

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE: OPENWAVE SYSTEMS  
SECURITIES LITIGATION,

07 Civ. 1309 (DLC)

This document relates to all actions.

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (the “Stipulation”), dated October 27, 2008, is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. This Stipulation is entered into between and among Arkansas Teacher Retirement System, Lead Plaintiff in the above-captioned consolidated class action (the “Consolidated Action”), on behalf of itself and the Class (as hereinafter defined), defendant Openwave Systems Inc. (“Openwave” or the “Company”), and defendants David C. Peterschmidt, Harold L. Covert, Jr., M. Bernard Puckett, Kenneth D. Denman, Bo C. Hedfors, Donald J. Listwin, Alan J. Black, Joshua A. Pace and Kevin J. Kennedy (the “Individual Defendants,” together with defendant Openwave, “Defendants”) (collectively with Lead Plaintiff, the “Settling Parties”), by and through their respective counsel. Subject to the approval of the Court and certain limitations expressly provided herein, the Settlement is intended to settle and release all claims that were, could be, or could have been asserted against the Defendants and/or any of the other Released Parties in this case.

WHEREAS:

A. All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 herein.

B. In May 2006, Openwave announced that the United States Securities and Exchange Commission (“SEC”) had initiated an informal inquiry relating to the Company’s historical stock option granting procedures and, further, that the Company’s Board of Directors had appointed a Special Committee consisting of outside directors to conduct an internal investigation into such historical procedures.

C. On October 4, 2006, Openwave announced that an internal investigation by the Special Committee had concluded that “the measurement dates for financial accounting purposes for certain stock option grants differ from recorded grant dates for certain awards” made between fiscal years 2000 through 2005 and, as a result, the Company would restate non-cash compensation expense reported in certain of its historical financial statements. The Special Committee further announced that it had not concluded that any errors resulting in the restatement were the result of fraud.

D. On December 1, 2006, Openwave filed a report on Form 10-K with the SEC which restated its historical non-cash compensation expense for fiscal years 2000 through the third quarter of 2006 by approximately \$181.7 million.

E. Beginning on February 21, 2007, various actions were commenced in the United States District Court for the Southern District of New York (the “Securities Class Actions”). The complaints in those actions alleged, *inter alia*, that certain of the Defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, and alleged that Openwave had fraudulently misstated its financial statements by improperly accounting for backdated stock option grants.

F. On May 29, 2007, the Court entered an Order consolidating the Securities Class Actions into the Consolidated Action, appointing Arkansas Teacher Retirement System as Lead Plaintiff in the Consolidated Action, and ordering Lead Plaintiff to file an amended complaint.

G. On August 3, 2007, Lead Plaintiff filed a First Corrected Consolidated Amended Class Action Complaint (the "Amended Complaint") which asserted claims against Openwave, David C. Peterschmidt ("Peterschmidt"), Harold L. Covert, Jr. ("Covert"), Donald J. Listwin ("Listwin"), Alan J. Black ("Black"), Joshua A. Pace ("Pace"), Kevin J. Kennedy ("Kennedy"), M. Bernard Puckett ("Puckett"), Kenneth D. Denman ("Denman"), Bo C. Hedfors ("Hedfors"), Gerald Held ("Held"), Masood Jabbar ("Jabbar"), Roger L. Evans ("Evans"), Andrew W. Verhalen ("Verhalen"), and Alain Rossmann ("Rossmann") under Section 10(b) and Rule 10b-5 of the Exchange Act; against Peterschmidt, Covert, Listwin, Black and Pace under Section 20(a) of the Exchange Act; against Peterschmidt, Pace, Rossmann, Kennedy, Puckett, Simon Wilkinson, Steve Peters and Allen E. Snyder under Section 20A of the Exchange Act; against Peterschmidt, Covert, Puckett, Denman, Hedfors, Held, Jabbar, Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"), Lehman Brothers Inc. ("Lehman Brothers"), J.P. Morgan Securities Inc. ("J.P. Morgan"), Thomas Weisel Partners LLC ("Thomas Weisel Partners"), and KPMG LLP ("KPMG") under Section 11 of the Securities Act of 1933 (the "Securities Act"), against Peterschmidt and Covert under Section 15 of the Securities Act, and against Openwave, Merrill Lynch, Lehman Brothers, J.P. Morgan, and Thomas Weisel Partners under Section 12(a)(2) of the Securities Act. The Amended Complaint alleged, among other things, that the named defendants manipulated stock option grants to certain of the Company's officers and employees to provide the recipients with "in the money" stock options and to underreport Company expenses.

