, Inc.

Xaxis Advertisement

If you purchased
Mackeeper software,
*you may be entitled to money
from a class action settlement.*

For more information,
click here or visit
www.YenchaSoftwareSettlement.com.

Facebook.com Advertisement



MacKeeper Settlement
yenchasoftwaresettlement.com
Purchased MacKeeper software? You may
be entitled to money from a class action
settlement.

Exhibit 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZeobIT LLC, a California limited liability
company,

Defendant.

Case No. 14-cv-00578

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement (the “Agreement” or “Settlement”) is entered into by and among Plaintiff Holly Yencha (“Yencha”), for herself individually and on behalf of the Settlement Class, and Defendant ZeoBIT, LLC (“ZeoBIT”; and Yencha and ZeoBIT are referred to collectively as the “Parties” or individually as a “Party”). This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

RECITALS

WHEREAS, on May 6, 2014, this action was filed in the United States District Court for the Western District of Pennsylvania by Yencha, who alleged claims for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, et seq., fraudulent inducement, breach of contract, and unjust enrichment and sought damages, injunctive, and declaratory relief against ZeoBIT, (*see* Dkt. 1);

WHEREAS, on July 14, 2014, ZeoBIT filed its answer and affirmative defenses to Yencha’s complaint, (Dkt. 8);

WHEREAS, on September 29, 2014, the Parties appeared before the Court for an initial scheduling conference. The Court entered the Parties' proposed discovery plan (*see* Dkt. 15) and advised the Parties to designate a neutral to conduct an early neutral evaluation ("ENE") conference and discuss class certification;

WHEREAS, following the scheduling conference, the Parties met and conferred regarding their respective views of the claims and defenses asserted in the Action, and Plaintiff's counsel presented the underlying forensics investigation their expert performed into the software at issue;

WHEREAS, the Parties selected the Honorable Edward A. Infante (ret.) of JAMS as the early neutral evaluator in this Action;

WHEREAS, on October 22, 2014, the Court appointed Judge Infante as the early neutral evaluator in this Action (*see* Dkt. 20);

WHEREAS, on January 6, 2015, the Parties convened the ENE before Judge Infante at JAMS in San Francisco, California;

WHEREAS, as the ENE proceeded, the Parties also discussed the potential to resolve the Action on a class-wide basis;

WHEREAS, as a result of their discussions at the ENE and with Judge Infante's assistance, the Parties were able to reach a proposed class-wide resolution of the Action, as outlined in this Agreement;

WHEREAS, Yencha is withdrawing her claims for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*, and fraudulent inducement;

WHEREAS, on May 20, 2015, Yencha filed her First Amended Class Action Complaint,

withdrawing her claims for Defendant's alleged violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §§ 201-1, *et seq.*, and fraudulent inducement, and asserting claims only for breach of contract and, in the alternative, unjust enrichment;

WHEREAS, Yench and Class Counsel have conducted a comprehensive examination of the law and facts relating to the matters at issue in the Action regarding Yench's claims and ZeoBIT's potential defenses;

WHEREAS, the Parties engaged in extensive arms-length settlement negotiations, including with the assistance of a third-party neutral appointed by the Court;

WHEREAS, based on an analysis of the facts and the law applicable to Yench's claims in the Action, and taking into account the burdens and expense of such litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Yench and Class Counsel have concluded that this settlement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate, and in the best interest of Yench and the Settlement Class; and

WHEREAS, ZeoBIT denies any liability or wrongdoing, but has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending protracted litigation, and to resolve finally and completely the pending and potential claims of Yench and the Settlement Class;

NOW, THEREFORE, the Parties stipulate and agree that any and all Released Claims against ZeoBIT and all other Released Parties, shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval, as a fair, reasonable and adequate settlement.

AGREEMENT

1. DEFINITIONS

Unless otherwise defined above, the following definitions shall define these terms for purposes of this Agreement:

1.1 “Action” means the case captioned *Yencha v. ZeoBIT, LLC*, No. 14-cv-00578, currently pending in the United States District Court for the Western District of Pennsylvania.

1.2 “Approved Claim” means a Claim Form, submitted by a Settlement Class Member that (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement; (b) is fully and truthfully completed and executed, with all of the information requested in the Claim Form by a Settlement Class Member; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is verified by the Settlement Administrator pursuant to Section 5.

1.3 “Claim Form” means the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment pursuant to this Agreement, shall be available for submission in electronic and paper format.

1.4 “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Final Approval Hearing. The date of the Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.5 “Class Counsel” means attorneys Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC.

1.6 “Class Representative” means the named plaintiff in the Action, Holly Yencha.

1.7 “Court” means the United States District Court for the Western District of Pennsylvania, the Honorable Joy Flowers Conti presiding, or any judge of this court who shall succeed her as the Judge assigned to this Action.

1.8 “Cy Pres Recipients” means the Carnegie Mellon CyLab Usable Privacy and Security Laboratory, and the National Consumer Law Center

1.9 “Defendant” means Defendant ZeoBIT, LLC.

1.10 “Defendant’s Counsel” means Barbara A. Scheib of Cohen and Grigsby P.C., and Matthew D. Brown and Matthew D. Caplan of Cooley LLP.

1.11 “Email Notice” means the legal notice summarizing the terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to the Settlement Class via electronic mail (as further provided for in Section 4 below). The Email Notice shall be substantially similar to the form attached hereto as Exhibit B.

1.12 “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

1.13 “Fee Award” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.14 “Final Approval Hearing” means the hearing before the Court where the Parties will request that the Final Judgment be entered by the Court approving this Settlement

Agreement, the Fee Award, and any incentive award to the Class Representative. The Final Approval Hearing shall be no earlier than seventy (70) days after the Notice Date or such other time as the Court shall set.

1.15 “Final Judgment” means the final judgment to be entered by the Court approving the class settlement of the Action in accordance with this Agreement after the Final Approval Hearing.

1.16 “Final Settlement Date” means one business day after the Final Judgment becomes “Final.” For purposes of this Section, “Final” means that all of the following have occurred: (i) the time expires for filing or noticing any appeal of the Court’s Final Judgment approving this Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.17 “MacKeeper” means any version of MacKeeper software, whether partial or complete, including all updates thereto, sold by ZeoBIT or by any other entity on or before the date of entry of the Preliminary Approval Order.

1.18 “Notice” means notice of this proposed settlement and the Final Approval Hearing, consisting of Email Notice and Website Notice.

1.19 “Notice Date” means the day by which the Notice set forth in Section 4, other than the second “final notice” email, is complete, which shall be a date no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

1.20 “Objection/Exclusion Deadline” means the date by which a written objection to this Agreement must be filed with the Court or a request for exclusion by a Person within the Settlement Class must be postmarked or delivered to the Settlement Administrator, which shall be designated as a date forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

1.21 “Person” means, without limitation, any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

1.22 “Plaintiffs” (singular “*Plaintiff*”) means Holly Yench and the Settlement Class Members, collectively.

1.23 “Preliminary Approval Order” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice, a proposed version of which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

1.24 “Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, contracts or agreements, expenses, costs,

Author

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attorneys' fees and/or obligations (including "Unknown Claims" as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims) against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions, or failures to act regarding the design, use, marketing, advertising, functionality, operation, and/or performance of MacKeeper, including all claims that were brought or could have been brought in the Action, belonging to any and all Plaintiffs and Releasing Parties.

1.25 "Released Parties" means ZeoBIT and any and all of its present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliated and related entities, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, insurers, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, other individuals or entities in which ZeoBIT has a controlling interest or which is affiliated with any of them, or any other representatives of any of these Persons and entities. The definition of Released Parties specifically excludes Kromtech Alliance Corp.

1.26 "Releasing Parties" means Plaintiff Yencha and the Settlement Class Members who do not validly and timely request to be excluded from the proposed settlement (whether or not such Settlement Class Members submit claims) and all of the their present, former, and

future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees. To the extent a Settlement Class Member is not an individual, Releasing Parties also includes all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, and predecessors-in-interest.

1.27 “Settlement Administration Expenses” means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, objections, and requests for exclusion, establishing and maintaining the settlement website and Escrow Account, administering payments for Approved Claims (including costs of mailing checks), and any costs incurred in sending the CAFA notices described in Section 4.2 below.

1.28 “Settlement Administrator” means Rust Consulting, a third-party settlement administrator selected by the Parties, subject to the Court’s approval, to oversee the distribution of Notice, oversee the distribution of the CAFA notices, and conduct the processing and payment of Approved Claims to Settlement Class Members as set forth in this Agreement.

1.29 “Settlement Class” means all Persons in the United States and its territories who purchased MacKeeper on or before the date of entry of the Preliminary Approval Order. Excluded from the Settlement Class are: (1) the Judge presiding over the Action and members of her family; (2) ZeoBIT, ZeoBIT's subsidiaries, parent companies, successors, predecessors, and any entity in which ZeoBIT or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Settlement Class in accordance with Section 4.5 below; (4) Class Counsel and Defendant’s counsel; (5) any Person whose claims in the Action have been finally adjudicated or otherwise released; and (6) the legal representatives, successors or assigns of any

such excluded Persons.

1.30 “Settlement Class Member(s)” means a Person who falls within the definition of the Settlement Class as set forth above.

1.31 “Settlement Fund” means a non-reversionary cash settlement fund to be established by Defendant in the amount of two-million dollars (\$2,000,000.00), which shall be paid into the escrow account in two equal installments of one-million dollars (\$1,000,000) each as follows: the first installment to be paid within twenty-eight (28) days after entry of the Preliminary Approval Order, and the second installment to be paid within twenty-eight (28) days after the Final Settlement Date. The Settlement Fund shall be used for payments to Settlement Class Members, including Approved Claims and any payment to *Cy Pres* Recipients, all Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings.

1.32 “Unknown Claims” means claims that could have been raised in the Action and that Plaintiff and/or the Settlement Class Members do not know or suspect to exist, which, if known by him, her, or it, might affect his, her or its agreement to release the Released Parties of the claims specified herein or might affect his, her or its decision to agree, object, or not object to the settlement. Upon the Final Settlement Date, for the purpose of the Released Claims, Settlement Class Members and Plaintiff shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, and any law or legal principle of similar

effect in any jurisdiction, whether federal or state. Section 1542 of the California Civil Code provides as follows:

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.

1.33 “Website Notice” means the legal notice of terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to Settlement Class Members on a website to be established by the Settlement Administrator (as further provided for in Section 4.1(b) below). The Website Notice shall be substantially similar to the form attached hereto as Exhibit C.

2. SETTLEMENT RELIEF

2.1 Monetary Payments to Settlement Class Members

(a) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim will be paid a *pro rata* share of the amount in the Settlement Fund, after payment of Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative, up to a maximum payment of thirty nine dollars and ninety five cents (\$39.95) per Settlement Class Member with an Approved Claim.

(b) To the extent that any funds remain in the Settlement Fund after all payments to Settlement Class Members with Approved Claims have been made, such funds shall be distributed to the *Cy Pres* Recipients *pro rata*.

(c) Within fifty-six (56) days after the Final Settlement Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all

Approved Claims by check, which will be mailed to the claimants of the Settlement Class via first-class mail. All cash payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

(d) To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Settlement Fund for distribution to the *Cy Pres* Recipients. In no event will the funds represented by an uncashed check constitute abandoned or unclaimed property.

3. RELEASES

3.1 Settlement Class Members' Release. Upon the Final Settlement Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.

3.2 Class Representative's Release. Upon the Final Settlement Date, Plaintiff Yenchu and her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees fully, finally and forever release, relinquish, and discharge the Released Parties from all Released Claims, Unknown Claims, and any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, claims, contracts or agreements, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the

UCL or other federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims).

Plaintiff Yench, individually and on behalf of each of her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff Yench and/or her counsel to be true and expressly accepts and assumes the risk of such possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts. Plaintiff Yench acknowledges and agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the settlement would not have been accepted.

4. NOTICE TO THE CLASS

4.1 Notice to the Settlement Class will be disseminated as follows:

(a) *Direct Notice.* The Settlement Administrator shall send Email Notice, which shall be substantially similar to the form attached as Exhibit B, which shall include an electronic link to the Claim Form, to each Person in the Settlement Class for whom ZeoBIT has a valid email address no later than the Notice Date, or on such other date determined by the Court. For emails that immediately result in a bounce-back or are otherwise undeliverable, the Settlement Administrator shall attempt to re-send the Email Notice prior to the Notice Date. Further, fourteen (14) days prior to the Objection/Exclusion Deadline, the Settlement Administrator will disseminate another copy of the Email Notice, adding to the subject line of the email "FINAL NOTICE." All Email Notice shall inform the Settlement Class how to file

claims and objections and how to request exclusion.

(b) *Settlement Website.* Starting no later than the start of the dissemination of Email Notice to the Settlement Class, the Website Notice shall also be provided on a website, which shall be established by the Settlement Administrator and shall include the ability to electronically file Claim Forms online. The Website Notice shall be substantially similar to the form attached as Exhibit C.

(c) *Online Media Campaign.* The Settlement Administrator will design and implement an online media campaign, which shall include Internet ads to be delivered through Facebook and Xaxis. Such ads will be substantially in the form attached hereto as Exhibit D.

4.2 *CAFA Notice.* Not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall serve upon the relevant government officials notice of the proposed settlement in accordance with 28 U.S.C. § 1715.

4.3 All objections and any papers submitted in support of such objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the Person making the objection (1) either files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court or, if represented by counsel, files copies of such papers through the Court's Case Management/Electronic Case Filing (CM/ECF) system, and (2) sends copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendant's counsel. Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name, address, email address, and contact phone number; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the

objection, including all citations to legal authority and evidence supporting the objection; and (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the “Objecting Attorneys”).

4.4 Any Settlement Class Member who fails to timely mail or file a written objection with the Court in accordance with the terms of Section 4.3 and as detailed in the Notice shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his, her or its objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.5 A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked or email sent, on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator (via mail or email) providing his or her name, address, email address, phone number, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of this information, or that is sent to an address or email address other than that designated in the Notice, or that is not postmarked or sent within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any Person in the Settlement Class who properly excludes themselves from the Settlement Class in accordance with the terms of this Agreement shall not: (i) be bound by any

Author

Deleted: ”); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court).

Author

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Author

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orders of the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.

5. SETTLEMENT ADMINISTRATION

5.1 The Settlement Administrator shall, under the Court's supervision, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall ensure that all such records will be made available to Class Counsel and Defendant's Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Receive objections, requests to be excluded from the Settlement Class, and other requests from Settlement Class Members and promptly provide to Class Counsel and Defendant's Counsel copies thereof upon receipt. If the Settlement Administrator receives any objections, requests for exclusion, or other requests from Settlement Class Members after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(b) Provide reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received and the amount of the payments sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(c) Make available for inspection by Class Counsel and Defendant's Counsel Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator may reject a Claim Form, or any part of a claim for a payment reflected therein, where the Person submitting the Claim Form does not appear to be a Settlement Class Member. In addition, the Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to comply with the instructions thereon or the terms of this Agreement, after giving the claimant a reasonable opportunity to provide any requested missing information. In no event shall any Settlement Class Member have more than twenty-one (21) days after being noticed by the Settlement Administrator of any question or deficiency in the submitted Claim Form to answer such question or cure such deficiency.

