

ORIGINAL

1 James C. Sturdevant, State Bar No. 94551

2 (jsturdevant@sturdevantlaw.com)

3 Monique Olivier, State Bar No. 190385

4 (molivier@sturdevantlaw.com)

5 THE STURDEVANT LAW FIRM

6 A Professional Corporation

7 354 Pine Street, Fourth Floor

8 San Francisco, CA 94104

9 Telephone: (415) 477-2410

10 Facsimile: (415) 477-2420

11  
12 Robert C. Lamar (*Admitted Pro Hac Vice*)

13 (rclamar@laclaw.net)

14 LAMAR, ARCHER & COFRIN, LLP

15 50 Hurt Plaza, Suite 900

16 Atlanta, GA 30303-2914

17 Telephone: (404) 577-1777

18 Facsimile: (404) 577-9490

19  
20 M. Jerome Elmore (*Admitted Pro Hac Vice*)

21 (elmore@bmelaw.com)

22 BONDURANT, MIXSON & ELMORE, LLP

23 1201 West Peachtree Street, Suite 3900

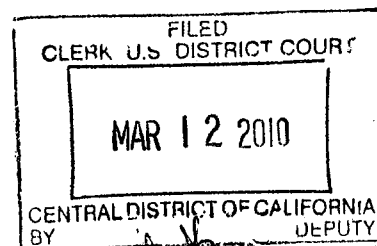
24 Atlanta, GA 30309

25 Telephone: (404) 881-4100

26 Facsimile: (404) 881-4111

27 Attorneys for Plaintiffs

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

PAUL ATHERTON, JOE O'BRIEN,  
MIKE WILLIAMS, GORDON  
PETRASH, GERHARD  
GUEVARRA and DAVID  
O'SHAUGHNESSY, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

vs.

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

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

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

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

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

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

1           1. The proposed Class Settlement Agreement and Release dated August 21, 2009  
2 (the "Settlement Agreement"),<sup>1</sup> 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  
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27 <sup>1</sup> 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,~~ <sup>May 24,</sup> 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 show<sup>n</sup>, 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

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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

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 <sup>14</sup>10  
27 days prior to the final approval hearing, on ~~February 12~~ <sup>May 10,</sup> 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,~~ <sup>May 10,</sup> 2010.

3 g. The Fairness Hearing shall be held at 10:00 a.m. on ~~February 22,~~ <sup>May 24,</sup> 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.

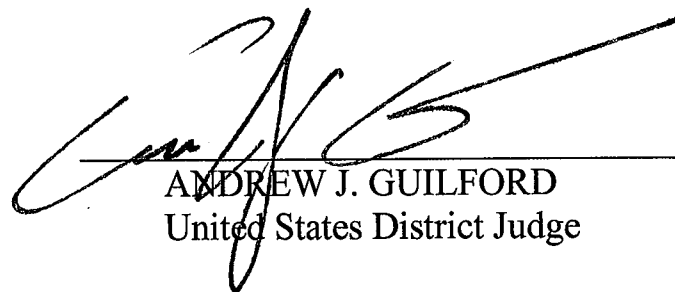
6 i. The Parties will abide by all deadlines set forth in the Settlement  
7 Agreement, which is incorporated herein by reference.

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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