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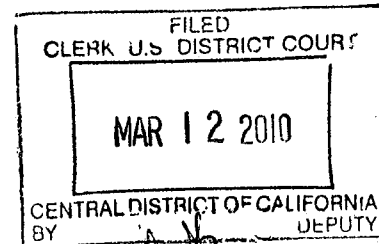
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1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

3
4 PAUL ATHERTON, JOE O'BRIEN,
5 MIKE WILLIAMS, GORDON
6 PETRASH, GERHARD
7 GUEVARRA and DAVID
8 O'SHAUGHNESSY, individually
9 and on behalf of all others similarly
10 situated,

11 Plaintiffs,

12 vs.

13 TOSHIBA AMERICA
14 INFORMATION SYSTEMS, INC.
15 and DOES 1-20,

16 Defendants.

CASE NO. CV 08-02141 AG (MLGx)
CLASS ACTION

**ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
DIRECTING DISSEMINATION OF
CLASS NOTICE**

Hearing Date: November 16, 2009
Time: 10:00 a.m.
Department: Courtroom 10D
Judge: Andrew J. Guilford

Pretrial Conference Date: February 8, 2010
Trial Date: February 23, 2010
Complaint Filed: March 31, 2008

17 WHEREAS plaintiffs Paul Atherton, Joe O'Brien, Mike Williams, Gordon
18 Petrash, Gerhard Guevarra, and David O'Shaughnessy (collectively, "Plaintiffs"), moved
19 for an Order, pursuant to Federal Rule of Civil Procedure 23(e), seeking preliminary
20 approval of a class action settlement, and directing the dissemination of class notice (the
21 "Motion"); and

22 WHEREAS defendant Toshiba America Information Systems, Inc. ("TAIS")
23 sought the same relief; and

24 WHEREAS the Court reviewed the submissions of the parties, held a hearing on
25 November 16, 2009 (the "Preliminary Approval Hearing"), and found that the parties are
26 entitled to the relief they seek;

27 IT IS ORDERED that the Motion is GRANTED, subject to the following terms
28 and conditions:

1 1. The proposed Class Settlement Agreement and Release dated August 21, 2009
2 (the "Settlement Agreement"),¹ submitted with the Motion, is preliminarily approved as
3 being within the range of potential final approval.

4 2. Based upon the submissions of the parties, and for purposes of this settlement
5 only, the Court conditionally makes the following findings:

6 a. The members of the Settlement Class are so numerous as to make joinder
7 impracticable.

8 b. There are questions of law and fact common to the Settlement Class, and such
9 questions predominate over any questions affecting only individual Settlement Class
10 Members for purposes of the Settlement.

11 c. Plaintiffs' claims and the defenses thereto are typical of the claims of the
12 Settlement Class Members and the defenses thereto for purposes of the Settlement.

13 d. Plaintiffs and their counsel can fairly and adequately protect, and have fairly
14 and adequately protected, the interests of the Settlement Class Members in this action
15 with respect to the Settlement.

16 e. The proposed class action Settlement is superior to all other available methods
17 for fairly and efficiently resolving this action.

18 f. Accordingly, for settlement purposes only, the Court preliminarily approves
19 each Plaintiff as a representative of the Settlement Class, and conditionally certifies a
20 Settlement Class comprised of all Persons who, at any time from April 1, 2000 through
21 the date of entry of this Order, purchased or acquired one or more of the Subject Model
22 Notebooks identified in the Settlement Agreement as new in the United States. Any
23 owner of a Subject Model Notebook identified in the Settlement Agreement who
24 submitted a claim to TAIS as part of the Remediation Program defined in the Settlement
25 Agreement, whose claim was accepted by TAIS and who deposited, cashed, redeemed, or
26

27 ¹ All terms used herein shall have the same definition and meaning as those set forth
28 in the Settlement Agreement, which is attached as Exhibit A to the Declaration of Mr.
Lamar that was submitted in support of the Motion for Preliminary Approval.

1 otherwise used a check or a credit voucher issued by TAIS under the Remediation
2 Program, the Released Parties under the Settlement Agreement, and their respective
3 officers, directors, employees, and counsel, and Plaintiffs' Counsel, are not included in
4 the Settlement Class, nor are any federal judges or members of their families within the
5 first degree of consanguinity.