H. On August 10, 2007, all of the defendants filed motions to dismiss the Amended Complaint, which were fully briefed by September 19, 2007. On October 31, 2007, the Court entered an order granting in part and denying in part the motions to dismiss. The claims against all defendants under the Securities Act, against defendants Peterschmidt, Covert, Held, Jabbar, Rossmann, Evans and Verhalen under Section 10(b) of the Exchange Act, and against defendants Peterschmidt, Rossmann, Snyder, Peters and Wilkinson under Section 20A of the Exchange Act were dismissed by the Court.

I. On May 14, 2008, the Court ordered the parties to “promptly contact Magistrate Judge Pitman to schedule settlement discussions under his supervision.”

J. On June 18, 2008, Lead Plaintiff, Openwave, the Individual Defendants and the Defendants’ directors’ and officers’ liability insurance carriers, through counsel, participated in a mediation with United States District Court Magistrate Judge Pitman in an effort to settle the Consolidated Action. No settlement was reached during that mediation.

K. On June 23, 2008, Lead Plaintiff filed a motion to certify a class of all those who purchased the publicly-traded shares of Openwave during the period from September 30, 2002 through October 26, 2006 and who were damaged thereby, which was fully briefed by August 8, 2008. The motion was pending at the time the agreement to settle was reached.

L. On August 21, 2008, Lead Plaintiff, Openwave, the Individual Defendants, and the Defendants’ directors’ and officers’ liability insurance carriers, through counsel, participated in a second mediation presided over by retired United States District Court Judge Nicholas H. Politan in an effort to settle the Consolidated Action. Although a settlement was not reached on August 21, 2008, the parties continued to negotiate a possible settlement with the assistance of Judge Politan between August 22, 2008 and August 26, 2008. On August 26, 2008, Lead

Plaintiff, Openwave and the Individual Defendants reached an agreement in principle to settle the Consolidated Action on the terms set forth herein.

M. Openwave has received commitments from certain of the Company's insurance carriers to make certain financial contributions toward the Settlement.

N. Each of the Defendants denies any wrongdoing, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have asserted, or could have asserted. Defendants expressly deny that Lead Plaintiff has asserted a valid claim as to them and deny any and all allegations of fault, liability, wrongdoing, or damages whatsoever. The Settling Parties recognize, however, that the litigation has been filed and prosecuted by Lead Plaintiff in good faith and defended by the Defendants in good faith, that the litigation is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable. This Stipulation shall not be construed or deemed to be a concession by Lead Plaintiff of any infirmity in the claims asserted in the Consolidated Action.

O. Lead Counsel has conducted an investigation and pursued discovery relating to the claims and the underlying events and transactions alleged in the Amended Complaint. Lead Counsel has analyzed the evidence adduced during its investigation and through discovery, including numerous witness interviews and review of over 1.5 million pages of documents produced by Defendants and others, and has researched the applicable law with respect to the claims of Lead Plaintiff and the Class against the Defendants and the potential defenses thereto.

P. Based upon its investigation and on its prosecution of the case, Lead Counsel has concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to

Lead Plaintiff and the Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the prosecution of this matter along with the input of Lead Counsel, Lead Plaintiff has agreed to settle the claims raised in the Consolidated Action sustained by the Court pursuant to the terms and provisions of this Stipulation, after considering (a) the substantial benefits that Lead Plaintiff and the members of the Class will receive from the resolution of the Consolidated Action, (b) the attendant risks of litigation, (c) Openwave's financial condition, and (d) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation.

NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff of any lack of merit of the Consolidated Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by the Defendants, it is hereby STIPULATED AND AGREED, by and among Lead Plaintiff, Openwave and the Individual Defendants, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement, that all Settled Claims as against the Released Parties and all Released Parties' Claims shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

#### **DEFINITIONS**

1. As used in this Stipulation, the following terms shall have the following meanings:

(a) "Amended Complaint" means the First Corrected Consolidated Amended Class Action Complaint filed by Lead Plaintiff in the Consolidated Action, on or about August 3, 2007.

(b) “Authorized Claimant” means a Class Member who submits a timely and valid Proof of Claim Form to the Claims Administrator, in accordance with the requirements established by the Court, that is approved for payment from the Net Settlement Fund.

(c) “Claim” means a completed and signed Proof of Claim Form submitted to the Claims Administrator in accordance with the instructions on the Proof of Claim Form.

(d) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant or Class Member must complete should that Claimant or Class Member seek to share in a distribution of the Net Settlement Fund.

(e) “Claimant” means a person or entity that submits a Claim Form to the Claims Administrator seeking to share in the proceeds of the Settlement Fund.