6. TERMINATION OF SETTLEMENT

6.1 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Judgment on any modifications of this Settlement

Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Judgment, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, then (a) the Preliminary Approval Order, and the Final Judgment (if applicable) and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, vacating conditional appointment of Plaintiff Yench as class representative, and vacating conditional appointment of Class Counsel as counsel to the class, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, and (c)(i) no term or draft of this Settlement Agreement, (ii) nor any part of the Parties' settlement discussions, negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), (iii) nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Judgment), will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the settlement or enter the Final Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendant shall retain all its rights, for example, to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other purpose.

6.2 Treatment of Settlement Fund if Settlement Terminated. Unless otherwise ordered by the Court, in the event the Settlement Agreement is terminated for any reason, then within ten (10) business days after the Parties have provided the Court with notice that they are

invoking this Section 6.2, the Settlement Administrator shall return the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed or incurred, including taxes and tax expenses, to Defendant pursuant to written instructions from Defendant's Counsel. At the request of Defendant's Counsel, the Settlement Administrator or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Defendant.

6.3 Termination Clause. If, prior to the Final Approval Hearing, any Persons who would otherwise be Settlement Class Members have timely requested exclusion from the Settlement Class in accordance with the provisions of this Agreement, the Preliminary Approval Order, and the Notice given pursuant thereto, and the number of such Persons seeking exclusion exceeds one thousand (1,000), ZeoBIT shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement. ZeoBIT may terminate the Settlement Agreement by serving written notice of termination on the Court and Class Counsel by hand delivery or overnight courier within five (5) business days after being informed in writing by the Settlement Administrator that there are one thousand (1,000) or more such requests for exclusion timely filed. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (iii) no term or draft of this Settlement Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation will have any affect or be admissible into evidence, for any purpose, in this Action or any other proceeding.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of a Preliminary Approval Order of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination, substantially in the form attached as Exhibits A, B and C.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth in this Agreement.

7.3 After Notice is given, Class Counsel, on behalf of the Class Representative, shall request from the Court a Final Judgment. The Final Judgment will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all attached exhibits;

(b) approve the Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is

reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clauses of the United States Constitution, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and class action claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as provided in the Settlement Agreement;

(f) incorporate the releases set forth in Section 3, make the releases effective as of the Final Settlement Date, and forever discharge the Released Parties as set forth in this Agreement;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) as (1) shall be consistent in all material respects with the Final Judgment, or (2) do not limit the rights of Settlement Class Members; and

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD

8.1 Class Counsel is entitled to petition the Court for reasonable attorneys' fees and expenses from the Settlement Fund. Class Counsel shall file, and the Settlement Administrator shall post to the settlement website referenced in Section 4.1(b), its papers supporting the Fee Award fourteen (14) days before the Objection/Exclusion Deadline. Class Counsel has agreed to limit their request for attorneys' fees and expenses to no more than one-third (1/3) of the Settlement Fund. ZeoBIT may oppose Class Counsel's petition for attorneys' fees and expenses.

8.2 The Settlement Administrator, within five (5) days after the later of (a) the Final Settlement Date or (b) receipt of wire instructions from Class Counsel, pay Class Counsel from the Settlement Fund the Fee Award via electronic transfer to an account designated by Class Counsel. Class Counsel is solely responsible for distributing the Fee Award to any attorney that may claim entitlement to attorneys' fees or costs in the Action. Defendant is not responsible for Class Counsel's allocation of the Fee Award. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

8.3 Class Counsel has agreed to limit its request for any incentive award for Plaintiff Yenchu to one thousand dollars (\$1,000.00). ZeoBIT may oppose Class Counsel's petition for an incentive award. Class Counsel shall file, and the Settlement Administrator shall post to the

settlement website referenced in Section 4.1(b), its papers supporting any incentive award fourteen (14) days before the Objection/Exclusion Deadline.

8.4 The Settlement Administrator, within five (5) days after the Final Settlement Date, shall pay from the Settlement Fund the amount of any Court-approved incentive award for Plaintiff Yench a via check, to be sent care of Class Counsel. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

9.1 If the Final Settlement Date does not occur for any reason, or in the event that this Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated then this Agreement shall be canceled and terminated subject to Section 9.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement. Notwithstanding anything in this Agreement, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees or incentive award sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.2 If this Agreement is terminated or fails to become effective for any reason, the Parties and the Settlement Class Members shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order, including but not limited to certifying any class for settlement purposes, entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties and the Settlement Class Members shall be returned to the *status quo ante*

with respect to the Action as if they had never entered into this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties, Class Counsel, and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provisions of this Agreement.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by the Releasing Parties and each or any of them, on the one hand, against the Released Parties, and each or any of them, on the other hand.

10.4 The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.

10.5 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have

read and understand fully this Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.6 Whether or not the Final Settlement Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained in this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or statute, the reasonableness of the settlement amount or the fee award, or of any alleged wrongdoing, liability, negligence or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered, or received against the Settlement Class as an admission, concession, or evidence of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement

is approved by the Court and the Final Settlement Date occurs, any of the Parties or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff Yencha, the Settlement Class or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount that could have or would have been recovered after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff Yencha, the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff Yencha's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.7 The headings used in this Agreement are used for the purpose of convenience only and are not meant to have legal effect.

10.8 The Recitals are incorporated by this reference and are part of the Settlement Agreement.

10.9 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.10 The Parties must execute and deliver any additional papers, documents, and other

assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

10.11 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matter set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

10.13 Except as otherwise provided in this Agreement, each Party shall bear its own fees and costs.

10.14 Plaintiff Yench represents and warrants that she has not assigned, granted, or transferred any claim or right or interest therein as against the Released Parties to any other Person and that she is fully entitled to release the same.

10.15 Nothing in this Agreement, the negotiations, and the mediation relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.

10.16 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any party to this Agreement warrants and represents that such Person has the full authority to do so and has the authority to take

appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.17 This Agreement may be executed in one or more counterparts. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of the Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.18 This Settlement Agreement shall be binding on, and inure to the benefit of, the successors and assigns of the Parties to this Agreement and the Released Parties except to the extent expressly stated.

10.19 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties to this Agreement submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.20 This Settlement Agreement and any claim, cause of action, or dispute among the Parties arising out of or relating to this Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict-of-law principles that may otherwise provide for the application of the law of another jurisdiction.

10.21 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms'-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

10.22 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to Class Counsel and Defendant's Counsel.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

HOLLY YENCH

Dated: _____

By (signature): _____

Name (printed): _____

ZEObIT, LLC

Dated: _____

By (signature): _____

Name (printed): _____

Its (title): _____

APPROVED AS TO FORM BY COUNSEL:

| Dated: May ____, 2015

EDELSON PC
Attorneys for Plaintiff Yench and the
Settlement Class

By: _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Author

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| Dated: May ____, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By: _____
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.

Author

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Exhibit A

MacKeeper Settlement Claim Form

Name (First, M.I., Last): _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Email Address (that was used in connection with purchase): _____

Phone Number (Optional. The Settlement Administrator may call you for additional information to process your claim, if necessary): _____

The Parties have the right to audit all claims for accuracy, truthfulness, and compliance with the terms and conditions of the Settlement Agreement.

Class Member Affirmation: By submitting this Claim Form and checking the box below, I declare that I believe I am a member of the Settlement Class and that the following statement is true (each box must be checked to receive payment):

- ☐ I purchased MacKeeper software or before [date of preliminary approval].
- ☐ I have not received a full refund for my purchase of MacKeeper.

Dated: _____, 20____.

All Claim Forms must be submitted or postmarked by [claims deadline]

Your claim will be submitted to the Settlement Administrator for review. Any payments will be made after the Court approves the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement. Please be patient. The amount of any payment, not to exceed \$39.95, will depend upon the number of valid claims submitted.

For more detail, please see the notice located on the settlement website at www.YenchaSoftwareSettlement.com.

Questions, visit www.YenchaSoftwareSettlement.com or call 1-877-315-1149.

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Exhibit B

FROM: MACKEEPERSETTLEMENT@[SETTLEMENTADMIN].COM
 TO: JOHNQCLASSMEMBER@GMAIL.COM
 RE: LEGAL NOTICE OF CLASS ACTION SETTLEMENT

IF YOU PURCHASED MACKEEPER SOFTWARE BEFORE [DATE], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

A settlement has been reached in a class action lawsuit against ZeoBIT LLC, the makers of MacKeeper software. The lawsuit alleges that ZeoBIT deceptively advertised and sold MacKeeper as capable of enhancing a Macintosh computer's speed, performance, and security by detecting and eliminating harmful errors and threats, but that it does not and cannot perform all of the functions advertised. ZeoBIT denies any wrongdoing, and the settlement does not establish that any law has been broken. The lawsuit is called *Yencha v. ZeoBIT LLC*, No. 14-cv-~~00578~~ and is in U.S. District Court for the Western District of Pennsylvania. You need not live in Pennsylvania to participate.

• **Why Am I Being Contacted?** Our records show you may be a "Settlement Class Member" entitled to payment under the Settlement. Settlement Class Members are those people who live in the United States or its territories and purchased MacKeeper on or before [the date of entry of the Preliminary Approval Order].

• **What Can I Get From the Settlement?** Settlement Class Members can submit a valid claim by [date] to receive a payment of up to \$39.95 from a \$2,000,000 Settlement Fund, after payment of the costs of administering the settlement, the attorneys' fee award, and any incentive award to the plaintiff. The amount of the payment to Settlement Class Members depends upon the number of valid claims filed. There are approximately 513,000 individuals in the Settlement Class. Based upon class member participation in other similar settlements, the Parties anticipate that each Settlement Class Member that submits an approved claim in this case will receive a payment of \$39.95. If, however, the amount required to pay each class member exceeds the amount of the Settlement Fund (after paying fees and expenses), then each Settlement Class Member who filed a valid claim will receive a proportionally reduced share of the Settlement Fund. If there is still money left in the Settlement Fund after all payments are made, the money will be donated to non-profit organizations. File your claim online here at www.YenchaSoftwareSettlement.com by [date]. To request a paper copy, call toll-free 1-877-315-1149.

• **How Do I Get My Payment?** Just click [here](#) and complete the short and simple Claim Form. More information is available at www.YenchaSoftwareSettlement.com. You can also call 1-877-315-1149 to request a paper copy of the Claim Form. All Claim Forms must be received by [claims deadline].

• **What Are My Options?** You can do nothing, submit a Claim Form, comment on or object to any of the Settlement terms, or exclude yourself from the Settlement. If you do nothing or submit a Claim Form, you won't be able to sue ZeoBIT in a future lawsuit about the claims addressed in the Settlement. If you exclude yourself, you won't get a payment—but you'll keep your right to sue ZeoBIT on the issues the settlement concerns. You must contact the settlement administrator by mail or e-mail to exclude yourself. You can also object to the settlement if you disagree with any of its terms. All Requests for Exclusion and Objections must be received by [exclusion/objection deadline]. For a more detailed description of the claims that you will be releasing if you do not request to exclude yourself from the Settlement, see paragraph 1.24 on pages 7–8 of the Settlement Agreement.

• **Do I Have a Lawyer?** Yes. The Court has appointed lawyers from Edelson PC to represent you as "Class Counsel." You will not be charged for these lawyers. You can hire your own lawyer, but you'll need to pay your own legal fees. The Court has also appointed Holly Yencha—a class member like you—to represent the Class.

• **When Will the Court Consider the Proposed Settlement?** The Court will hold a hearing to determine the fairness of the settlement at [time] on [date] at the United States Courthouse, Pittsburgh Division, 700 Grant Street, Pittsburgh, Pennsylvania 15219 in Courtroom 5A before Judge Joy Flowers Conti. At that hearing, the Court will hear objections, determine if the Settlement is fair, and consider Class Counsel's request for fees and expenses up to one-third (1/3) of the Settlement Fund and an award for the Class Representative of up to \$1,000. The Court may award less than these amounts. The hearing may be postponed to a different date or time without notice, so check www.YenchaSoftwareSettlement.com for updates. You are not required to come to this hearing.

• **Want More Information?** This notice is a summary. For a detailed notice or to see the Settlement Agreement and other court documents, go to www.YenchaSoftwareSettlement.com, call the settlement administrator at 1-877-315-1149 or call Class Counsel at 1-866-354-3015. The Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the U.S. District Court of the Western

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District of Pennsylvania, Pittsburgh Division, located at the United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219. Do not contact the Court or MacKeeper with questions.

| By Order of the Court Dated: [Date],

Author

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Exhibit C

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

If you live in the United States or its territories and purchased MacKeeper Software on or before [date of preliminary approval], a class action settlement may affect your rights.

A Federal Court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

- A settlement has been reached in a class action lawsuit against software developer ZeoBIT LLC. The class action lawsuit involves whether or not ZeoBIT's MacKeeper software performed certain functions as advertised.
- You are included if you live in the United States or its territories and purchased MacKeeper software on or before [date of preliminary approval].
- If you are included in the settlement, you are eligible to submit a claim to receive a payment of up to \$39.95 from a \$2,000,000 settlement fund, after the payment of the costs of administering the settlement, the attorneys' fee award, and any incentive award to the plaintiff. The amount of the payment will depend on the number of claims received.
- Please read this notice carefully. Your legal rights are affected whether you act or don't act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY [DATE]	The only way to receive a payment.
EXCLUDE YOURSELF BY [DATE]	You will receive no payment, but you will retain any rights you currently have to sue ZeoBIT about the claims in this case.
OBJECT BY [DATE]	Write to the Court explaining why you don't like the Settlement.
ATTEND A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	You won't get a share of the settlement benefits and will give up your rights to sue ZeoBIT about the claims in this case.

These rights and options—and the deadlines to exercise them—are explained in this notice.

The Court in charge of this case still has to decide whether to approve the settlement. Payments will be provided only after any issues with the settlement are resolved. Please be patient.

BASIC INFORMATION

1. What is this notice?

A court authorized this notice to let you know about a proposed settlement of a class action lawsuit with ZeoBIT LLC. You have legal rights and options that you may act on before the Court decides

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

Author

Author

Author

whether to approve the proposed settlement. This notice explains the lawsuit, the settlement, and your legal rights.