6 3. This matter is preliminarily certified as a class action for settlement purposes
7 only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). If the Court does not
8 finally approval the settlement, TAIS retains the right to assert that this action may not be
9 certified as a class action for liability purposes, and no party shall rely on this preliminary
10 approval as support for the certification of a class in this or any other action.

11 4. The Sturdevant Law Firm, a Professional Corporation, Lamar, Archer &
12 Cofrin, LLP ("LAC"), and Bondurant, Mixson & Elmore, LLP are appointed as Class
13 Counsel, with LAC to serve in the role of Plaintiffs' Lead Counsel. Garden City Group,
14 Inc., is approved as the Claims Administrator to administer the claims process and
15 perform all functions as agreed to by the Parties in the Settlement Agreement.

16 5. A final hearing (the "Fairness Hearing") shall be held before this Court on
17 ~~February 22,~~ ^{May 24,} 2010 at 10:00 a.m. to determine whether (a) this action meets each of the
18 prerequisites for class certification set forth in Federal Rule of Civil Procedure 23(a), and
19 may properly be maintained as a class action on behalf of the Settlement Class under
20 Federal Rule of Civil Procedure 23(b)(3); (b) the Settlement Agreement should receive
21 final approval as fair, reasonable, adequate, and in the best interests of the Settlement
22 Class; (c) orders granting final approval of the Settlement Agreement, entering final
23 judgment and dismissing the Second Amended Complaint (with claims concerning the
24 Subject Model Notebooks identified in the Settlement Agreement to be dismissed with
25 prejudice and claims concerning any Non-Covered Models, as defined in the Settlement
26 Agreement, to be dismissed without prejudice), as provided in the Settlement Agreement,
27 should be entered; and (d) the applications of Plaintiffs' Counsel for the payment of
28 attorneys' fees and expenses for, and service awards to, Plaintiffs are reasonable and

1 should be approved. The Fairness Hearing may be postponed, adjourned or continued by
2 further order of this Court, without further notice to the parties or the members of the
3 Settlement Class.

4 6. At the Fairness Hearing the Court will consider and determine whether the
5 Settlement Agreement should be finally approved as fair, adequate and reasonable in
6 light of any objections presented by Settlement Class Members and the parties' responses
7 to any such objections.

8 7. Any Settlement Class Member who has not timely filed a written request for
9 exclusion from the Settlement Class pursuant to paragraph 8 of this Order may object to
10 the fairness, reasonableness or adequacy of the settlement as set forth in the Settlement
11 Agreement. Any member of the Settlement Class who so objects may appear at the
12 Fairness Hearing, in person or through counsel, to show cause why the settlement should
13 not be approved as fair, adequate and reasonable. Each Settlement Class Member who
14 wishes to object to any term of the Settlement Agreement must do so in writing by filing
15 a written objection with the Clerk of the Court and mailing it to counsel for the parties at
16 the addresses set forth in the Settlement Agreement. Any such objection must be filed
17 with the Clerk of the Court and received by counsel for the parties no later than 30 days
18 after the date of the Settlement Notice set forth in Exhibit B to the Settlement Agreement.
19 The objection must:

20 (a) identify the Subject Model Notebook purchased or acquired as new by the
21 Settlement Class Member (by model number and either by serial number, or by the date
22 or approximate date of the Settlement Class Member's purchase or receipt of the Subject
23 Model Notebook and the City and State in which the Subject Model Notebook was
24 purchased);

25 (b) attach copies of any materials that will be submitted to the Court or presented at
26 the Fairness Hearing;

27 (c) be signed by the Settlement Class Member;

28 (d) clearly state in detail

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- 1 (i) the legal and factual ground(s) for the objection; and
- 2 (ii) the Settlement Class Member's name and address; and
- 3 (e) if the Settlement Class Member is represented by counsel, be accompanied by a
- 4 notice of appearance submitted no later than 20 days before the date of the Fairness
- 5 Hearing.

6 Any objection that fails to satisfy the requirements of this paragraph, or that is not

7 properly and timely submitted, shall not be effective, will not be considered by this

8 Court, and will be deemed waived, and those Settlement Class Members shall be bound

9 by the final determination of this Court.