(f) “Claims Administrator” means the firm of The Garden City Group, Inc. which shall administer the Settlement.

(g) “Class” means, for the purposes of this Settlement only, all persons and entities who purchased or otherwise acquired common stock of Openwave between September 30, 2002 and October 26, 2006, inclusive, and who were injured thereby. Excluded from the Class are (a) the Defendants; (b) members of the immediate families of the Individual Defendants; (c) the subsidiaries and affiliates of Openwave; (d) any person or entity who is or, during the Class Period, was an officer, director, or controlling person of Openwave (including any of its subsidiaries or affiliates); (e) any entity in which any Defendant has or had a controlling interest; (f) the Defendants’ directors’ and officers’ liability insurance carriers; (g) Merrill Lynch, Lehman Brothers, J.P. Morgan, and Thomas Weisel Partners (collectively the “Underwriters”) and KPMG; (h) the respective subsidiaries and affiliates of the Underwriters or

KPMG; (i) any person or entity who is or, during the Class Period, was a partner, officer, director or controlling person of any of the Underwriters or KPMG (including any of their subsidiaries or affiliates), (j) any entity in which any of the Underwriters or KPMG has or had a controlling interest, provided that any Investment Vehicle (as defined below) shall not be deemed an excluded person or entity by definition; and (j) the legal representatives, agents, affiliates, heirs, successors-in-interest and assigns of any such excluded person or entity. Also excluded from the Class are any persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(i) “Class Member” means a person or entity that is a member of the Class and does not exclude himself, herself or itself by filing a request for exclusion in accordance with the requirements set forth in the Notice.

(j) “Class Period” means, for the purposes of this Settlement only, the period between September 30, 2002 and October 26, 2006, inclusive.

(k) “Consolidated Derivative Action”, unless otherwise specified herein, means (i) the consolidated derivative action filed in the Northern District of California under the caption *In re Openwave Systems Inc. Shareholder Derivative Litigation*, Case No. 3:06-CV-03468-SI; and (ii) the consolidated derivative action filed in the California Superior Court for the County of San Mateo under the caption *In re Openwave Systems Inc. Derivative Litigation*, Case No. Civ. 455265.

(l) “Court” means the United States District Court for the Southern District of New York.

(m) “Defendants” means Openwave Systems Inc., David C. Peterschmidt, Harold L. Covert, Jr., M. Bernard Puckett, Kenneth D. Denman, Bo C. Hedfors, Donald J. Listwin, Alan J. Black, Joshua A. Pace and Kevin J. Kennedy. “Defendant” means any one of the Defendants.

(n) “Defendants’ Counsel” means Openwave’s Counsel and the Individual Defendants’ Counsel.

(o) “Effective Date” means the first date by which all of the events and conditions specified in paragraph 28 of the Stipulation have been met and have occurred.

(p) “Escrow Account” means an account maintained at Valley National Bank to hold the Settlement Fund, which account, subject to the Court’s supervisory authority, shall be under the control of Lead Counsel.

(q) “Escrow Agent” means Valley National Bank.

(r) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(s) “Final” means when the last of the following with respect to the Judgment approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed or, if filed, such motion having been denied; (ii) the time in which to appeal the Judgment has passed without any appeal having been taken; and (iii) if an appeal is taken, immediately after the determination of that

appeal, provided that the Parties are permitted to consummate the Settlement substantially in accordance with the terms of this Stipulation. For purposes of this paragraph, an appeal shall include any petition for writ of certiorari or other writ that may be filed in connection with approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of attorneys' fees and expenses or any Plan of Allocation of the Settlement Fund, as hereinafter defined.

(t) "Individual Defendants" means David C. Peterschmidt, Harold L. Covert, Jr., M. Bernard Puckett, Kenneth D. Denman, Bo C. Hedfors, Donald J. Listwin, Alan J. Black, Joshua A. Pace and Kevin J. Kennedy.

(u) "Individual Defendants' Counsel" means Skadden, Arps, Slate, Meagher & Flom LLP and Mayer Brown LLP.

(v) "Investment Vehicle" means any investment company or pooled investment fund, including but not limited to mutual fund families, exchange-traded funds, fund of funds and hedge funds, in which any Underwriter has or may have a direct or indirect interest, but in which the Underwriter is not a majority owner and does not hold a majority beneficial interest. This definition does not bring into the Class any of the Underwriters.

(w) "Judgment" means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered pursuant to Rule 54 of the Federal Rules of Civil Procedure approving the Settlement.

(x) "Lead Counsel" means the law firm of Bernstein Litowitz Berger & Grossmann LLP.