Judge Joy Flowers Conti of the U.S. District Court for the Western District of Pennsylvania is overseeing this class action. The case is known as *Yencha v. ZeoBIT LLC*, No. 14-cv-00578 (the “Action”). The person who sued is called the “Plaintiff.” The company she sued, ZeoBIT LLC, is called the “Defendant.” You need not live in Pennsylvania to participate.

2. What is a class action lawsuit?

In a class action, one or more people called “Class Representatives” sue on behalf of a group of people who have similar claims. Together, these people are called a “Class” or “Class Members.” In a class action, the court resolves the issues for all Class Members, except for those who exclude themselves from the Class. After the parties reached an agreement to settle this case, the Court recognized it as a case that should be treated as a class action for settlement purposes.

THE CLAIMS IN THE LAWSUIT AND THE SETTLEMENT

3. What is this lawsuit about?

The lawsuit alleges that ZeoBIT deceptively advertised and sold MacKeeper software as capable of enhancing an Apple Macintosh computer’s speed, performance, and security by detecting and eliminating harmful errors and threats, but that it does not and cannot perform all of the functions advertised. The lawsuit seeks damages for breach of contract and unjust enrichment. ZeoBIT denies Plaintiff’s claims of wrongdoing or liability against it and asserts that its conduct was lawful.

More information about Plaintiff’s complaint and Defendant’s answer to the claim are available in the “Court Documents” section of the settlement website at www.YenchaSoftwareSettlement.com.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or the Defendant should win this case. Instead, the parties have agreed to settle the claims against Defendant—that is, reach a compromise—by entering into a written settlement agreement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Class Members will get compensation now rather than, if at all, years from now.

The Class Representative and her attorneys (“Class Counsel”) believe that the settlement is in the best interest of the Class Members.

WHO’S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The Court decided that everyone who fits this description is a member of the **Settlement Class**:

All Persons in the United States and its territories who purchased MacKeeper on or before [the date of entry of the Preliminary Approval Order].

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

If you meet that definition, you are a member of the Settlement Class.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

Defendant has agreed to create a \$2,000,000 Settlement Fund. Settlement Class Members can submit a claim for up to \$39.95 for their purchase of MacKeeper. In addition to paying for valid claims of Class Members, the Settlement Fund will be used to pay the costs to administer the settlement, any Court-ordered award to Class Counsel for reasonable fees and expenses, and any incentive award to the Class Representative. The amount each claimant will be paid depends upon the number of valid claims submitted. There are approximately 513,000 individuals in the Settlement Class. Based upon class member participation in other similar settlements, the Parties anticipate that each Settlement Class Member that submits an approved claim in this case will receive a payment of \$39.95. If the amount required to pay each class member with a valid claim exceeds the amount of the Settlement Fund (after paying fees and expenses), then each Settlement Class Member who filed a valid claim will receive a proportionally reduced share of the Settlement Fund.

On the other hand, if there is still money left in the Settlement Fund after providing payments to every Settlement Class Member with a valid claim, paying the costs to administer the Settlement, the award of attorneys' fees and expenses, and any incentive award to the Class Representative, the remaining money will be donated to the following nonprofit organizations:

- Carnegie Mellon CyLab: Carnegie Mellon University's CyLab establishes public-private partnerships to develop new technologies for measurable, available, secure, trustworthy, and sustainable computing and communications systems, as well as to educate individuals at all levels equipping them to meet the demands and challenges of being responsible computer users and cybertizens. For more information visit www.cylab.cmu.edu.
- National Consumer Law Center: The NCLC has dedicated itself to consumer justice issues since its founding in 1969 and has taken a leadership role in the development of laws aimed at protecting consumers, such as the Credit CARD Act of 2009. The NCLC also works closely with nonprofit organizations, legal service organizations, attorneys, policymakers, and state and federal governments to stop exploitive consumer practices, help consumers build and retain wealth, and advance economic fairness. The NCLC's expertise has focused on a broad range of consumer issues, including deceptive acts and practices, and privacy rights. For more information visit www.nclc.org.

HOW TO GET BENEFITS

7. How do I get benefits?

If you are a Class Member and you want to participate in the settlement, you must complete and submit a Claim Form **online or by mail postmarked by claims deadline**.

You can submit an electronic Claim Form online at www.YenchaSoftwareSettlement.com, or obtain a copy of the Claim Form by downloading it from www.YenchaSoftwareSettlement.com, by writing to the Settlement Administrator at MacKeeper Settlement Administrator, c/o Rust Consulting, Inc., PO Box 2242,

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

Faribault, MN 55021-1642, or by calling toll-free 1-877-315-1149. You cannot submit a claim if you already received a refund for the MacKeeper software you purchased.

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If you submit a Claim Form, you won't be able to sue ZeoBIT in a future lawsuit about the claims addressed in the Settlement. For a more detailed description of the claims that you will be releasing if you do not request to be excluded from the Settlement, see **provision 1.24 on pages 7–8** of the Settlement Agreement.

8. When will I get my payment?

If you submitted a valid and approved claim, you should receive a check from the Settlement Administrator within approximately 60-90 days after the Settlement has been finally approved and/or after any appeals have been resolved in favor of the Settlement. The hearing to consider the final fairness of the Settlement is scheduled for [**Fairness Hearing Date**]. All checks will expire and become void 90 days after they are issued.

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Please also note that if, prior to the fairness hearing, more than 1,000 Class Members exclude themselves from the settlement, ZeoBIT shall have the option to terminate the settlement. If ZeoBIT terminates the settlement, you will not receive a payment.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes, the Court has appointed lawyers Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC as Class Counsel. You will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

Author

10. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses of up to one-third (1/3) of the Settlement Fund. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel. The Court may award less than the amount requested.

Class Counsel will also request a service award (also known as an "incentive" award) for the Class Representative of up to \$1,000 from the Settlement Fund for her services as Class Representative and her efforts in bringing this case. The Court will determine what amount will be paid to the Class Representative. The Court may award less than the amount requested.

Class Counsel will file with the Court and post on the settlement website their request for attorneys' fees and expenses and request for an incentive award to the Class Representative two weeks before the objection deadline of [**date 2 weeks before objection deadline**].

YOUR RIGHTS AND OPTIONS

11. What happens if I do nothing at all?

If you do nothing, you will receive no payment under the Settlement, you will be in the Settlement Class, and if the Court approves the Settlement, you will also be bound by all orders and judgments

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QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

of the Court. Also, unless you exclude yourself, you won't be able to start a lawsuit or be part of any other lawsuit against the Defendant for the claims being resolved by this Settlement.

12. What happens if I ask to be excluded?

If you exclude yourself from the Settlement, you can't claim any money or receive any benefits as a result of the Settlement. You will keep your right to start your own lawsuit against Defendant for the same legal claims made in this lawsuit. You will not be legally bound by the Court's judgments related to the Settlement Class and Defendant in this class action.

13. How do I ask to be excluded?

To exclude yourself from the Settlement Class, you must send a letter or email saying that you want to be excluded from the Settlement Class in *Yencha v. ZeoBIT LLC*, Case No., 14-cv-00578. Your letter or email must also include your name, address, the e-mail address you used in connection with your purchase of MacKeeper, your phone number, and your signature. If you choose to exclude yourself by mail, your request for exclusion must be postmarked no later than [objection / exclusion deadline], and sent to:

MacKeeper Settlement Administrator
c/o Rust Consulting, Inc.
PO Box 2242
Faribault, MN 55021-1642

If you choose to exclude yourself by email, your request for exclusion must be sent to info@yenchasoftwaresettlement.com no later than [objection / exclusion deadline].

You cannot exclude yourself by phone.

14. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue the Defendant for the claims being resolved by this Settlement. For a more detailed description of the claims that you will be releasing if you do not request to be excluded from the Settlement, see paragraph 1.24 on pages 7-8 of the Settlement Agreement.

15. If I exclude myself, can I get anything from this Settlement?

No, if you exclude yourself, do not submit a Claim Form to ask for a payment.

16. How do I object to the Settlement?

If you do not exclude yourself from the Settlement Class, you can object to the Settlement if you like or don't like any part of it. You can give reasons why you think the Court should not approve it by filing an objection. The Court will consider your views. Your objection must be filed with the Court or postmarked to the Court's address below no later than [date]. You must also send a copy to attorneys for the Parties at the addresses below. If you are represented by an attorney, your objection must be filed through the Court's Case Management/Electronic Case Filing (CM/ECF) system.

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

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Court	Class Counsel	Defendant's Counsel
Clerk of the Court United States Courthouse W.D. of Pennsylvania, Pittsburgh Division 700 Grant Street Pittsburgh, Pennsylvania 15219	Benjamin H. Richman EDELSON PC 350 North LaSalle, Suite 1300 Chicago, Illinois 60654	Matthew D. Brown Cooley LLP 101 California Street, 5th Floor San Francisco, California 94111

The objection must be in writing and include the case name *Yencha v. ZeoBIT LLC*, Case No. 14-cv-00578. It must also include (a) your name, (b) your address, (c) the e-mail address that you used in connection with your purchase of MacKeeper, (d) your phone number, (e) an explanation of the basis upon which you claim to be a Settlement Class Member, (f) the specific grounds for the objection (including all arguments, citations, and evidence supporting the objection), (g) the name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of your objection or who may profit from the pursuit of your objection, and (h) your physical signature. The Court will consider all properly filed objections from Settlement Class Members.

17. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you don't like something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you don't want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

18. When and where will the Court hold a hearing on the fairness of the Settlement?

A hearing has been set for [date] at [time], before The Honorable Joy Flowers Conti at the United States Courthouse, Pittsburgh Division, 700 Grant Street, Pittsburgh, Pennsylvania 15219 in Courtroom 5A. At the hearing, the Court will hear any objections and arguments concerning the fairness of the proposed settlement, including the amount requested by Class Counsel for attorneys' fees and expenses and the incentive award to the Class Representative. You do not need to attend this hearing. You also do not need to attend to have an objection considered by the Court.

Note: The date and time of the fairness hearing are subject to change by Court Order, but any changes will be posted at www.YenchaSoftwareSettlement.com or through the Court's Public Access to Court Electronic Records (PACER) system.

19. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as your written objection was filed and mailed on time and meets the other criteria described in the Settlement, the Court will consider it. You may also pay another lawyer to attend, but you don't have to.

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

20. May I speak at the hearing?

If you do not exclude yourself from the Settlement Class, you may speak at the hearing,

GETTING MORE INFORMATION**21. Where can I get additional information?**

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, please see the Settlement Agreement available at [www.website.com], by contacting Class Counsel at 1-866-354-3015, by accessing the Court docket in this case through the Court's PACER system, or by writing to the Settlement Administrator at MacKeeper Settlement Administrator, c/o Rust Consulting, Inc., PO Box 2242, Faribault, MN 55021-1642 or calling toll-free 1-877-315-1149. The Settlement Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the U.S. District Court of the Western District of Pennsylvania, Pittsburgh Division, located at the United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219.

PLEASE Do NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANT WITH QUESTIONS ABOUT THE SETTLEMENT OR CLAIMS PROCESS.

QUESTIONS? CALL 1-877-315-1149 TOLL FREE, OR VISIT WWW.YENCHASOFTWARESETTLEMENT.COM

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Exhibit 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZeoBIT LLC, a California limited liability
company,

Defendant.

Case No. 2-14-cv-00578-JFC

Judge: Joy Flowers Conti

DECLARATION OF BENJAMIN H. RICHMAN

Pursuant to 28 U.S.C. § 1746, I hereby declare and state as follows:

1. I am an attorney admitted *pro hac vice* in the United States District Court for the Western District of Pennsylvania. I am entering this declaration in support of Plaintiff Holly Yench's Renewed Motion for Preliminary Approval of Proposed Class Action Settlement. This declaration is based upon my personal knowledge, except where expressly noted otherwise. If called upon to testify to the matters stated herein, I could and would competently do so.

2. I am a partner in the law firm of Edelson PC, which has been retained to represent the named Plaintiff in this matter, Holly Yench, and act as proposed Class Counsel on behalf of the Settlement Class.

Settlement Negotiations

3. On January 6, 2015, Plaintiff Holly Yench ("Yench" or "Plaintiff") and Defendant ZeoBIT LLC ("ZeoBIT" or "Defendant") (Plaintiff and Defendant together, the "Parties") proceeded with an early neutral evaluation conference and mediation with the

Honorable Edward A. Infante (ret.) of JAMS to discuss their respective positions on the claims and defenses at issue as well as the suitability of those claims for class certification.

4. The early neutral evaluation and mediation proved informative for both sides and ultimately resulted in the settlement of this action. Indeed, after a full day of discussions and negotiation with the assistance of Judge Infante, the Parties were able to reach an agreement in principle on the key terms of a class-wide settlement.

5. After months of further negotiations, exchanges of drafts of a settlement agreement, and communications, the Parties were able to finalize their settlement in the form of the original Stipulation of Class Action Settlement.

6. On March 12, 2015, Plaintiff Yencha filed her original motion for preliminary approval of the Parties' proposed class action settlement. (Dkt. 28.) On April 16, 2015, the Court held a hearing on Plaintiff's motion to determine whether the settlement was fair, reasonable, and adequate and thus, whether preliminary approval should be granted. During the hearing, the Court expressed concerns about the claims for which Yencha requested class certification for settlement purposes, the specificity of the notice documents, and how Settlement Class members could exercise their rights under the Agreement.

7. One concern expressed by the Court was whether class certification was appropriate for Plaintiff's unjust enrichment claim. Since the hearing, the Parties have conferred and agreed that certification of Plaintiff's unjust enrichment claim is appropriate for settlement purposes.

Certification of the Settlement Class is Appropriate.

8. It is proposed Class Counsel's position that Rule 23's requisites to conditionally certifying the proposed Settlement Class for settlement purposes are satisfied here.

9. With respect to Rule 23(a)'s numerosity requirement, Defendant's records indicate that approximately 513,000 individuals and entities purchased the MacKeeper Software at issue here.

10. As to the adequacy requirement, Plaintiff Yenchu's interests directly align with the Settlement Class members', as each has an interest in recouping the monies she, he or it paid for the Software that allegedly failed to function as promised. In addition to having virtually the same interests as other Settlement Class members, Yenchu does not have any individual interests in this case that would be antagonistic to those of the Settlement Class, and her pursuit of this action demonstrates as much.

11. For our part, proposed Class Counsel are well respected members of the legal community and have significant experience litigating class actions of similar size, scope, and complexity to the instant action. We have regularly engaged in major complex litigation involving consumer technology issues, have the resources necessary to conduct litigation of this nature, and have frequently been appointed lead class counsel by courts throughout the country. We also have experience prosecuting and settling numerous class actions related to alleged design and marketing issues of software products similar to those at issue here.

12. In this case specifically, we have identified the claims at issue, diligently investigated, prosecuted, and dedicated substantial resources to this Action, and ultimately negotiated a settlement providing *up to full* refunds for the proposed Settlement Class. We will continue to put forth such effort and dedicate the resources necessary to appropriately represent the Settlement Class's interests throughout the pendency of the Action.