10 8. Any Person included within the Settlement Class who wishes to be excluded,

11 or to "opt out," from membership in the Settlement Class must do so in writing by

12 mailing a request for exclusion from the Settlement to Garden City Group, Inc., as

13 Claims Administrator ("GCG"), P.O. Box 9219, Dublin, Ohio 43017, Attn: Toshiba

14 Satellite Hinge Class Settlement, so that such request is postmarked no later than 45 days

15 from the date of the Settlement Notice set forth in Exhibit B to the Settlement Agreement

16 is commenced. Such a request must:

- 17 (a) be signed by the Settlement Class Member; and
- 18 (b) identify the Subject Model Notebook purchased or acquired as new by the
- 19 Settlement Class Member (by model number and either by serial number, or by the date
- 20 or approximate date of the Settlement Class Member's purchase or receipt of the Subject
- 21 Model Notebook and the City and State in which the Subject Model Notebook was
- 22 purchased); and
- 23 (c) clearly express the Settlement Class Member's desire to be excluded from the
- 24 Settlement Class; and
- 25 (d) include the Settlement Class Member's name, address and telephone number,
- 26 and, if represented by counsel, counsel's name, address and telephone number.

27 Any Person within the Settlement Class who wishes to be excluded from the

28 Settlement Class can only opt out for himself or herself and, except for minors, cannot

1 opt out for any other Person. No Person within the Settlement Class may authorize
2 another Person to opt out on his or her behalf.

3 Any Settlement Class Member who has filed an objection to the fairness,
4 reasonableness or adequacy of the Settlement pursuant to paragraph 7 of this Order shall
5 be deemed not to have opted out of the Settlement Class pursuant to this paragraph. In
6 the event and to the extent that the Parties advise the Court that a Settlement Class
7 Member has made a submission to the Court and the Parties which appears to assert both
8 an objection to the fairness, reasonableness or adequacy of the proposed Settlement, and
9 a statement of intent to opt out of the Settlement Class, such Settlement Class Member
10 shall be deemed to have objected to the Settlement.

11 Any request for exclusion that fails to satisfy the requirements of this paragraph, or
12 is not properly or timely submitted, shall not be effective, and the Person making such a
13 request shall be deemed to have waived all rights to opt out of the Settlement, and to be a
14 Settlement Class Member for all purposes pursuant this Order.

15 9. Except for good cause showⁿ, no person (other than the parties and their
16 respective representatives and counsel) may appear or be heard at the Fairness Hearing,
17 or file papers, briefs or other submissions regarding the Fairness Hearing, unless no later
18 than 20 days prior to the date of the Fairness Hearing, such person or their counsel files
19 with the Clerk of this Court and simultaneously serves on counsel for all parties at the
20 addresses set forth in the Settlement Agreement a timely, written notice of request to
21 appear at the Fairness Hearing. Such notice must state the name, address and telephone
22 number of the Settlement Class Member, as well as the name, address and telephone
23 number of any counsel who wishes to appear on behalf of the Settlement Class Member.
24 The notice must also indicate that the Settlement Class Member has previously or
25 contemporaneously objected to the Settlement in compliance with paragraph 7 of this
26 Order.

27 Any request to appear that fails to satisfy the above requirements, or that is not
28 properly and timely submitted, shall not be effective and will not be considered by this

1 Court, and the Person who made such a request shall not be permitted to appear or be
2 heard at the Fairness Hearing, or otherwise comment further on the settlement.

3 10. The Court finds that the manner and content of (a) the Settlement Notice set
4 forth in Exhibit B to the Settlement Agreement, (b) the Summary Notice set forth in
5 Exhibit C to the Settlement Agreement, (c) the Google Banner Ad set forth in Exhibit D
6 to the Settlement Agreement, and (d) the proposed claim form attached as **Exhibit B** to
7 this Order, will provide the best notice practicable to the Settlement Class under the
8 circumstances. All costs incurred in connection with the preparation and dissemination
9 of any notices to the Settlement Class shall be borne by TAIS.

10 11. If the Settlement Agreement is finally approved, the Court shall enter a
11 separate order finally approving the Settlement Agreement, entering judgment and
12 dismissing the Second Amended Complaint. Such order and judgment shall be fully
13 binding with respect to all members of the Settlement Class.

14 12. In the event that the proposed settlement provided for in the Settlement
15 Agreement is not approved by this Court, then the Settlement Agreement, all drafts,
16 negotiations, discussions, and documentation relating thereto, and all orders entered by
17 this Court in connection therewith shall become null and void. In such event, the
18 Settlement Agreement and all negotiations and proceedings relating thereto shall be
19 withdrawn without prejudice to the rights of the parties, who shall be restored to their
20 respective positions as of March 25, 2009.