(y) "Lead Plaintiff" means the Arkansas Teacher Retirement System.

(z) “Litigation Expenses” means the costs and expenses incurred by Plaintiffs’ Counsel in connection with commencing and prosecuting the Consolidated Action, for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(aa) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(bb) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, Settlement Fairness Hearing and Motion for Attorneys’ Fees and Reimbursement of Litigation Expenses, which is to be sent to members of the Class, substantially in the form attached hereto as Exhibit 1 to Exhibit A.

(cc) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and Lead Counsel in connection with (i) providing notice to the Class; and (ii) administering the Claims process.

(dd) “Openwave” or the “Company” means defendant Openwave Systems Inc.

(ee) “Openwave’s Counsel” means the law firm of Gibson, Dunn & Crutcher LLP.

(ff) “Plaintiffs’ Counsel” means Lead Counsel and all other legal counsel who, at the direction and under the supervision of Lead Counsel, represent Class Members in the Consolidated Action.

(gg) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(hh) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing notice be provided to the Class.

(ii) “Released Parties” means any and all of the Defendants and their past, present and future parent entities, affiliates, subsidiaries, predecessors, successors and assigns, and each of their past, present and future officers, directors, attorneys, auditors, accountants, advisors, consultants, insurers, employees, associates, controlling persons, representatives, underwriters and other agents, including their agents, assigns, spouses, heirs, executors, trustees, general and limited partners or partnerships, personal representatives, estates and administrators.

(jj) “Released Parties’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Consolidated Action or any forum by the Released Parties or any of them against any of the Lead Plaintiff, Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Consolidated Action (except for claims to enforce the Settlement). “Released Parties’ Claims,” however, do not include or in any way impair or affect any claims or rights asserted in the Consolidated Derivative Action, and do not include any claims belonging to Openwave against any of its current or former directors, officers or employees, including, but not limited to, the Individual Defendants herein, which claims and rights are hereby expressly reserved. “Released Parties’ Claims” also do not include or in any way impair or affect any claims or rights that any current or former director, officer, or employee, including the Individual Defendants has or may have against Openwave, including, but not limited to, any and all rights of indemnification under any

applicable indemnification agreement, Openwave's by-laws and charter, or Delaware law, which claims and rights are hereby expressly reserved.

(kk) "Settled Claims" means any and all claims, causes of action, demands, rights, or liabilities (including but not limited to claims for violation of the federal securities laws, negligence, gross negligence, professional negligence, breach of duty of care and/or breach of duty of loyalty and/or breach of the duty of candor, fraud, breach of fiduciary duty, mismanagement, corporate waste, malpractice, breach of contract, negligent misrepresentation, unjust enrichment, self-dealing, violations of any state statutes or federal statutes, rules or regulations, including both known and Unknown Claims (as defined below)), that (1) have been asserted in the Consolidated Action; or (2) that could be or could have been asserted in this or any other forum by or on behalf of Lead Plaintiff or any Class Member based on, arising out of or in any way relating to the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Consolidated Action, and which relate to Lead Plaintiff's or any Class Member's purchase, other acquisition, holding, sale or other disposition of Openwave's common stock during the Class Period. "Settled Claims" do not include, or in any way impair or affect, any claims that have been or may be asserted in the Consolidated Derivative Action or any other claim or cause of action belonging to Openwave (including, but not limited to, claims for breach of fiduciary duty, contribution, and violations of any state statutes or federal statutes, rules or regulations) that may be asserted against any of its current or former directors, officers or employees, including, but not limited to, the Individual Defendants. "Settled Claims" also do not include, or in any way impair or affect, any claims or rights that any current or former director, officer or employee, including the Individual Defendants, has or may have against Openwave, including, but not limited to, any and all rights

of indemnification under any applicable indemnification agreement, Openwave's by-laws and charter, or Delaware law, which claims and rights are hereby expressly reserved. Nothing herein, nor in any judgment that may be entered, shall in any way impair or restrict the rights of any Settling Party to enforce the terms of this Stipulation.

(ll) "Settlement" means the settlement contemplated by this Stipulation.

(mm) "Settlement Amount" means Twenty Million Dollars (\$20,000,000), in cash.

(nn) "Settlement Fund" means the Settlement Amount plus interest earned thereon.

(oo) "Settlement Hearing" means the hearing set by the Court under Rule 23(e)(1)(c) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(pp) "Settling Parties" means the Defendants and Lead Plaintiff, on behalf of itself and the Class Members.

(qq) "Summary Notice" means the Summary Notice of Proposed Settlement, Settlement Fairness Hearing and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(rr) "Taxes" means: (i) all federal, state and/or local taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants).