The Proposed Settlement is Well Within the Range of Possible Approval.

13. We are of the opinion that the proposed settlement is fair, reasonable and adequate and well within the range of possible approval.

14. First, we believe the settlement is entitled to a presumption of fairness because it is the product of arm's-length negotiations. At the outset of the case, the Parties began a dialogue regarding their respective views of the claims and defenses in question, which led the Parties to convene a meeting between their counsel and a representative of ZeoBIT in Pittsburgh, Pennsylvania on September 29, 2014. During that meeting, Plaintiff's counsel presented the findings of our forensic investigation into the Software and related marketing materials, and the Parties continued their dialogue regarding their views on the merits of the case. The Parties also discussed potential neutrals to preside over the Early Neutral Evaluation ordered by the Court.

15. Ultimately, the Parties selected (and the Court endorsed) Judge Edward A. Infante (ret.) of JAMS (San Francisco)—a former Magistrate Judge for the Northern District of California who has extensive experience mediating complex class actions—as the early neutral evaluator and proceeded with a full-day ENE and mediation before him on January 6, 2015. During the ENE/mediation, Judge Infante led substantive discussions on the strengths and weaknesses of the Parties' respective claims and defenses, the likelihood of obtaining class certification, and the settlements and dispositions in similar actions against ZeoBIT's industry competitors.

16. With the benefit of those discussions (and Judge Infante's views) as well as an exchange of certain additional information (e.g., information regarding ZeoBIT's sales of the Software and the fact that the company no longer owns nor markets it), the Parties also discussed the potential resolution of the Action.

17. Ultimately, it was only with Judge Infante's assistance that the Parties were able to reach a settlement in principle on a class-wide basis that is consistent with the other settlements reached with ZeoBIT's industry competitors. After the conclusion of the ENE, the Parties spent several weeks' time exchanging drafts of their proposed Settlement Agreement and negotiating the specific terms of the Agreement.

18. Of course, the Parties have also now had the benefit of the Court's own views of the settlement as stated at the preliminary approval hearing on April 16th, and their own additional meet and confers regarding the issues addressed by the Court, all of which contributed to the form of their revised Settlement Agreement.

19. Further, we believe that a presumption of fairness is warranted based on our substantial experience in consumer class actions generally, and cases against Defendant's industry competitors specifically. That experience—coupled with our investigation and information uncovered in this case—has allowed us to gain a superior understanding of the factual and legal bases of the claims at issue, rendering us best equipped to ensure that the Settlement Class receives the best relief possible under the circumstances. As a result, we were able to fully weigh the risks and rewards of further litigation as compared to the proposed settlement, and we believe that the Agreement represents the best option for obtaining a meaningful recovery for the Settlement Class.

20. We further believe that the settlement is fair and reasonable because it provides substantial—if not full—relief to the Settlement Class, as Yencha's theory of this case has always been that while any design flaws in MacKeeper's ability to diagnose, report and repair various errors and problems on users' Macs reduced the Software's value, it was not that the Software lacked utility all together. Thus, the potential to obtain up to a full refund of the

purchase price they paid for the Software under the terms of the settlement represents as good (if not better) a result as Settlement Class members could hope to achieve in this case.

21. We also believe that the result for the Settlement Class is especially beneficial in light of the risks associated with continued litigation of the Action. Even though we are confident in the strength of Yenchu's claims, litigation is inherently uncertain. Indeed, as the Court's stated views on class certification at the preliminary approval hearing recognized, the potential for a battle over class certification; the future availability of witnesses (many of whom are likely located in Europe, where the Software was developed, and thus outside of the subpoena power of this Court); the preservation of evidence; and, the depreciated value of future recovery compared to immediate relief, all present risks to obtaining a full recovery for the Settlement Class after trial.

22. Finally, we also believe that the settlement is fair and reasonable because it was negotiated by Parties' who have a solid understanding of the factual allegations, claims, and defenses at issue. As it relates to Plaintiff, she and her counsel conducted substantial factual investigation into the bases of the Settlement Class's claims and ZeoBIT's likely defenses by, *inter alia*, having a computer forensic analysis performed on the Software and receiving and reviewing information from members of the proposed Settlement Class about their experiences with the Software. The Parties also exchanged information regarding the Software, pricing, and size of the proposed Settlement Class, and had the benefit of an early neutral evaluation of their respective positions from a well-respected former Magistrate Judge. Drawing on all of that, the Parties negotiated a valuable settlement for the proposed Settlement Class, which is consistent with others previously approved by courts throughout the country.

23. For all of these reasons, we and Yenchu firmly believe that both the relief obtained for the Settlement Class through the settlement, as well as the manner in which it was attained, weigh heavily in favor of a finding that the settlement is fair, reasonable and adequate, and well within the range of approval.

The Proposed Notice Plan Should Be Approved.

24. Finally, we are also of the opinion that the proposed notice plan constitutes the best notice practicable under the circumstances. The Parties—again, with the direction of the Court at the preliminary approval hearing—have agreed to a three-part notice plan that includes direct e-mail notice, online publication notice via internet and mobile banner advertisements, and notice via a dedicated settlement website. We expect the direct email notice to be particularly effective in this case—as it has been in similar cases—given that Settlement Class members who purchased MacKeeper were required to provide their e-mail addresses before they could complete their purchases of the Software, and indeed, that was the method by which they communicated with ZeoBIT. And, of course, the extensive online publication notice—i.e., 16,000,000 impressions across a major network of online advertisers and Facebook.com—will supplement and bolster that direct notice.

Attachments.

25. Attached to Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Approval as Exhibit 1 is a true and accurate copy of the Parties' Stipulation of Class Action Settlement.

26. Attached to Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Approval as Exhibit 2 is a true and accurate copy of the Declaration of Tore Hodne in Support of Motion for Preliminary Approval of Proposed Class Action Settlement.

27. Attached to Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Approval as Exhibit 3 are true and accurate copies of the Parties' original settlement agreement and accompanying exhibits that include the redlined revisions.

28. Attached to Plaintiff's Memorandum in Support of Renewed Motion for Preliminary Approval as Exhibit 5 is a true and accurate copy of the April 16, 2015 hearing transcript.

29. Attached hereto as Exhibit 4-A is a true and accurate copy of the Firm Resume of Edelson PC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of June 2015 at San Diego, California.

/s/ Benjamin H. Richman

Exhibit A

EDELSON PC FIRM RESUME

EDELSON PC is a plaintiffs' class action and commercial litigation firm with attorneys in Illinois and California.

Our attorneys have been recognized as leaders in these fields by state and federal legislatures, national and international media groups, the courts, and our peers. Our reputation for leadership in class action litigation has led state and federal courts to appoint us lead counsel in many high-profile class actions, including privacy suits against comScore, Netflix, Time, Microsoft, and Facebook; numerous Telephone Consumer Protection Act ("TCPA") cases against companies such as Google, Twentieth Century Fox, and Simon & Schuster; class actions against Citibank, Wells Fargo, and JP Morgan Chase related to reductions in home equity lines of credit; fraudulent marketing cases against software companies such as Symantec; mobile content class actions against all major cellular telephone carriers; the Thomas the Tank Engine lead paint class actions; and the tainted pet food litigation. We have testified before the United States Senate on class action issues and have repeatedly been asked to work on federal and state legislation involving cellular telephony, privacy, and other issues. Our attorneys have appeared on dozens of national and international television and radio programs to discuss our cases and class action and consumer protection issues more generally. Our attorneys speak regularly at seminars on consumer protection and class action issues, lecture on class actions at law schools, and are asked to serve as testifying experts in cases involving class action and consumer issues.

PLAINTIFFS' CLASS AND MASS ACTION PRACTICE GROUP

EDELSON PC is a leader in plaintiffs' class and mass action litigation, with a particular emphasis on consumer technology class actions, and has been called a "class action 'super firm.'" (Decalogue Society of Lawyers, Spring 2010.) As recognized by federal courts nationwide, our firm has an "extensive histor[y] of experience in complex class action litigation, and [is a] well-respected law firm[] in the plaintiffs' class action bar." *In re Pet Food Prod. Liab. Litig.*, MDL Dkt. No. 1850, No. 07-2867 (NLH) (D.N.J. Nov. 18, 2008). A leading arbitrator concurred, finding that Edelson was "extraordinarily experienced" in "consumer protection class actions generally," including "technology consumer protection class action[s]."

In appointing our firm interim co-lead in one of the most high profile cases in the country, a federal court pointed to our ability to be "vigorous advocates, constructive problem-solvers, and civil with their adversaries." *In Re JPMorgan Chase Home Equity Line of Credit Litig.*, No. 10 C 3647 (N.D. Ill. July 16, 2010). After hard fought litigation, that case settled, resulting in the reinstatement of between \$3.2 billion and \$4.7 billion in home credit lines.

We have been specifically recognized as "pioneers in the electronic privacy class action field, having litigated some of the largest consumer class actions in the country on this issue." *In re Facebook Privacy Litig.*, No. C 10-02389, Dkt. 69 at 5 (N.D. Cal. Dec. 10, 2010) (order appointing the firm interim co-lead of privacy class action); *see also In re Netflix Privacy Litig.*, No. 11-cv-00379, Dkt. 59 at 5 (N.D. Cal. Aug. 12, 2011) (appointing us the sole lead counsel due, in part, to our "significant and particularly specialized expertise in electronic privacy litigation and class actions[.]").

Similarly, as recognized by a recent federal court, our firm has “pioneered the application of the TCPA to text-messaging technology, litigating some of the largest consumer class actions in the country on this issue.” *Ellison v Steve Madden, Ltd.*, No. 11-cv-5935 PSG, Dkt. 73 at 9 (C.D. Cal. May 7, 2013).

We have several sub-specialties within our plaintiffs’ class action practice:

PRIVACY/DATA LOSS

Data Loss/Unauthorized Disclosure of Data

We have litigated numerous class actions involving issues of first impression against Facebook, Apple, Netflix, Sony, Redbox, Pandora, Sears, Storm 8, Google, T-Mobile, Microsoft, and others involving failures to protect customers’ private information, security breaches, and unauthorized sharing of personal information with third parties. Representative settlements and ongoing cases include:

- *Dunstan v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.): Lead counsel in certified class action accusing Internet analytics company of improper data collection practices. The court has finally approved a \$14 million settlement.
- *Resnick v. Avmed*, No. 10-cv-24513 (S.D. Fla.): Lead counsel in data breach case filed against health insurance company. Obtained landmark appellate decision endorsing common law unjust enrichment theory, irrespective of whether identity theft occurred. Case also resulted in the first class action settlement in the country to provide data breach victims with monetary payments irrespective of identity theft.
- *In re Netflix Privacy Litigation*, No. 11-cv-00379 (N.D. Cal.): Sole lead counsel in suit alleging that defendant violated the Video Privacy Protection Act by illegally retaining customer viewing information. Case resulted in a \$9 million dollar *cy pres* settlement that has been finally approved (pending appeal).
- *Halaburda v. Bauer Publishing Co.*, No. 12-cv-12831 (E.D. Mich.); *Grenke v. Hearst Communications, Inc.*, No. 12-cv-14221 (E.D. Mich.); *Fox v. Time, Inc.*, No. 12-cv-14390 (E.D. Mich.): Consolidated actions brought under Michigan’s Video Rental Privacy Act, alleging unlawful disclosure of subscribers’ personal information. In a ground-breaking decision, the court denied three motions to dismiss finding that the magazine publishers were covered by the act and that the illegal sale of personal information triggers an automatic \$5,000 award to each aggrieved consumer.

- *Standiford v. Palm*, No. 09-cv-05719-LHK (N.D. Cal.): Sole lead counsel in data loss class action, resulting in \$640,000 settlement.
- *In re Zynga Privacy Litig.*, No. 10-cv-04680 (N.D. Cal.): Appointed co-lead counsel in suit against gaming application designer for the alleged unlawful disclosure of its users' personally identifiable information to advertisers and other third parties.
- *In re Facebook Privacy Litigation*, No. 10-cv-02389 (N.D. Cal.): Appointed co-lead counsel in suit alleging that Facebook unlawfully shared its users' sensitive personally identifiable information with Facebook's advertising partners.
- *In re Sidekick Litigation*, No. C 09-04854-JW (N.D. Cal.): Co-lead counsel in cloud computing data loss case against T-Mobile and Microsoft. Settlement provided the class with potential settlement benefits valued at over \$12 million.
- *Desantis v. Sears*, No. 08 CH 00448 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in injunctive settlement alleging national retailer allowed purchase information to be publicly available through the Internet.

Telephone Consumer Protection Act

Edelson has been at the forefront of TCPA litigation for over six years, having secured the groundbreaking *Satterfield* ruling in the Ninth Circuit applying the TCPA to text messages. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946 (9th Cir. 2009). In addition to numerous settlements totaling over \$100 million in relief to consumers, we have over two dozen putative TCPA class actions pending against companies including Santander Consumer USA, Inc., Walgreen Co., Path, Inc., Nuance Communications, Inc., Stonebridge Life Insurance, Inc., GEICO, DirectBuy, Inc., and RCI, Inc. Representative settlements and ongoing cases include:

- *Rojas v CEC*, No. 10-cv-05260 (N.D. Ill.): Lead counsel in text spam class action that settled for \$19,999,400.
- *In re Jiffy Lube Int'l Text Spam Litigation*, No. 11-md-2261, 2012 WL 762888 (S.D. Cal.): Co-lead counsel in \$35 million text spam settlement.
- *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.): Lead counsel in \$10 million text spam settlement.
- *Kramer v. B2Mobile*, No. 0-cv-02722-CW (N.D. Cal.): Lead counsel in \$12.2 million text spam settlement.

- *Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D. Cal.): Lead counsel in class action alleging that defendant co-opted group text messaging lists to send unsolicited text messages. \$6 million settlement provides class members with an unprecedented \$500 recovery.
- *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.): Lead counsel in \$10 million text spam settlement.
- *Miller v. Red Bull*, No. 12-CV-04961 (N.D. Ill.): Lead counsel in \$6 million text spam settlement.
- *Woodman v. ADP Dealer Services*, No. 2013 CH 10169 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in \$7.5 million text spam settlement.
- *Lockett v. Mogreet, Inc.*, No 2013 CH 21352 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in \$16 million text spam settlement.
- *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.): Lead counsel in class action alleging that defendants violated federal law by sending unsolicited text messages to cellular telephones of consumers. Case settled for \$16 million.
- *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.): Co-lead counsel in in \$10 million text spam settlement.
- *Weinstein v. Airt2me, Inc.*, No. 06 C 0484 (N.D. Ill): Co-lead counsel in \$7 million text spam settlement.