21 13. The parties shall abide by the following scheduled dates:

22 a. The Settlement Notice shall be made available through publication of a
23 settlement website within 20 days of entry of this Order, and shall contain a copy of the
24 notice in a form substantially similar to that set forth in Exhibit B to the Settlement
25 Agreement and attached hereto as **Exhibit A**.

26 b. Within 20 days of entry of this Order, the Settlement Notice and a claim
27 form shall be mailed by the Claims Administrator, GCG, to all members of the Settlement
28

1 Class for whom TAIS has records of such Persons' mailing or e-mail addresses, as
2 follows.

3 i. To the extent that TAIS has an operative e-mail address for a
4 Settlement Class Member, it will send e-mail notification to that Settlement Class
5 Member solely by means of providing, within the body of the e-mail, direct links to the
6 specific web pages on the settlement website referenced in subparagraph (a) which
7 contain copies of the Settlement Notice and the proposed claim form attached to this
8 Order as **Exhibits A and B**.

9 ii. Otherwise, TAIS will send direct mail notice to those Settlement
10 Class Members for whom it has a mailing address by first class mail, postage prepaid,
11 enclosing a hard copy of the Settlement Notice and claim form, attached hereto as
12 **Exhibits A and B**.

13 c. The Summary Notice shall be published once in a 1/6 page
14 advertisement in a weekday edition of USA Today, and once in a 1/6 page advertisement
15 in the weekday "National Science Times" section of the New York Times, within 20
16 days of entry of this Order, or as soon thereafter as possible in light of any submission
17 deadlines imposed by these publications, in a form substantially similar to that attached
18 as Exhibit C to the Settlement Agreement, and attached hereto as **Exhibit C**.

19 d. Within 20 days of entry of this Order, TAIS shall instruct GCG to bid on
20 placements of an advertisement, in a form substantially similar to that set forth in Exhibit
21 D to the Settlement Agreement and attached hereto as **Exhibit D**, within the banners on
22 third party websites that participate with www.google.com ("Google Banner Ads").
23 Through GCG, TAIS will pay for such Google Banner Ads on a cost per thousand basis,
24 up to but not exceeding \$12,500.

25 e. The parties shall file and serve papers in support of final approval of the
26 settlement, including any responses to proper and timely objections filed thereto, by ¹⁴10
27 days prior to the final approval hearing, on ~~February 12~~ ^{May 10,} 2010.

1 f. Plaintiffs' Counsel shall file any applications for an award of attorneys'
2 fees, costs and litigation expenses, or service awards to Plaintiffs, by ~~February 15,~~ ^{May 10,} 2010.

3 g. The Fairness Hearing shall be held at 10:00 a.m. on ~~February 22,~~ ^{May 24,} 2010 in
4 Courtroom 10D of the United States District Court for the Central District of California,
5 411 West Fourth Street, Santa Ana, California.

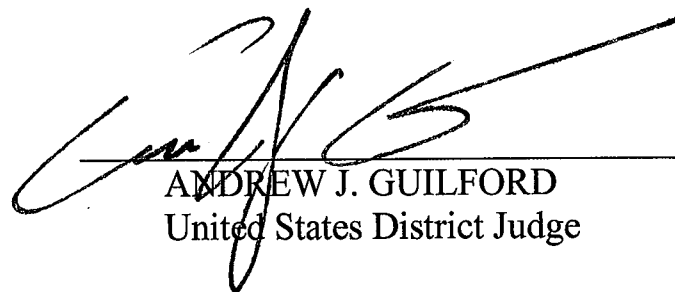
6 i. The Parties will abide by all deadlines set forth in the Settlement
7 Agreement, which is incorporated herein by reference.

8 14. This Court hereby enters a Preliminary Injunction barring and enjoining
9 Plaintiffs and all Settlement Class Members, to the extent permissible by existing law,
10 from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining,
11 intervening in, participating in, or receiving any benefits from any other lawsuit,
12 arbitration, or administrative, regulatory, or other proceeding in law or equity that asserts,
13 arises from, concerns, or is in any way related to the Released Claims identified in the
14 Settlement Agreement, until such time as this Court has ruled on the fairness of the
15 settlement terms following the Fairness Hearing.

16 **March 12, 2010**

17 Dated: ~~December 9, 2009~~

SO ORDERED:

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21 ANDREW J. GUILFORD
22 United States District Judge
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