(ss) “Unknown Claims” means (i) any and all Settled Claims that Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement, and (ii) any and all Released Parties’ Claims that any Released Party does not know or suspect to exist in his, her or its favor at the time of the release described herein, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. For purposes of the discussion below, the Lead Plaintiff, Class Members and the Released Parties are collectively referred to as the “Releasing Parties.” Except as expressly set forth herein, the parties stipulate and agree that upon the Effective Date, each party to this Stipulation shall expressly waive and all other Releasing Parties shall by operation of the Judgment be deemed to have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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.

The Releasing Parties may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Settled Claims or the Released Parties’ Claims, but, upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Settled Claims and any and all Released Parties’ Claims as those terms are defined herein. The parties to this Stipulation acknowledge, and all other Releasing

Parties shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and was a key element of the Settlement.

### **CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (a) certification of the Consolidated Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class; (b) appointment of Lead Plaintiff as the Class Representative; and (c) appointment of Lead Counsel as Class Counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. Lead Plaintiff and Defendants will move jointly for entry of the Preliminary Approval Order, which will certify the Consolidated Action to proceed as a class action solely for purposes of the Settlement.

### **RELEASE OF CLAIMS**

3. Except as expressly set forth in paragraph 1(jj)-(kk) herein with respect to excluded claims by Openwave against any of the Individual Defendants, and claims by any of the Individual Defendants against Openwave, the obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Consolidated Action as against Openwave and the Individual Defendants, and shall fully and finally release any and all Settled Claims as against all Released Parties and shall also release Lead Plaintiff, all Class Members, and their attorneys from any and all Released Parties' Claims.

4. Pursuant to the Judgment, upon the Effective Date, Lead Plaintiff and members of the Class on behalf of themselves, their agents, representatives, heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released,

waived, discharged and dismissed each and every Settled Claim, and shall forever be enjoined from prosecuting any and all Settled Claims against any and all Released Parties.

5. Pursuant to the Judgment, upon the Effective Date, Openwave and the Individual Defendants and each of the other Released Parties, on behalf of themselves, their agents, representatives, heirs, executors, administrators, predecessors, successors and assigns, shall be deemed by operation of law to have released, waived, discharged and dismissed each and every of the Released Parties' Claims, and shall forever be enjoined from prosecuting any and all of the Released Parties' Claims, against Lead Plaintiff, any and all Class Members and any and all of Lead Plaintiff's and Class Members' attorneys.

#### **THE SETTLEMENT CONSIDERATION**

6. In consideration of the Settlement of the Settled Claims against Openwave, the Individual Defendants and the other Released Parties, Openwave shall pay or cause to be paid twenty million dollars (\$20,000,000) in cash, such amount to be deposited into the Escrow Account no later than thirty (30) calendar days after the later of: (a) the Court entering an order preliminarily approving this Stipulation and the Settlement; or (b) receipt by Openwave's counsel from Lead Counsel of full and complete wiring instructions for such payment and an executed W-9 for the owner of the account into which such payment is to be made.

#### **USE OF SETTLEMENT FUND**

7. The Settlement Fund shall be used to pay: (a) first, any Taxes, (b) next, any Notice and Administration Costs, (c) next, any Litigation Expenses awarded by the Court; and (d) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund shall be distributed to Authorized Claimants as provided below.

8. The Net Settlement Fund shall be distributed to Authorized Claimants as provided herein. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances of less than \$100,000 may be invested in money market mutual funds comprised exclusively of investments secured by the full faith and credit of the United States.

9. The parties hereto agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Such returns shall be consistent with this paragraph and in all events shall reflect that all taxes on the income earned on the Settlement Fund shall be paid out of the Settlement Fund as provided below. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. Upon written request, Openwave will provide to Lead Counsel the statement described in Treasury Regulation § 1.468B-3(e). Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this

paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

10. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without prior Order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

11. This is not a claims-made settlement. Upon the occurrence of the Effective Date, neither Openwave, the Individual Defendants, or any person or entity who or which paid any portion of the Settlement Fund on their behalf, shall have any right to the return of the Settlement Fund or any portion thereof irrespective of the number of Claims filed, the collective amount of losses of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

12. The Claims Administrator shall discharge its duties under Lead Counsel’s supervision and subject to the jurisdiction of the Court. No Defendant shall have any responsibility whatsoever for the administration of the Settlement, and shall have no liability whatsoever to any person, including, but not limited to, the Class Members, in connection with any such administration. Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim to those members of the Class at the address of each such person as set forth in the records of Openwave or its transfer agent(s), or who otherwise may be identified through

further reasonable effort. Lead Counsel will cause to be published the Summary Notice pursuant to the terms of the Preliminary Approval Order or whatever other form or manner might be ordered by the Court. For the purpose of identifying and providing notice to the Class, within five (5) business days of the date of entry of the Preliminary Approval Order, Openwave shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, Lead Plaintiff's Counsel or the Claims Administrator) its security holder lists (consisting of security holder names and addresses), in electronic form.