CONSUMER TECHNOLOGY

Fraudulent Software

In addition to the settlements listed below, EDELSON PC has consumer fraud cases pending in courts nationwide against companies such as McAfee, Inc., Avanquest North America Inc., PC Cleaner, AVG, iolo Technologies, LLC, among others. Representative settlements include:

- *Drymon v. Cyberdefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.75 million.
- *Gross v. Symantec Corp.*, No. 12-cv-00154-CRB (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$11 million.

- *LaGarde v. Support.com, Inc.*, No. 12-cv-00609-JSC (N.D. Cal.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$8.59 million.
- *Ledet v. Ascentive LLC*, No. 11-CV-294-PBT (E.D. Pa.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$9.6 million.
- *Webb v. Cleverbridge, Inc.*, No. 1:11-cv-04141 (N.D. Ill.): Lead counsel in class action alleging that defendant deceptively designed and marketed its computer repair software. Case settled for \$5.5 million.

Video Games

EDELSON PC has litigated cases video-game related cases against Activision Blizzard Inc., Electronic Arts, Inc., Google, and Zenimax Media, Inc., and has active litigation pending, including:

- *Locke v. Sega of America*, No. 13-cv-01962-MEJ (N.D. Cal.): Pending putative class action alleging that Sega of America and Gearbox Software released video game trailer that falsely represented the actual content of the game.

MORTGAGE & BANKING

EDELSON PC has been at the forefront of class action litigation arising in the aftermath of the federal bailouts of the banks. Our suits include claims that certain banks unlawfully suspended home credit lines based on pre-textual reasons, and that certain banks have failed to honor loan modification programs. We achieved the first federal appellate decision in the country recognizing the right of borrowers to enforce HAMP trial plans under state law. The court noted that “[p]rompt resolution of this matter is necessary not only for the good of the litigants but for the good of the Country.” *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 586 (7th Cir. 2012) (Ripple, J., concurring). Our settlements have restored billions of dollars in home credit lines to people throughout the country. Representative cases and settlements include:

- *In re JP Morgan Chase Bank Home Equity Line of Credit Litig.*, No. 10-cv-3647 (N.D. Ill.): Court appointed interim co-lead counsel in nationwide putative class action alleging illegal suspensions of home credit lines. Settlement restored between \$3.2 billion and \$4.7 billion in credit to the class.
- *Hamilton v. Wells Fargo Bank, N.A.*, No. 09-cv-04152-CW (N.D. Cal.): Lead counsel in class actions challenging Wells Fargo’s suspensions of home equity lines of credit. Nationwide settlement restores access to over

\$1 billion in credit and provides industry leading service enhancements and injunctive relief.

- *In re Citibank HELOC Reduction Litig.*, No. 09-cv-0350-MMC (N.D. Cal.): Lead counsel in class actions challenging Citibank's suspensions of home equity lines of credit. The settlement restored up to \$653,920,000 worth of credit to affected borrowers.
- *Wigod v. Wells Fargo*, No. 10-cv-2348 (N.D. Ill.): In ongoing putative class action, obtained first appellate decision in the country recognizing the right of private litigants to sue to enforce HAMP trial plans.

GENERAL CONSUMER PROTECTION CLASS ACTIONS

We have successfully prosecuted countless class actions against computer software companies, technology companies, health clubs, dating agencies, phone companies, debt collectors, and other businesses on behalf of consumers. In addition to the settlements listed below, EDELSON PC have litigated consumer fraud cases in courts nationwide against companies such as Motorola Mobility, Stonebridge Benefit Services, J.C. Penney, Sempris LLC, and Plimus, LLC. Representative settlements include:

Mobile Content

We have prosecuted over 100 cases involving mobile content, settling numerous nationwide class actions, including against industry leader AT&T Mobility, collectively worth over a hundred million dollars.

- *McFerren v. AT&T Mobility, LLC*, No. 08-CV-151322 (Fulton Cnty. Super. Ct., Ga.): Lead counsel class action settlement involving 16 related cases against largest wireless service provider in the nation. "No cap" settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.
- *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 27 related cases alleging unauthorized mobile content charges. Case settled for \$36 million.
- *Gray v. Mobile Messenger Americas, Inc.*, No. 08-CV-61089 (S.D. Fla.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Case settled for \$12 million.
- *Parone v. m-Qube, Inc.*, No. 08 CH 15834 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving over 2 dozen cases alleging

the imposition of unauthorized mobile content charges. Case settled for \$12.254 million.

- *Williams v. Motricity, Inc.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.): Lead counsel in class action settlement involving 24 cases alleging the imposition of unauthorized mobile content charges. Case settled for \$9 million.
- *VanDyke v. Media Breakaway, LLC*, No. 08 CV 22131 (S.D. Fla.): Lead counsel in class action settlement alleging unauthorized mobile content charges. Case settled for \$7.6 million.
- *Gresham v. Cellco Partnership*, No. BC 387729 (L.A. Super. Ct., Cal.): Lead counsel in case alleging unauthorized charges were placed on cell phone bills. Settlement provided class members with full refunds.
- *Abrams v. Facebook, Inc.*, No. 07-05378 (N.D. Cal.): Lead counsel in injunctive settlement concerning the transmission of allegedly unauthorized mobile content.

Deceptive Marketing

- *Van Tassell v. UMG*, No. 1:10-cv-2675 (N.D. Ill.): Lead counsel in negative option marketing class action. Case settled for \$2.85 million.
- *McK Sales Inc. v. Discover Bank*, No. 10-cv-02964 (N.D. Ill.): Lead counsel in class action alleging deceptive marketing aimed at small businesses. Case settled for \$6 million.
- *Farrell v. OpenTable*, No. 11-cv-01785 (N.D. Cal.): Lead counsel in gift certificate expiration case. Settlement netted class over \$3 million in benefits.
- *Ducharme v. Lexington Law*, No. 10-cv-2763 (N.D. Cal): Lead counsel in CROA class action. Settlement resulted in over \$6 million of benefits to the class.
- *Pulcini v. Bally Total Fitness Corp.*, No. 05 CH 10649 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in four class action lawsuits brought against two health clubs and three debt collection companies. A global settlement provided the class with over \$40 million in benefits, including cash payments, debt relief, and free health club services.
- *Kozubik v. Capital Fitness, Inc.*, 04 CH 627 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in state-wide suit against a leading health club chain, which settled in 2004, providing the over 150,000 class members with between

\$11 million and \$14 million in benefits, consisting of cash refunds, full debt relief, and months of free health club membership.

- *Kim v. Riscuity*, No. 06 C 01585 (N.D. Ill.): Co-lead counsel in suit against a debt collection company accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with full debt relief and return of all money collected.
- *Jones v. TrueLogic Financial Corp.*, No. 05 C 5937 (N.D. Ill.): Co-lead counsel in suit against two debt collectors accused of attempting to collect on illegal contracts. The case settled in 2007, providing the class with approximately \$2 million in debt relief.
- *Fertelmeyster v. Match.com*, No. 02 CH 11534 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under Illinois consumer protection statutes. The settlement provided the class with a collective award with a face value in excess of \$3 million.
- *Cioe v. Yahoo!, Inc.*, No. 02 CH 21458 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in a state-wide class action suit brought under state consumer protection statutes. The settlement provided the class with a collective award with a face value between \$1.6 million and \$4.8 million.
- *Zurakov v. Register.com*, No. 01-600703 (N.Y. Sup. Ct., N.Y. Cnty.): Co-lead counsel in a class action brought on behalf of an international class of over one million members against Register.com for its allegedly deceptive practices in advertising on “coming soon” pages of newly registered Internet domain names. Settlement required Register.com to fully disclose its practices and provided the class with relief valued in excess of \$17 million.

PRODUCTS LIABILITY CLASS ACTIONS

We have been appointed lead counsel in state and federal products liability class settlements, including a \$30 million settlement resolving the “Thomas the Tank Engine” lead paint recall cases and a \$32 million settlement involving the largest pet food recall in the history of the United States and Canada. Representative settlements include:

- *Barrett v. RC2 Corp.*, No. 07 CH 20924 (Cir. Ct. Cook Cnty., Ill.): Co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement is valued at over \$30 million and provided class with full cash refunds and reimbursement of certain costs related to blood testing.
- *In re Pet Food Products Liability Litig.*, No. 07-2867 (D.N.J.): Part of mediation team in class action involving largest pet food recall in United

States history. Settlement provided \$24 million common fund and \$8 million in charge backs.

INSURANCE CLASS ACTIONS

We have prosecuted and settled multi-million dollar suits against J.C. Penney Life Insurance for allegedly illegally denying life insurance benefits under an unenforceable policy exclusion and against a Wisconsin insurance company for terminating the health insurance policies of groups of self-insureds. Representative settlements include:

- *Holloway v. J.C. Penney*, No. 97 C 4555 (N.D. Ill.): One of the primary attorneys in a multi-state class action suit alleging that the defendant illegally denied life insurance benefits to the class. The case settled in or around December 2000, resulting in a multi-million dollar cash award to the class.
- *Ramlow v. Family Health Plan* (Wisc. Cir. Ct., WI): Co-lead counsel in a class action suit challenging defendant's termination of health insurance to groups of self-insureds. The plaintiff won a temporary injunction, which was sustained on appeal, prohibiting such termination and eventually settled the case ensuring that each class member would remain insured.

MASS/CLASS TORT CASES

Our attorneys were part of a team of lawyers representing a group of public housing residents in a suit based upon contamination related injuries, a group of employees exposed to second-hand smoke on a riverboat casino, and a class of individuals suing a hospital and national association of blood banks for failure to warn of risks related to blood transfusions. Representative settlements include:

- *Aaron v. Chicago Housing Authority*, No. 99 L 11738 (Cir. Ct. Cook Cnty., Ill.): Part of team representing a group of public housing residents bringing suit over contamination-related injuries. Case settled on a mass basis for over \$10 million.
- *Januszewski v. Horseshoe Hammond*, No. 2:00CV352JM (N.D. Ind.): Part of team of attorneys in mass suit alleging that defendant riverboat casino caused injuries to its employees arising from exposure to second-hand smoke.

The firm's cases regularly receive attention from local, national, and international media. Our cases and attorneys have been reported in the Chicago Tribune, USA Today, the Wall Street Journal, the New York Times, the LA Times, by the Reuters and UPI news services, and BBC International. Our attorneys have appeared on numerous national television and radio programs, including ABC World News, CNN, Fox News, NPR, and CBS Radio, as well as television and

radio programs outside of the United States. We have also been called upon to give congressional testimony and other assistance in hearings involving our cases.

GENERAL COMMERCIAL LITIGATION

Our attorneys have handled a wide range of general commercial litigation matters, from partnership and business-to-business disputes, to litigation involving corporate takeovers. We have handled cases involving tens of thousands of dollars to “bet the company” cases involving up to hundreds of millions of dollars. Our attorneys have collectively tried hundreds of cases, as well as scores of arbitrations and mediations.

OUR ATTORNEYS

JAY EDELSON is the founder and Managing Partner of EDELSON PC. He has been recognized as a leader in class actions, technology law, corporate compliance issues, and consumer advocacy by his peers, the media, state and federal legislators, academia, and courts throughout the country.

Jay has been appointed lead counsel in numerous state, federal, and international class actions, resulting in hundreds of millions of dollars for his clients. He is regularly asked to weigh in on federal and state legislation involving his cases. He testified to the U.S. Senate about the largest pet food recall in the country’s history and is advising state and federal politicians on consumer issues relating to the recent federal bailouts, as well as technology issues, such as those involving mobile marketing. Jay also counsels companies on legal compliance and legislative issues in addition to handling all types of complex commercial litigation.

Jay has litigated class actions that have established precedent concerning the ownership rights of domain name registrants, the applicability of consumer protection statutes to Internet businesses, and the interpretation of numerous other state and federal statutes including the Telephone Consumer Protection Act and the Video Privacy Protection Act. As lead counsel, he has also secured settlement in cases of first impression involving Facebook, Microsoft, AT&T, and countless others, collectively worth hundreds of millions of dollars.

In addition to technology based litigation, Jay has been involved in a number of high-profile “mass tort” class actions and product recall cases, including cases against Menu Foods for selling contaminated pet food, a \$30 million class action settlement involving the Thomas the Tank Engine toy train recall, and suits involving damages arising from second-hand smoke.

In 2009, Jay was named one of the top 40 Illinois attorneys under 40 by the Chicago Daily Law Bulletin. In giving Jay that award, he was heralded for his history of bringing and winning landmark cases and for his “reputation for integrity” in the “rough and tumble class action arena.” In the same award, he was called “one of the best in the country” when it “comes to legal strategy and execution.” Also in 2009, Jay was included in the American Bar Association’s “24 hours of Legal Rebels” program, where he was dubbed one of “the most creative minds in the legal profession” for his views of associate training and firm management. In 2010, he was presented with the Annual Humanitarian Award in recognition of his “personal integrity,

professional achievements, and charitable contributions” by the Hope Presbyterian Church. Starting in 2011, he has been selected as an Illinois Super Lawyer and, separately, as a top Illinois class action lawyer by Benchmark Plaintiff.

Jay is frequently asked to participate in legal seminars and discussions regarding the cases he is prosecuting, including serving as panelist on national symposium on tort reform and, separately, serving as a panelist on litigating high-profile cases. He has also appeared on dozens of television and radio programs to discuss his cases. He has taught classes on class action law at Northwestern Law School and The John Marshall Law School, and has co-chaired a 2-day national symposium on class action issues. He has been an adjunct professor, teaching a seminar on class action litigation at the Chicago-Kent College of Law since 2010.

Jay is a graduate of Brandeis University and the University of Michigan Law School.

RYAN D. ANDREWS is a Partner at Edelson PC. He presently leads the firm’s complex case resolution and appellate practice group, which oversees the firm’s class settlements, class notice programs, and briefing on issues of first impression.

Ryan has been appointed class counsel in numerous federal and state class actions nationwide that have resulted in over \$100 million dollars in refunds to consumers, including: *Satterfield v. Simon & Schuster*, No. C 06 2893 CW (N.D. Cal.); *Ellison v Steve Madden, Ltd.*, No. cv 11-5935 PSG (C.D. Cal.); *Robles v. Lucky Brand Dungarees, Inc.*, No. 10-cv-04846 (N.D. Cal.); *Lozano v. 20th Century Fox*, No. 09-cv-05344 (N.D. Ill.); *Paluzzi v. Cellco Partnership*, No. 07 CH 37213 (Cir. Ct. Cook Cnty., Ill.); and *Lofton v. Bank of America Corp.*, No. 07-5892 (N.D. Cal.).

Representative reported decisions include: *Lozano v. Twentieth Century Fox*, 702 F. Supp. 2d 999 (N.D. Ill. 2010), *Satterfield v. Simon & Schuster, Inc.* 569 F.3d 946 (9th Cir. 2009), *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010); *In re Jiffy Lube Int’l Text Spam Litig.*, 847 F. Supp. 2d 1253 (S.D. Cal. 2012); *Lee v. Stonebridge Life Ins. Co.*, 289 F.R.D. 292 (N.D. Cal. 2013); and *Kristensen v. Credit Payment Servs.*, No. 2:12-CV-00528-APG, --- F. Supp. 2d ---, 2014 WL 1256035 (D. Nev. Mar. 26, 2014).

Ryan graduated from the University of Michigan, earning his B.A., with distinction, in Political Science and Communications. Ryan received his J.D. with High Honors from the Chicago-Kent College of Law and was named Order of the Coif. Ryan has served as an Adjunct Professor of Law at Chicago-Kent, teaching a third-year seminar on class actions. While in law school, Ryan was a Notes & Comments Editor for The Chicago-Kent Law Review, earned CALI awards for the highest grade in five classes, and was a teaching assistant for both Property Law and Legal Writing courses. Ryan externed for the Honorable Joan B. Gottschall in the United State District Court for the Northern District of Illinois.

Ryan is licensed to practice in Illinois state courts, the United States District Court for the Northern District of Illinois, the U.S. Court of Appeals for the Seventh Circuit, and the U.S. Court of Appeals for the Ninth Circuit.

RAFEY S. BALABANIAN is a Partner and General Counsel at EDELSON PC. Rafey's practice focuses upon a wide range of complex consumer class action litigation, as well as general business litigation. In the class action context, Rafey has extensive experience both prosecuting and defending class actions.

On the plaintiff's side, Rafey has been appointed lead counsel in numerous class actions, and has achieved landmark settlements involving the telecom industry worth hundreds of millions of dollars, including nationwide settlements in the cases *Pimental, et al. v. Google, Inc.*, No. 11-cv-2585 (N.D. Cal.); *Van Dyke v. Media Breakaway, LLC*, No. 08-cv-22131 (S.D. Fla.); *Williams v. Motricity, Inc., et al.*, No. 09 CH 19089 (Cir. Ct. Cook Cnty., Ill.); and *Walker v. OpenMarket, Inc., et al.*, No. 08 CH 40592 (Cir. Ct. Cook Cnty., Ill.).

Rafey's plaintiff's class action practice also focuses on consumer privacy issues and some of his most notable accomplishments include nationwide settlements reached with companies such as Netflix (*In re Netflix Privacy Litig.*, No. 11-cv-379 (N.D. Cal.)) and RockYou (*Claridge v. RockYou, Inc.*, No. 09-cv-6030 (N.D. Cal.)). Rafey also led the effort to secure adversarial class certification of what is believed to be the largest privacy class action in the history of U.S. jurisprudence in the case of *Dunstan, et al. v. comScore, Inc.*, No. 11-cv-5807 (N.D. Ill.).

On the business side, Rafey has counseled clients ranging from "emerging technology" companies, real estate developers, hotels, insurance companies, lenders, shareholders and attorneys. He has successfully litigated numerous multi-million dollar cases, including several "bet the company" cases. And, with respect to the defense of class action, Rafey's practice focuses mainly on the defense of corporate clients facing wage and hour lawsuits brought under the Fair Labor Standards Act.

Rafey received his J.D. from the DePaul University College of Law in 2005. While in law school, he received a certificate in international and comparative law. A native of Colorado, Rafey received his B.A. in History, with distinction, from the University of Colorado – Boulder in 2002.

CHRISTOPHER L. DORE is a Partner at Edelson and a member of the Technology and Fraudulent Marketing Group. Chris focuses his practice on emerging consumer technology issues, with his cases relating to online fraud, deceptive marketing, consumer privacy, negative option membership enrollment, and unsolicited text messaging. Chris is also a member of the firm's Incubation and Startup Development Group wherein he consults with emergent businesses.

Chris has been appointed class counsel in multiple class actions, including one of the largest text-spam settlements under the Telephone Consumer Protection Act, ground breaking issues in the mobile phone industry and fraudulent marketing, as well as consumer privacy. *See Pimental v. Google, Inc.*, No. 11-cv-02585 (N.D. Cal.); *Turner v. Storm8, LLC*, No. 09-cv-05234 (N.D. Cal.); *Standiford v Palm, Inc.*, No. 09-cv-05719-LHK (N.D. Cal.); and *Espinal v. Burger King Corp.*, No. 09-cv-20982 (S.D. Fla.). In addition, Chris has achieved groundbreaking court decisions protecting consumer rights. Representative reported decisions include: *Claridge v. RockYou, Inc.*, 785 F. Supp. 2d 855 (N.D. Cal. 2011); *Kramer v. Autobyte, Inc.*, 759 F. Supp. 2d

1165 (N.D. Cal. 2010); and *Van Tassell v. United Marketing Group, LLC*, 795 F. Supp. 2d 770 (N.D. Ill. 2011). In total, his suits have resulted in hundreds of millions of dollars to consumers.

Prior to joining Edelson, Chris worked for two large defense firms in the areas of employment and products liability. Chris graduated *magna cum laude* from The John Marshall Law School, where he served as the Executive Lead Articles for the Law Review, as well as a team member for the D.M. Harish International Moot Court Competition in Mumbai, India. Chris has since returned to his alma mater to lecture on current issues in class action litigation and negotiations.

Before entering law school, Chris received his Masters degree in Legal Sociology, graduating *magna cum laude* from the International Institute for the Sociology of Law, located in Onati, Spain. Chris received his B.A. in Legal Sociology from the University of California, Santa Barbara.

BENJAMIN H. RICHMAN is a Partner at EDELSON PC and is a member of the firm's Corporate Governance and Business Litigation Practice Group. He handles plaintiffs'-side consumer class actions, focusing mainly on technology-related cases, represents corporate defendants in class actions, and handles general commercial litigation matters.

On the plaintiff's side, Ben has brought industry-changing lawsuits involving the marketing practices of the mobile industry, print and online direct advertisers, and Internet companies. He has successfully prosecuted cases involving privacy claims and the negligent storage of consumer data. His suits have also uncovered complex fraudulent methodologies of Web 2.0 companies, including the use of automated bots to distort the value of consumer goods and services. In total, his suits have resulted in hundreds of millions of dollars to consumers.

On the defense side, Ben has represented large institutional lenders in the defense of employment class actions. He also routinely represents technology companies in a wide variety of both class action defense and general commercial litigation matters.

Ben received his J.D. from The John Marshall Law School, where he was an Executive Editor of the Law Review and earned a Certificate in Trial Advocacy. While in law school, Ben served as a judicial extern to the Honorable John W. Darrah of the United States District Court for the Northern District of Illinois, in addition to acting as a teaching assistant for Prof. Rogelio Lasso in several torts courses. Ben has since returned to the classroom as a guest-lecturer on issues related to class actions, complex litigation and negotiation. He also lectures incoming law students on the core first year curriculums. Before entering law school, Ben graduated from Colorado State University with a B.S. in Psychology.

Ben is also the director of EDELSON PC's Summer Associate Program.

ARI J. SCHARG is a Partner at EDELSON PC. He handles technology-related class actions, focusing mainly on cases involving the unlawful geo-locational tracking of consumers through their mobile devices, the illegal collection, storage, and disclosure of personal information, fraudulent software products, data breaches, and text message spam. His settlements have resulted in tens of millions of dollars to consumers, as well as industry-changing injunctive

relief. Ari has been appointed class counsel by state and federal courts in several nationwide class action settlements, including *Webb v. Cleverbridge*, No. 11-cv-4141 (N.D. Ill.); *Ledet v. Ascentive*, No. 11-cv-294 (E.D. Penn.); and *Drymon v. CyberDefender*, No. 11 CH 16779 (Cir. Ct. Cook Cnty., Ill.); and was appointed sole-lead class counsel in *Loewy v. Live Nation*, No. 11-cv-4872 (N.D. Ill.), where the court praised his work as “impressive” and noted that he “understand[s] what it means to be on a team that’s working toward justice.” Ari was selected as an Illinois Rising Star (2013) by Super Lawyers.

Prior to joining the firm, Ari worked as a litigation associate at a large Chicago firm, where he represented a wide range of clients including Fortune 500 companies and local municipalities. His work included representing the Cook County Sheriff’s Office in several civil rights cases and he was part of the litigation team that forced Craigslist to remove its “Adult Services” section from its website.

Ari is very active in community groups and legal industry associations. He is a member of the Board of Directors of the Chicago Legal Clinic, an organization that provides legal services to low-income families in the Chicago area. Ari acts as Outreach Chair of the Young Adult Division of American Committee for the Shaare Zedek Medical Center in Jerusalem, and is actively involved with the Anti-Defamation League. He is also a member of the Standard Club Associates Committee.

Ari received his B.A. in Sociology from the University of Michigan – Ann Arbor and graduated magna cum laude from The John Marshall Law School where he served as a Staff Editor for The John Marshall Law Review and competed nationally in trial competitions. During law school, he also served as a judicial extern to The Honorable Bruce W. Black of the U.S. Bankruptcy Court for the Northern District of Illinois.

COURTNEY BOOTH is an Associate at EDELSON PC. Courtney focuses her practice on consumer class actions.

Courtney received her J.D., *magna cum laude*, from The John Marshall Law School. While in law school, she was a staff editor of The John Marshall Law Review, a teaching assistant for Legal Writing and Civil Procedure, and a member of the Moot Court Honor Society. Courtney represented John Marshall at the Mercer Legal Ethics and Professionalism Competition where she was a semi-finalist and won Best Respondent’s Brief and at the Cardozo/BMI Entertainment and Communications Law Competition where she placed in the top three oralists. Courtney was recently nominated as a 2013 Member of the National Order of Scribes.

Prior to law school, Courtney attended Saint Louis University where she earned a B.A. in Communication. While there, she was a community relations intern for the St. Louis Blues.

JONATHAN W. HODGE is an Associate at EDELSON PC where his practice focuses on complex consumer class actions.

Prior to joining EDELSON PC, Jonathan handled complex commercial litigation at an Am Law 100 defense firm, where he drove successful outcomes in matters with as much as \$100,000,000

in controversy. Previously, Jonathan served as a consultant for a tech incubator where he helped clients form new business based on patent-protected technologies developed at the University of Michigan. He also served in the accounting department of Nucor Steel-Hertford, where his IT skillsets helped him largely automate the monitoring of the largest cost at a multibillion-dollar division of America's largest steel company.

Jonathan received his J.D. from the University of Michigan Law School. While in law school, Jonathan participated in the Campbell Moot Court and the Frank Murphy Society 1L Oral Advocacy Competition. He was awarded Legal Practice Honors for performing in the top 20% of his first-year legal research and writing classes.

Jonathan graduated *summa cum laude* from Chowan University, earning his B.S. in Business Administration with a double concentration in Information Systems and Accounting.

JAMIE J. R. HOLZ is an Associate at EDELSON PC where his practice focuses on technology and privacy-related class actions.

Jamie received his J.D., *magna cum laude*, from The John Marshall Law School. While attending law school, Jamie participated in The John Marshall Law Review and the Moot Court Honors Council and was a Board Member for The John Marshall Trial Advocacy and Dispute Resolution Honors Board. Jamie competed nationally on several alternative dispute resolution teams, was the Herzog Moot Court Competition champion and a two-time Triple Crown Alternative Dispute Resolution Competition champion.

Jamie externed with the Honorable Arlander Keys in the United States District Court for the Northern District of Illinois and with the Cook County State's Attorney's Office. Jamie completed his time at John Marshall as a David R. Sargis Scholar and received CALI awards in property law and civil procedure.

Prior to law school, Jamie attended Loras College where he earned a B.A. in Creative Writing and English Literature.

ALICIA HWANG is an Associate at EDELSON PC. Alicia practices in the area of consumer class action and general litigation.

Alicia received her J.D. from the Northwestern University School of Law in May 2012, where she was an articles editor for the Journal of Law and Social Policy. During law school, Alicia was a legal intern for the Chinese American Service League, served as president of the Asian Pacific American Law Student Association and the Student Animal Legal Defense Fund, and was Chair of the Student Services Committee. She also worked as a student in the Northwestern Entrepreneurship Law Clinic and Complex Civil Litigation and Investor Protection Clinic.

Prior to joining EDELSON PC, Alicia worked as an Executive Team Leader for the Target Corporation, as well as a public relations intern for a tourism-marketing agency in London.

Alicia graduated *magna cum laude* from the University of Southern California, earning her B.A. in Communication in 2007. She is a member of the Phi Beta Kappa honor society.

NICK LARRY is an Associate at EDELSON PC. Nick practices in the area of consumer class action and general litigation.

Nick received his J.D., *cum laude*, from Northwestern University School of Law, where he was a senior editor of the Northwestern University Journal of International Law and Business.

Nick attended Michigan State University, where he graduated with a B.A. in General Business Administration/Pre-law in 2008 and played on the school's rugby team.

DAVID I. MINDELL is an Associate at EDELSON PC. David practices in the area of technology and privacy class actions.

David helps direct a team of attorneys and engineers in investigating and litigating cases involving complex tech fraud and privacy violations. His team's research has led to lawsuits involving the fraudulent development, marketing and sale of computer software, unlawful tracking of consumers through mobile-devices and computers, unlawful collection, storage, and dissemination of consumer data, mobile-device privacy violations, large-scale data breaches, and the Bitcoin industry. On the other side, David also serves as a consultant to a variety of emerging technology companies.

Prior to joining EDELSON PC, David co-founded several technology companies that reached multi-million dollar valuations within 12 months of launch. David has advised or created strategic development and exit plans for a variety of other technology companies.

While in law school, David was a research assistant for University of Chicago Law School Kauffman and Bigelow Fellow, Matthew Tokson, and for the preeminent cyber-security professor, Hank Perritt at the Chicago-Kent College of Law. David's research included cyberattack and denial of service vulnerabilities of the Internet, intellectual property rights, and privacy issues.

David has given speeches related to his research to a wide-range of audiences.

AMIR MISSAGHI is an Associate at Edelson, where he focuses on technology and privacy class actions.

Amir received his J.D. from the Chicago-Kent College of Law, where he was a member of the Moot Court Honor Society and a teaching assistant in Property. Before law school, he attended the University of Minnesota, where he received his B.S. and M.S. in Applied Economics. He then began working at a Fortune 50 company as a programmer and data analyst. During that time Amir started working on his graduate studies in Applied Economics where he focused on analyzing consumer choice in healthcare markets.

JOHN OCHOA is an associate at EDELSON PC, focusing his practice on protecting consumers with a special emphasis on plaintiffs' privacy class action litigation, including cases brought under the Telephone Consumer Protection Act. John prosecutes cases in both state and federal courts at the trial and appellate levels.