13. Lead Counsel may pay from the Settlement Fund, without further approval from Defendants or further order of the Court, all reasonable Notice and Administration Costs actually and reasonably incurred. Such costs and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing Notice and processing the submitted claims, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Stipulation, all Notice and Administration Costs reasonably paid or reasonably incurred, including any related fees, shall not be returned or repaid to Openwave, the Individual Defendants or to any person or entity who or which paid any portion of the Settlement Fund on their behalf.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

14. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel which shall be a percentage of the Settlement Fund to be approved by Lead Plaintiff no greater than the amount set forth in the Notice attached hereto as Exhibit A-1. Lead Counsel also will apply to the Court for reimbursement of Litigation Expenses. Provided that the

amount of attorneys' fees requested by Lead Counsel does not exceed the amount set forth in the Notice attached as Exhibit A-1, neither Openwave nor any other Individual Defendant, shall take any position with respect to Lead Counsel's application or award of attorneys' fees and/or Litigation Expenses. Such matters are not the subject of any agreement between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

15. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel, with the Court's approval, immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after receiving from any of Defendants' Counsel or from a court of appropriate jurisdiction notice of the termination of the Settlement or notice of any reduction of the award of attorneys' fees and/or Litigation Expenses. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of this Stipulation. Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

16. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the prosecution and settlement of the Consolidated Action.

## CLAIMS ADMINISTRATOR

17. The Claims Administrator shall administer the process of receiving, reviewing and approving or denying claims under Lead Counsel's supervision and subject to the jurisdiction of the Court. Other than Openwave's obligation to provide its shareholder transfer records, as provided herein, none of the Defendants shall have any responsibility whatsoever for the administration of the Settlement or the claims process and shall have no liability whatsoever to any person, including, but not limited to, Lead Plaintiff, Class Members or Lead Counsel in connection with such administration. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

18. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Loss Amount compared to the total Loss Amounts of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

19. The Plan of Allocation proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff and Lead Counsel may not cancel or terminate the Stipulation or the Settlement based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in this Consolidated Action. Neither Openwave, the Individual Defendants, nor any other Released Party, shall have any responsibility or liability whatsoever for allocation of the Net Settlement Fund.

20. Any Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment to be entered in the Consolidated Action and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against any Released Party concerning any Settled Claim or Released Parties' Claim.

21. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund. Neither Openwave, the Individual Defendants, nor any other Released Party, shall have any liability, obligation or responsibility whatsoever for the administration of the Settlement or disbursement of the Net Settlement Fund. Neither Openwave, the Individual Defendants, nor any other Released Party, shall be permitted to review, contest or object to any Claim Form or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim Form or Claim for payment by a Class Member. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

22. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an Authorized Claimant, the following conditions shall apply:

a. Each Class Member shall be required to submit a Claim Form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

b. All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice, unless such deadline is extended by Order of the Court. Any Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless, by Order of the Court, late-filed Claim Forms are accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment and the releases provided for herein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind against any Released Party concerning any Settled Claim. Provided that it is received before the motion for the Class Distribution Order is filed, a Claim Form shall be deemed to be submitted when posted, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator;

c. Each Claim Form shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below;

d. Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion and in writing, all Claimants whose Claim the

Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below;

e. If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court; and

f. The administrative determinations of the Claims Administrator accepting and rejecting Claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

23. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Consolidated Action or this Settlement in connection with the processing of Claim Forms.

24. Lead Counsel will apply to the Court, on notice to all Defendants, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any

administration fees and expenses associated with the administration of the Settlement from the Escrow Account, and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

25. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Class Members. All Class Members whose Claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in this Consolidated Action and the releases provided for therein, and will be permanently barred and enjoined from bringing any action against any and all Released Parties concerning any and all of the Settled Claims.

26. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court.

#### **TERMS OF THE JUDGMENT**

27. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form annexed hereto as Exhibit B, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

#### **CONDITIONS OF SETTLEMENT AND EFFECT OF TERMINATION**

28. The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) payment of the full contribution to the Settlement Fund as required by paragraph 6 hereof;

(b) the Stipulation has not been terminated pursuant to the provisions of paragraphs 29 or 30 hereof;

(c) the Court has entered the Preliminary Approval Order; and

(d) the Judgment has become Final, as defined in paragraph 1(s) hereof.