John has secured important court decisions protecting the rights of consumers, including *Elder v. Pacific Bell Telephone Co*, 205 Cal. App. 4th 841 (2012), where the California Court of Appeal held that consumers may pursue claims against telecommunications companies for placing unauthorized charges on consumers' telephone bills, a practice known as "cramming." John was also appointed class counsel in *Lee v. Stonebridge Life Insurance Co*, 289 F.R.D. 292 (N.D. Cal. 2013), a case where the defendants are alleged to have caused the transmission of unauthorized text messages to the cellular telephones of thousands of consumers.

He graduated *magna cum laude* from The John Marshall Law School in May 2010 and served as Managing Editor for The John Marshall Law Review. His student Comment, which examines bicycling and government tort immunity in Illinois, appears in Vol. 43, No. 1 of The John Marshall Law Review. While in law school, John externed with Judge Thomas Hoffman at the Illinois Appellate Court, and competed in the ABA National Appellate Advocacy Competition.

John is active in the Illinois legal community, and serves as Co-Chair of the Membership Committee on the Young Professionals Board of Illinois Legal Aid Online (ILAO). ILAO is a non-profit organization committed to using technology to increase access to free and pro bono legal services for underserved communities throughout Illinois.

He received his B.A. with Honors in Political Science from the University of Iowa in 2004.

ROGER PERLSTADT is an Associate at EDELSON PC, where he concentrates on appellate and complex litigation advocacy. Roger graduated from the University of Chicago Law School, where he was a member of the University of Chicago Law Review. After law school, he served as a clerk to the Honorable Elaine E. Bucklo of the United States District Court for the Northern District of Illinois.

Prior to joining the firm, Roger spent several years at a litigation boutique in Chicago where his practice included employment and housing discrimination claims, constitutional litigation, and general commercial matters. In 2011, he was named a Rising Star by Illinois Super Lawyers Magazine.

Roger also spent time as a Visiting Assistant Professor at the University of Florida Law School where he taught Arbitration, Conflict of Laws, and Employment Discrimination, and has published articles on the Federal Arbitration Act in various law reviews.

EVE-LYNN J. RAPP is an Associate at EDELSON PC. Eve-Lynn focuses her practice in the areas of consumer and technology class action litigation.

Prior to joining EDELSON PC, Eve-Lynn was involved in numerous class action cases in the areas of consumer and securities fraud, debt collection abuses and public interest litigation. Eve-Lynn

has substantial experience in both state and federal courts, including successfully briefing issues in both the United States and Illinois Supreme Courts.

Eve-Lynn received her J.D. from Loyola University of Chicago-School of Law, graduating cum laude, with a Certificate in Trial Advocacy. During law school, Eve-Lynn was an Associate Editor of Loyola's International Law Review and externed as a "711" at both the Cook County State's Attorney's Office and for Cook County Commissioner Larry Suffredin. Eve-Lynn also clerked for both civil and criminal judges (Honorable Yvonne Lewis and Plummer Lott) in the Supreme Court of New York.

Eve-Lynn graduated from the University of Colorado, Boulder, with distinction and Phi Beta Kappa honors, receiving a B.A. in Political Science.

BEN THOMASSEN is an Associate at EDELSON PC. At the firm, Ben's practice centers on the prosecution of class actions cases that address federally protected privacy rights and issues of consumer fraud—several of which have established industry-changing precedent. Among other high profile cases, Ben recently played key roles in delivering the winning oral argument before the United States Court of Appeals for the Eleventh Circuit in *Curry v. AvMed*, 693 F.3d 1317 (11th Cir. 2012) (a data breach case that has, following the Eleventh Circuit's decision, garnered national attention both within and without the legal profession) and securing certification of a massive consumer class in *Dunstan v. comScore*, No. 11 C 5807, 2013 WL 1339262 (N.D. Ill. Apr. 2, 2013) (estimated by several sources as the largest privacy case ever certified on an adversarial basis).

Ben received his J.D., *magna cum laude*, from the Chicago-Kent College of Law, where he also earned his certificate in Litigation and Alternative Dispute Resolution and was named Order of the Coif. At Chicago-Kent, Ben was Vice President of the Moot Court Honor Society and earned (a currently unbroken firm record of) seven CALI awards for receiving the highest grade in Appellate Advocacy, Business Organizations, Conflict of Laws, Family Law, Personal Income Tax, Property, and Torts.

Before settling into his legal career, Ben worked in and around the Chicago and Washington, D.C. areas in a number of capacities, including stints as a website designer/developer, a regular contributor to a monthly Capitol Hill newspaper, and a film projectionist and media technician (with many years experience) for commercial theatres, museums, and educational institutions. Ben received his Bachelor of Arts, *summa cum laude*, from St. Mary's College of Maryland and his Master of Arts from the University of Chicago.

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HOLLY YENCHA, individually and on
behalf of all others similarly
situated,

Plaintiff,

Civil Action

vs.

No. 14-578

ZEObIT, LLC,

Defendant.

Transcript of HEARING ON MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED CLASS SETTLEMENT recorded on April 16, 2015, in
the United States District Court, Pittsburgh, Pennsylvania,
before The Hon. Joy Flowers Conti, Chief Judge, United States
District Court

APPEARANCES:

For the Plaintiff:

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P R O C E E D I N G S

(12:01 p.m.; conference room proceedings:)

THE COURT: This is a hearing on a motion for preliminary approval of a proposed class settlement. It's in Holly Yench a versus ZeoBIT, LLC, Civil 14-578. Will counsel please enter your appearance?

MR. BALABANIAN: Good morning, Your Honor. My name is Rafey Balabanian, appearing for Holly Yench a, Plaintiff, in the proposed class settlement, joined by co-counsel --

MR. MCGOWAN: David McGowan, from Caroselli Beachler, local counsel on behalf of Plaintiffs.

THE COURT: Is your appearance entered for the record?

MR. MCGOWAN: I think Mr. Caroselli's appearance was entered.

THE COURT: He is, but not yours, so you won't be able to speak today.

MR. MCGOWAN: I don't plan on it.

MR. CAPLAN: Good morning, Your Honor. Matt Caplan for the Defendant, ZeoBIT, LLC, appearing pro hac vice. And with me I have --

MS. SCHEIB: Barbara Scheib of Cohen Grigsby on behalf of the Defendant.

THE COURT: Okay. I have two matters that I have some serious concerns with. I will go through everything in

1 conclusion, but I wanted to start with those. And the first
2 thing has to do with the value of the settlement.

3 I have to make some preliminary assessment of
4 fairness here. And when I looked at the amount of money
5 being paid and the number of potential class members, which
6 exceeded 600,000, it appeared to the Court that any
7 individual Plaintiff, if they filed a claim, might be lucky
8 to receive maybe \$3 or so if they were lucky.

9 And so I have concerns about that, and you refer in
10 the briefing to other cases that have been approved, and so I
11 would need some more information about what's the expected
12 numbers that may respond, that type of thing, to see if
13 there's really any significant value here to the class
14 members from this kind of settlement.

15 The next issue that I have problems with is the
16 kind of notice. The notice that's going to be sent is
17 twofold. One, if there are valid E-mail addresses of
18 prospective class members, they'll be notified by E-mail, and
19 more than once as I understand it.

20 MR. BALABANIAN: Correct.

21 THE COURT: There's also going to be a web site
22 established by Plaintiff's counsel that will give
23 information. But there will be some members of the class who
24 no longer have valid E-mail addresses. And I don't know how
25 they could be reached because -- and I think just having a

1 web site, unless you've got notice of something, you would
2 have no reason to be directed to go there.

3 So I have a problem with notice to those because,
4 my understanding, the notice has to be something that could
5 be directed to all members of the class, and so I think that
6 there's going to be a subset that may be incurred by
7 excluding from the class anyone who doesn't maintain or does
8 not have the same E-mail address that was used to place the
9 order. So those people could be excluded, or you're going to
10 have to have some other type of more national notice that
11 would be typical in these types of cases.

12 So those are the two overarching problems. And my
13 other question, and this doesn't have to do with the
14 substance, but where were the forms of release? Where would
15 I find that?

16 MR. BALABANIAN: The release for the Defendant?

17 THE COURT: For the Plaintiffs.

18 MR. BALABANIAN: I'm not sure I understand.

19 THE COURT: Weren't they giving up their claims?

20 MR. BALABANIAN: Yes. The release in the
21 settlement agreement?

22 THE COURT: Well, that they would know about it.
23 The members of the class, how will they know what they're
24 giving up?

25 MR. BALABANIAN: The notice speaks to the types of

1 claims that would be released. And it's by virtue of the
2 notice that they would be directed to the settlement
3 agreement posted on the web site.

4 THE COURT: So they would know that that's the
5 release?

6 MR. BALABANIAN: Correct.

7 THE COURT: So we'll have to look when we look at
8 the notice somehow that they have to be specifically
9 instructed that they're going to be releasing these claims,
10 and they must look at the settlement agreement on the web
11 site and give the page and the paragraph number, so they're
12 very clear so that they know what they're giving up.

13 Now, that brings me to another issue that I had.
14 There are a number of claims that were asserted by the
15 Plaintiffs in this case, and you will have to go over them
16 with me. But I think the only one that would be susceptible
17 for settlement class -- by a class action would be the breach
18 of contract, and so I think that can be fixed by the
19 Plaintiffs agreeing to withdraw all those other claims and
20 only going forward with the contract.

21 Why do I say that? Each of the other types of
22 claims would require an assessment of justifiable reliance of
23 some kind. And I've just been through a number of class
24 actions where I had to not certify a class for that reason
25 because there's an individualized inquiry that must be made

1 when you're looking at justifiable reliance.

2 And the way the Supreme Court and the Court of
3 Appeals for the Third Circuit has reviewed class actions, it
4 has made that type of inquiry one that would preclude a
5 District Court from certifying a class action.

6 I don't think that that would apply to the breach
7 of contract because my view of what everyone had here, all
8 the Plaintiffs here had the same type of contract. I don't
9 think there's any dispute about that, and the question is
10 whether the contract was breached by the alleged failure of
11 the Defendant to provide a workable product that was
12 purchased. So I think we have to address that as well.

13 MR. BALABANIAN: Sure.

14 THE COURT: So those are my sort of overarching
15 issues, and I need you to address those before we can maybe
16 move forward here. I don't know that any of them are
17 fundamental impediments, but I think they would require some
18 possible refinement to the settlement agreement.

19 MR. BALABANIAN: I'm happy to speak to the issue,
20 Your Honor. Rafey Balabanian for the Plaintiff, and I
21 appreciate the Court's scheduling this hearing in the middle
22 of a trial. I know you have a lot going on.

23 Okay. So the overall value of the settlement?

24 THE COURT: Yes.

25 MR. BALABANIAN: Let's talk about that first. So

1 the two million I think is going to be more than sufficient
2 based on our prior experience in these types of cases.

3 THE COURT: Tell me about that.

4 MR. BALABANIAN: The reason being, the claims rates
5 will lean around 1 to 2 percent of the class.

6 THE COURT: How many would that be, and what would
7 be the expected payment that they would receive?

8 MR. BALABANIAN: I can't do the math, but I expect
9 everybody will get their full purchase price back.

10 THE COURT: So that's the expectation, that any
11 member of the class who submits a claim would receive their
12 full payment back?

13 MR. BALABANIAN: And beyond that, I think there's
14 even going to be some leftover funds after the redistribution
15 up to the purchase price. And the reason we picked the \$2
16 million number is because, frankly -- we're not shy about it
17 in our brief -- we have a lot of experience with these exact
18 types of cases.

19 There's a lot of players in this industry with
20 respect to kind of fix-it software for computers; and in all
21 the other settlements that we've structured, and now I think
22 we have about eight that we've structured, that we've put
23 together and had approved, the last two most recent ones,
24 which are basically a carbon copy of this structure, all-in
25 type structure, no monies revert to the Defendant.

1 In both of those cases the classes -- the claiming
2 class members all received their purchase price back. The
3 claims rate in all of the cases has not exceeded two percent.
4 And that's just really a function of kind of the price point
5 at which these people are claiming this money.

6 It's unfortunately not easy to get people to move
7 and make a claim for something less than \$50 or even \$30
8 honestly, Your Honor. I've had settlements where I've had
9 claim amounts of up to \$500, and the claims rate lingers
10 around 3 percent, two to three percent. It's just the nature
11 of consumer class actions.

12 So I absolutely think there's going to be no issue
13 with the amount people are going to get back.

14 THE COURT: And when you were negotiating this with
15 the mediator, was this part of your discussion?

16 MR. BALABANIAN: Absolutely. It had to be because
17 the real theory is oftentimes the concern by courts is that
18 the fund is actually not reflective of what the actual payout
19 will be. And oftentimes that's -- it's kind of to prop up
20 attorney's fees. So you've got 650,000 class members. Let's
21 just multiply by \$39 a person. You have a fund in the tens
22 of millions of dollars.

23 That's not a realistic view of this case. It's not
24 a realistic view of the Defendant's liability. It's not a
25 realistic view of the expected claims rate.

1 And really what we're supposed to do is put a
2 settlement together that is fair, adequate and reasonable and
3 that accounts for the value of the claims and how much people
4 are actually going to claim.

5 And this settlement absolutely does that. You will
6 see at the end, to the extent the Court grants preliminary
7 approval, I'm quite confident people will be getting their
8 full purchase price. I would be shocked if they got less
9 than \$20, but you're going to see the claims rate is going to
10 be around 2 percent, and that's just empirically. There's no
11 way that figure is going to move much to make any impact on
12 what I've said, Your Honor.

13 THE COURT: Okay.

14 MR. CAPLAN: And two points I would like to add in
15 terms of value, and the first is that the net fee includes
16 about 16 different features, and the Complaint really only
17 touches on maybe four or five of them, and that's included in
18 Paragraph 17 of Mr. Richman's declaration and was also
19 included in the preliminary approval motion.

20 And correct me if I'm stating it wrong, but the
21 basis of their claims was never to receive the full value of
22 the product. It was just that there was some amount of
23 overpayment attributable to the alleged features that didn't
24 live up to the expectations.

25 MR. BALABANIAN: Exactly right. It was not a "this

1 product is worthless." It's this product was overvalued.

2 MR. CAPLAN: The second point is we have a firm
3 number on the number of class members. The 650,000 was an
4 upper bound, and that was something we were very confident of
5 during negotiations, and the exact number that sort of came
6 out as we've been able to get the E-mail addresses and class
7 information is 513,330 class members.

8 THE COURT: So you may want to modify --

9 MR. BALABANIAN: Well, I don't think the fund needs
10 to be modified or anything like that, but yes, we can be more
11 precise if the Court need be for the record as far as --

12 THE COURT: Well, you may have to resubmit this if
13 you have to make some other changes based on the other
14 things.

15 MR. BALABANIAN: Right. And we can note that, but
16 that won't make a material difference.

17 THE COURT: Right.

18 MR. BALABANIAN: Now on notice?

19 THE COURT: Yes.

20 MR. BALABANIAN: Can I move forward on that?

21 THE COURT: Yes.

22 MR. BALABANIAN: Thank you. The notice plan in
23 this case was carefully tailored to account for these types
24 of consumers, these consumers interacting with the Defendant
25 online only. There's no interaction by way of mail, no real

1 interaction by way of phone support, that type of stuff.