29. Within thirty (30) days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect; (b) the Court's refusal to approve this Stipulation or any material part of it; (c) the Court's declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court, Openwave and Lead Plaintiff each shall have the right to terminate the Settlement and this Stipulation by providing written notice to all of the Settling Parties of an election to do so. However, any decision with respect to an application for attorneys' fees or Litigation Expenses, or with respect to any plan of allocation, shall not be considered material to the Settlement, shall not affect the finality of the Judgment, and shall not be grounds for termination.

30. Either (a) the Individual Defendants, provided they unanimously agree, or (b) Openwave shall have the option to terminate the Settlement and this Stipulation in the event that Class Members who collectively purchased in excess of 6% (six percent) or more of the shares eligible to participate in the Settlement properly elect to exclude themselves from the Class in accordance with the requirements for requesting exclusion provided in the Notice. Lead Counsel and Defendants' Counsel shall request jointly that the deadline for submitting exclusions from the Class be at least fifteen (15) business days prior to the Settlement Hearing. Copies of all

requests for exclusion from the Class received by the Claims Administrator (or other person designated to receive exclusion requests) shall be provided to Openwave's Counsel and the Individual Defendants' Counsel no later than ten (10) business days prior to the Settlement Hearing. If the 6% threshold is reached, Openwave or the Individual Defendants shall have until 5:00 p.m. EST of five (5) business days before the Settlement Hearing to inform Lead Counsel, in writing, of Openwave's and/or the Individual Defendants' election to exercise the option to terminate the Settlement. Lead Counsel shall have the right to communicate with the holders of such shares and, if a sufficient number of them withdraw in writing their requests for exclusion such that the total number of shares eligible to participate in the Settlement represented by the remaining "opt outs" represents less than 6% of the number of shares eligible to participate in the Settlement, the notice(s) of termination shall be deemed withdrawn.

31. Except as otherwise provided herein, in the event that the Settlement is terminated, the Settlement and this Stipulation shall be null and void, and without prejudice, and none of their terms shall be effective or enforceable and the facts of the Settlement shall not be admissible in any trial of this Consolidated Action, and the Settling Parties shall be deemed to have reverted to their respective status in this Consolidated Action immediately prior to August 26, 2008 and, except as otherwise expressly provided, the parties shall proceed in all respects as if this Stipulation and any related orders had not been entered, and any portion of the Settlement consideration previously paid or caused to be paid by or on behalf of Defendants, including, but not limited to, any funds disbursed in payment of Litigation Expenses and attorneys' fees, together with any interest earned or appreciation thereon at the same net rate as earned by the Settlement Fund, less any Taxes paid or due with respect to such amounts, and less Notice and Administration Costs actually incurred and paid or payable, shall be returned to the person who,

or entity that, funded the Settlement, in proportion to such contributions, within thirty (30) calendar days after written notification of such event by Openwave to the Escrow Agent, with a copy of such notice to Lead Counsel, pursuant to the terms of the Escrow Agreement.

**NO ADMISSION OF WRONGDOING**

32. This Stipulation, whether or not consummated, and any proceedings taken pursuant to it:

a. shall not be offered or received against any of the Released Parties as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Parties with respect to the truth of any fact alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted against any of the Released Parties in this Consolidated Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Parties;

b. shall not be offered or received against any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any of the Released Parties, or against the Lead Plaintiff or any other Class Members as evidence of any infirmity in the claims of Lead Plaintiff or the other Class Members;

c. shall not be offered or received against any of the Released Parties, or against the Lead Plaintiff or any other Class Members, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Parties, or against the Lead Plaintiff or any other Class Members in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this

Stipulation; provided, however, that if this Stipulation is approved by the Court, Openwave, the Individual Defendants, any other Released Party, Lead Plaintiff and the other Class Members may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement;

d. shall not be construed against any of the Released Parties, Lead Plaintiff or any other Class Members as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

e. shall not be construed against Lead Plaintiff or any other Class Members as an admission, concession, or presumption that any of their claims are without merit or that damages recoverable under the Amended Complaint would not have exceeded the Settlement amount; and

f. shall not be construed as or received in evidence as an admission, concession or presumption that class certification is appropriate in this Consolidated Action, except for purposes of this Settlement.

#### **MISCELLANEOUS PROVISIONS**

33. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

34. Openwave warrants that, as to the payments made pursuant to paragraph 6 hereof, at the time of such payment that Openwave made or caused or will make or cause to be made pursuant to the terms above, Openwave was not insolvent, nor will the payment required to be made by or on behalf of Openwave render Openwave insolvent, within the meaning of and/or for

the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by Openwave and not by Openwave's Counsel.

35. If a case is commenced in respect of Openwave (or insurer contributing funds to the Settlement Fund) under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, conservator, or other fiduciary is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Openwave to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited to the Settlement Fund by others, then, at the election of Lead Counsel, the parties shall jointly move the Court to vacate and set aside the releases given and the Judgment entered in favor of Openwave and the other Released Parties pursuant to this Stipulation, which releases and Judgment shall be null and void, and the parties shall be restored to their respective positions in the litigation immediately prior to August 26, 2008, and any cash amounts in the Settlement Fund shall be returned as provided in paragraph 31 hereof.

36. The Settling Parties intend this Settlement to be a final and complete resolution of all disputes asserted, or that could be or could have been asserted, by the Lead Plaintiff, any other Class Members and their attorneys against all Released Parties with respect to all Settled Claims. Accordingly, Lead Plaintiff and Defendants agree not to assert in any forum that this Consolidated Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without a reasonable basis. The parties hereto shall assert no claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of this Consolidated Action. The Settling Parties agree that the amount paid and the other terms of this

Settlement were negotiated at arm's-length in good faith by the parties, including at a mediation conducted by a United States Magistrate Judge and at a subsequent mediation conducted by a former United States District Court Judge, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

37. While maintaining their positions that the claims asserted in the Consolidated Action were not meritorious, Defendants in any statement made to any media representative (whether or not for attribution) will not deny that the Consolidated Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Lead Plaintiff and Defendants shall not make any accusations of wrongful or actionable conduct by the other side concerning the prosecution and resolution of the Consolidated Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

38. This Stipulation may not be modified or amended, nor may any of its provisions be waived except by a writing signed by all signatories hereto or their successors-in-interest.

39. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

40. The administration and consummation of this Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Lead Counsel and enforcing the terms of this Stipulation.

41. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

42. This Stipulation and its exhibits constitute the entire agreement among the parties hereto concerning this Settlement, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

43. This Stipulation may be executed in one or more original and/or faxed counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the signatories of this Stipulation shall exchange among themselves original signed counterparts.

44. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

45. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

46. This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the parties, it being recognized that it is the result of arm's-length negotiations between the parties and all parties have contributed substantially and materially to the preparation of this Stipulation.

47. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

48. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and this Settlement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

49. If any party is required to give notice to any other party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or overnight delivery service with confirmation of receipt. Notice shall be provided as follows:

If to Lead Plaintiff: Or Lead Counsel	Bernstein Litowitz Berger & Grossmann LLP 1285 Avenue of the Americas New York, New York 10019 Telephone: (212) 554-1400 Facsimile: (212) 554-1444 Attn: Chad Johnson, Esq.
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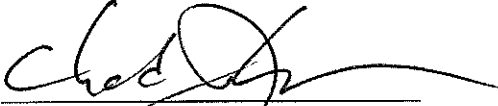
If to Openwave:	Gibson, Dunn & Crutcher LLP 1881 Page Mill Road, Palo Alto, CA 94304-1211 Telephone: (650) 849-5300 Facsimile: (650) 849-5333 Attn: Paul J. Collins, Esq.
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If to Covert, Denman, Hedfors or Puckett:	Skadden, Arps, Slate, Meagher & Flom LLP 525 University Avenue, Suite 1100 Palo Alto, CA 94301 Telephone: (650) 470-4500 Facsimile: (650) 470-4570 Attn: Amy S. Park, Esq.
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If to Black, Kennedy, Listwin, Pace or Peterschmidt	Mayer Brown LLP Two Palo Alto Square 3000 El Camino Real, Suite 300 Palo Alto, CA 94306-2112 Telephone: (650) 331-2000 Facsimile: (650) 331-2060 Attn: Lee H. Rubin, Esq.
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DATED: New York, New York  
October 27, 2008

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GROSSMANN LLP**

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Laura Gundersheim  
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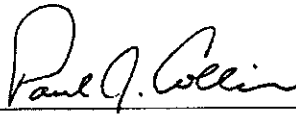
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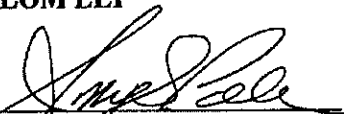
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DATED: New York, New York  
October 27, 2008

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*Lead Counsel for Lead Plaintiff and the  
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