2 So Rule 23 counsels us to provide the best notice
3 practicable under the circumstances, but of course direct
4 notice is absolutely a key component.

5 I think the Court will see that the direct notice
6 in this case by way of E-mail is going to be extremely
7 effective. I would guess that it's going to exceed 80 to 90
8 percent, and the Center for Class Action -- excuse me -- the
9 Judicial Center on Class Actions has counseled that if 70
10 percent of the class is reached by direct notice, then that's
11 sufficient notice for purposes of Rule 23 and due process.
12 So to the extent that --

13 THE COURT: Where is that found? Where is that
14 authority?

15 MR. CAPLAN: The Judicial Guide for Class Action
16 Management I think is where that's --

17 MR. BALABANIAN: Yes.

18 THE COURT: Complex litigation?

19 MR. BALABANIAN: Yes, Your Honor, the Newberg --
20 well, it's not just the Newberg. It's --

21 THE COURT: It's not the Newberg. Do you have
22 that?

23 MR. BALABANIAN: The Federal Judicial Center that
24 promulgates guidelines as far as notice is concerned, and we
25 always cite it in our brief, and I don't know why we didn't

1 here. I can certainly provide a citation, but I thought it
2 was in here, Your Honor.

3 THE COURT: Normally you'll see some kind of
4 publication somewhere, and it at least has a national
5 circulation. That's the only thing I have a problem with
6 here.

7 MR. CAPLAN: I think there's two things I could
8 sort of add to this. One, my client actually doesn't have
9 physical mailing addresses for most of these people, and --

10 THE COURT: Well, I don't expect anything would go
11 by mail. I have no problem with the E-mail. My only problem
12 is if there is no longer an E-mail associated with a
13 particular purchaser, then as I'm understanding it, it's
14 about ten, fifteen percent of the potential class members
15 would not receive notice. Because I don't view the web site
16 as notice.

17 MR. BALABANIAN: It could be, but in the other
18 cases, the percentage has lingered around 95 percent as far
19 as the hit rate for E-mails. And that's --

20 THE COURT: Do we know how many E-mail addresses
21 you have currently --

22 MR. CAPLAN: We have 513,330 E-mail addresses.

23 THE COURT: But some of them may get a bounce-back.

24 MR. BALABANIAN: Some may be outdated or a
25 bounce-back, in which case the settlement administrator is

1 charged with the duty to work around that bounce-back or
2 current E-mail. In any class action there's going to be some
3 amount of class that doesn't receive the direct notice.

4 THE COURT: I understand that. It's a question of
5 what the alternate notice is under those circumstances.

6 MR. CAPLAN: And I know, speaking to that, we would
7 be willing to issue an agreed-upon press release that would
8 point --

9 THE COURT: Where would the press release be
10 published? Just issuing one isn't enough because then a lot
11 of the newspapers or wherever wouldn't publish them.

12 MR. BALABANIAN: Well, why don't I suggest this?
13 Another thing we could do, frankly, beyond the press release
14 is we could just have a small component of like an online
15 media, like banner ads or whatnot, and that's relatively
16 inexpensive, and the claims administrator is good --

17 THE COURT: Where would they go?

18 MR. BALABANIAN: -- directing to the settlement web
19 site.

20 THE COURT: But where would the banners --

21 MR. BALABANIAN: It would be online. It would be
22 in connection with -- the settlement administrator will do an
23 analysis of the demographic of this class, what web sites
24 they would frequent, and then it would tailor the online
25 advertising --

1 THE COURT: Okay. That might be sufficient. So if
2 you can --

3 MR. CAPLAN: We'll work on something.

4 MR. BALABANIAN: We can certainly do that.

5 THE COURT: I mean I'm not looking to create costs
6 here. I'm just thinking it should be for that extra number
7 some way that I could logically infer that members of this
8 class might see it. I can't guarantee that they would see
9 it, but they might.

10 MR. BALABANIAN: Understood, Your Honor.

11 THE COURT: Okay. All right. What was the --

12 MR. BALABANIAN: I'm sorry -- the release, I
13 believe?

14 THE COURT: Yes. So we just would have to modify
15 the notice slightly to make sure that they look at that. And
16 then what do you want to do about the claims I don't think I
17 can certify?

18 MR. BALABANIAN: I think that the unjust enrichment
19 claim doesn't have a reliance element.

20 THE COURT: Yes, it does.

21 MR. BALABANIAN: Does it in Pennsylvania? I
22 thought it didn't.

23 THE COURT: You can look it up.

24 MR. BALABANIAN: I don't question the Court. The
25 Court knows better than I do.

1 THE COURT: It has to -- well, let's look. It may
2 not be exactly reliance, but it's something --

3 MS. SCHEIB: A change in position and reliance.

4 THE COURT: Something like that. There's something
5 where I think you have to look at the individual.

6 MR. BALABANIAN: It's conferral of a benefit, and
7 then it's acceptance of that benefit unjustly. And it has to
8 be unjust.

9 THE COURT: It's the unjust that they have to have
10 some -- okay. Here it is. It says the elements of an unjust
11 enrichment involve benefits conferred on Defendant by
12 Plaintiff, appreciation of such benefits by Defendant, and
13 acceptance and retention of such benefits under such
14 circumstances that it would be inequitable for Defendant to
15 retain the benefit without payment of value.

16 The most significant element of the doctrine is
17 whether the enrichment of the Defendant is unjust. The
18 doctrine does not apply simply because the Defendant may have
19 benefited as a result of the actions of the Plaintiff. But
20 it is a quasi-contract.

21 MR. BALABANIAN: It is. So my overall view would
22 be we have no problem withdrawing the claims other than the
23 breach of contract, but I would contend that the unjust
24 enrichment should stay --

25 THE COURT: Well, you can meet and confer about

1 that.

2 MR. CAPLAN: That would be fine.

3 THE COURT: And see if there's any dispute between
4 the parties about that, and I'll take another look at it as
5 well.

6 MR. BALABANIAN: Sure. And to the extent we reach
7 agreement on that, shall we file an Amended Complaint or a
8 notice --

9 THE COURT: I just think you're going to have to
10 say as part of the settlement, because until I approve it, I
11 don't think it would be necessary. But the parties have to
12 be advised that those claims are being withdrawn as part of
13 the settlement and that the class is being certified on the
14 basis of the breach of contract claim.

15 MR. BALABANIAN: Understood.

16 THE COURT: And -- or plus the unjust enrichment
17 also could survive.

18 MR. BALABANIAN: Very well.

19 THE COURT: But I think we need to make those
20 slight modifications, and I had a couple other things in the
21 notice. Look on page 3.

22 MR. BALABANIAN: Of the long form notice, Your
23 Honor?

24 THE COURT: Yes. This is where you're talking
25 about what does the settlement provide? It says the

1 Defendant has agreed to create a \$2 million settlement fund,
2 blah, blah, blah, claim up to \$39.95.

3 Then at the end it says, "The amount each claimant
4 will be paid depends upon the number of claims submitted,"
5 and then say while there will be numerous -- something to the
6 effect, while there will be numerous members of the class, it
7 is not expected that any significant number of those -- based
8 on experience with similar settlements, it's not expected
9 that a significant number of claims will be submitted.

10 What's troubling for the Court is if somebody
11 thinks they're going to get \$39, and what if 100,000 people
12 file or 200,000 claims come back in? So I think they need to
13 have a sense of that there are numerous claims, hundreds of
14 thousands of claims, but experience with similar settlements
15 is that just a minor percentage will return claims.

16 MR. BALABANIAN: Yes. We can certainly provide
17 more detail.

18 THE COURT: Just a little detail there just so that
19 somebody -- if per chance 100,000 people come back and you're
20 shocked that they're all filing a claim, then people should
21 know that if they get \$2 or \$3, it was a risk that we
22 assumed.

23 MR. BALABANIAN: Absolutely, Judge.

24 THE COURT: And why, for someone to be excluded, do
25 they have to send a letter, but to make a claim, you only

1 have to send an E-mail?

2 MR. BALABANIAN: Well, I've done it a couple ways
3 as far as opt-outs. We've actually prepared an opt-out --

4 THE COURT: Not that I think many people are going
5 to opt out.

6 MR. BALABANIAN: There will be one or two,
7 literally like one or two, but we've done it where we
8 provided a form to class members. We found that sometimes
9 there's a risk that it can be confusing when you've got a
10 claim form and then you've got the opt-out form. So that's
11 something that we try to guard against.

12 But as far as what they need to send in, honestly,
13 Judge, that's just a common practice that we've established.
14 And I don't think it's very onerous for them to say I just
15 want to opt out of this case.

16 But I don't know any other real -- I don't know any
17 other way that they can do it other than us providing them a
18 form, which I'd be open to doing. I don't know that it would
19 make a material difference.

20 THE COURT: Well, I mean why couldn't they just
21 send an E-mail with the same information to the claims
22 settlement person?

23 MR. BALABANIAN: That would be fine. How about
24 both just in case somebody --

25 THE COURT: Right, either by mail or by E-mail?

1 MR. BALABANIAN: Sure.

2 THE COURT: I don't think you need to have the
3 form, but I think -- people today don't send mail. I mean
4 younger people, if they bought this, they're not going to go
5 out and buy a stamp and mail it. So it would just strike me
6 that if we're going to let people submit the claim by E-mail,
7 they could also do the other.

8 MR. BALABANIAN: I'm sure that's fine.

9 THE COURT: All right. The other thing, this is
10 one change I feel would be important. It has to do with
11 whether somebody objects and they come to the hearing.
12 You're requiring at page 6 that if, in addition to submitting
13 a written objection to the settlement, you wish to appear and
14 be heard at the hearing on the fairness, you or your attorney
15 must say so in your written objection. I think it should be
16 you should say so.

17 MR. BALABANIAN: Yes, Your Honor.

18 THE COURT: And then in 20, "May I speak at the
19 hearing?" I would say if you do not exclude yourself from
20 the settlement class, you may speak at the hearing concerning
21 any part of the post settlement period. I mean I'm not going
22 to have people be so restricted that if they showed up, if
23 they take the time and effort to come -- I don't expect
24 anybody to be coming by the way. But should they do that, if
25 they haven't gone through the hoops of filing something in

1 writing, I don't know that I would necessarily preclude them
2 from doing that.

3 MR. BALABANIAN: Understood, Your Honor.

4 THE COURT: I think that was all I had on that.
5 Then you'll have something that directs them for the
6 release --

7 MR. BALABANIAN: Yes. We'll have it in the notice,
8 and we'll direct them for more details to go --

9 THE COURT: To the settlement web site and look at
10 the settlement agreement paragraph.

11 MR. BALABANIAN: Page blah, blah, blah.

12 THE COURT: Whatever it is. All right. I had a
13 couple other things here. These short questions, this is
14 "What can I get from the settlement?" This talks something
15 along the lines of what we said before. There could be
16 numerous claims. It's not expected that a significant number
17 will apply, but --

18 MR. BALABANIAN: You're talking about the shorter
19 claim form?

20 THE COURT: Yes. Something in there.

21 MR. BALABANIAN: Yes, Your Honor.

22 THE COURT: And then in the "Do I have a lawyer?"
23 I would say yes -- okay. The last sentence, it says the
24 Court has also chosen Holly Yench. I would say the Court
25 has also appointed. I didn't choose her. I appointed her.

1 MR. BALABANIAN: Apologies for the loose language,
2 Your Honor.

3 THE COURT: Wasn't there something about if more
4 than a thousand people exclude themselves?

5 MR. BALABANIAN: Yes. Well, the Defendant has the
6 sole right to terminate the settlement.

7 THE COURT: Okay. I didn't see that in the short
8 notice. I'm not expecting that to happen.

9 MR. BALABANIAN: No. Well, the reason it's not in
10 there is only because the case law counsels that that's not
11 something that necessarily has to be included. If that's
12 something the Court would like included, we can, but I think
13 it's -- I don't know -- as the Court said, I don't think it's
14 a real possibility at all. But --

15 THE COURT: Educate me a little bit about those
16 other classes.

17 MR. BALABANIAN: How many opt-outs? Less than five
18 in each case.

19 THE COURT: So the likelihood of that happening --

20 MR. BALABANIAN: Is zero. It's zero, Your Honor,
21 unless there's some conspiracy against this case. But I
22 don't see it happening.

23 THE COURT: So it's not a significant risk that
24 would need to be in the short form?

25 MR. BALABANIAN: No. I don't believe so, Judge.

1 MR. CAPLAN: We don't think so either.

2 THE COURT: I know it's just there's a fail safe --

3 MR. CAPLAN: Just in case.

4 THE COURT: Right. One other quick look through
5 here, I guess this is unknown claims. It means claims which
6 could have been raised in the action and that you do not know
7 or suspect to exist, that you're releasing those.

8 This is the reason I wanted them to be directed to
9 this. I wanted to know where the release was, because this
10 is something where it's typically in a general release where
11 you release all known and unknown claims.

12 MR. BALABANIAN: Yes. And that language is
13 required to be in there by virtue of California consumers
14 since it's a nationwide settlement. That's why that's in
15 there. But it's covered in the release regardless.

16 THE COURT: So as long as you direct them to the
17 release, that would be good.

18 MR. BALABANIAN: Yes, Your Honor.

19 THE COURT: Okay. You might want to put that in
20 the short form, too, somewhere.

21 MR. BALABANIAN: Yes, Your Honor.

22 THE COURT: Okay. I think that's it. So if you
23 would just get those to me, we can have a telephone call and
24 go through it. You won't have to come back in in person, and
25 I'll just quickly go through the other factors and get those

1 on the record. But I think I raised with you the areas that
2 I had concerns with, that if they're fixed, I think I'd be
3 able to approve the settlement.

4 MR. BALABANIAN: Thank you, Your Honor. Thank you
5 for your time.

6 THE COURT: At least on a preliminary basis.

7 MR. BALABANIAN: Of course. We will meet and
8 confer immediately, and we should have a submission to the
9 Court within the next two weeks probably.

10 MR. CAPLAN: That would be fine.

11 THE COURT: If you can get it in before early May,
12 then we'll get a conference call in early May, and then you
13 can be off and running.

14 MR. BALABANIAN: Terrific. Your Honor, thank you
15 for your time and for fitting us in in your trial schedule.

16 THE COURT: No problem.

17 MR. CAPLAN: Thank you very much.

18 (Proceedings were concluded at 12:33 p.m.)

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20 C E R T I F I C A T E

21
22 I, Deborah Rowe, certify that the foregoing is
23 a correct transcript from the record of proceedings in the
above-titled matter.

24 S/Deborah Rowe _____

25 Certified Realtime Reporter