

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

EUGENE ROSENFELD, On Behalf of Himself and All Others Similarly Situated,	:	CIVIL ACTION NO. 08-03381-SVW (CTx)
	:	
Plaintiff,	:	<u>CLASS ACTION</u>
	:	
vs.	:	
	:	
GATEWAY, INC.,	:	
	:	
Defendant.	:	

SETTLEMENT AGREEMENT

Plaintiff, Eugene Rosenfeld ("Plaintiff" or "Rosenfeld"), by and through his counsel, and Defendant, Gateway, Inc. ("Defendant" or "Gateway"), by and through its counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendant.

WHEREAS, Rosenfeld filed the above-captioned class action against Gateway on May 22, 2008, alleging that Defendant had improperly advertised certain notebook computers as having the capacity to be upgraded to 4 gigabytes ("GB") of random access memory ("RAM");

WHEREAS, Gateway vigorously denied and continues to deny Rosenfeld's allegations and denies that it engaged in any improper or unlawful conduct of any kind;

WHEREAS, Rosenfeld and Gateway (the "Parties") exchanged expert reports with respect to the central issue in this case (*i.e.*, the ability of the notebook computers to be upgraded to 4 GB of RAM) on October 10, 2008, pursuant to the Order of the Honorable Stephen V. Wilson dated August 27, 2008;

WHEREAS, Plaintiff and Defendant agreed to participate and participated in a mediation

session with the Honorable Dickran M. Tevrizian (ret.) in Los Angeles, California on October 15, 2008;

WHEREAS, after a day of vigorous discussions and negotiations with the assistance of Judge Tevrizian, the Parties reached an agreement to resolve this case and the dispute between them;

WHEREAS, for purposes of settlement, the Parties agree to the certification of a settlement class defined as follows:

All persons or entities who purchased, not for resale, one of the Notebook Computers (defined below) in the United States ("Class" or "Settlement Class");

WHEREAS, the Parties agree that the following persons and entities should be excluded from the Class: Defendant, as well as Defendant's employees, officers and directors; any persons or entities which distribute or sell the Notebook Computers; and the Judge(s) to whom this matter is assigned;

WHEREAS, Plaintiff and Defendant have conducted a thorough examination and investigation of the facts and law relating to the matters in this Litigation, subject to certain agreed upon confirmatory discovery that they have agreed to complete before a preliminary approval hearing currently scheduled for December 8, 2008;

WHEREAS, Defendant has denied and continues to deny that it is legally responsible or liable to Plaintiff or any member of the Class for any of the matters asserted in this Litigation but has concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending

and potential claims of the Plaintiff and all members of the Class relating to claims which were or could have been asserted by Plaintiff and the Class in this Litigation, relating to the practices at issue;

WHEREAS, Plaintiff recognizes the costs and risks of prosecution of this Litigation, and believes that it is in his interest, and the interest of all Class Members, to resolve this Litigation, and any and all claims against Defendant, in this Settlement Agreement;

WHEREAS, significant arm's-length settlement negotiations have taken place between the Parties and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein;

WHEREAS, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate and in the best interest of Class Members; and

WHEREAS, this Settlement Agreement is made and entered into by and among Plaintiff and Defendant, individually and on behalf of the Class;

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. **Action**. "Action" shall mean this above-captioned class action pending before the United States District Court for the Central District of California.

B. **Claim Form.** "Claim Form" shall mean a form in substantially the same form as that attached hereto as Exhibit "A."

C. **Claims Period.** "Claims Period" shall mean the time period through which Claim Forms may be submitted by Class Members and shall conclude one hundred and twenty (120) days after the entry of the Preliminary Approval Order (defined below) with respect to this Settlement.

D. **Class Counsel.** "Class Counsel" shall mean Shepherd, Finkelman, Miller & Shah, LLP, Seeger Weiss LLP and the Law Offices of Thomas D Mauriello.

E. **Class Counsel Fees and Expenses.** "Class Counsel Fees and Expenses" shall mean the reasonable attorneys' fees and expenses in the amount of Three Hundred Thousand Dollars (\$300,000) that Defendant has agreed to pay to Class Counsel as part of the resolution of this Litigation, subject to approval of the Court. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class.

F. **Class Members.** "Class Members" shall mean all persons or entities who purchased, not for resale, one of the Notebooks in the United States with the exception of Defendant, Defendant's employees, officers and directors; any persons or entities which distribute or sell the Notebook Computers and the Judge(s) to whom this matter is assigned.

G. **Class Notice.** "Class Notice" shall mean the Court-approved form of notice to Class Members informing them of the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; and (iii) opportunity to submit a claim, in substantially the same form as that attached hereto as Exhibit "B."

H. **Court.** "Court" shall mean the United States District Court for the Central District of California, the Honorable Stephen V. Wilson presiding, or his duly appointed successor.

I. **Defendant.** "Defendant" shall mean Gateway, Inc. and its predecessors, successors, assigns, directors, officers, agents, attorneys, representatives and employees.

J. **Defendant's Counsel.** "Defendant's Counsel" shall mean Quinn Emanuel Urquhart Oliver and Hedges, LLP.

K. **Effective Date.** "Effective Date" shall mean the date following the entry of the Final Approval Order on which the time for any appeal expires or the date upon which any appeal is finally terminated, whichever date is later.

L. **Final Approval Hearing.** "Final Approval Hearing" shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order.

M. **Final Approval Order.** "Final Approval Order" shall mean the Court order that approves this Settlement Agreement, approves payment of attorneys' fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement.

N. **Gateway.** "Gateway" shall mean Gateway, Inc. and its predecessors, successors, assigns, directors, officers, agents, attorneys, representatives and employees.

O. **Incentive Award.** "Incentive Award" shall mean the Two Thousand Five Hundred Dollar (\$2,500) payment that the Defendant has agreed to pay to Plaintiff to compensate him for his time and efforts on behalf of the Class, subject to approval of the Court.

P. **Lead Class Counsel.** "Lead Class Counsel" shall mean Shepherd, Finkelman, Miller & Shah, LLP.

Q. **Litigation.** "Litigation" shall mean this above-captioned class action proceeding pending before the United States District Court for the Central District of California.

R. **Notebooks or Notebook Computers.** "Notebooks" or "Notebook Computers" shall mean the models in the Gateway CX210X computer series [*i.e.*, CX210X, CX210S, M285E, M285-E SB, M285G, M7225C models (collectively "CX210X Notebooks" or "CX210X Notebook Computers"), as well as the models in the Gateway M7309H, M153XL and/or DX42X computer series.

S. **Objection Date.** "Objection Date" shall mean the date agreed upon by the Parties or otherwise ordered by the Court for Class Members to object to the Settlement Agreement's terms or provisions and submit any required statements, proof, or other materials and/or argument.

T. **Opt-Out Deadline.** "Opt-Out Deadline" shall mean the date agreed upon by the Parties or otherwise ordered by the Court, by which any Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

U. **Opt-Out List.** "Opt-Out List" shall mean a written list prepared by Class Counsel of all Class Members who submit timely Requests for Exclusion.

V. **Parties.** "Parties" shall mean the Plaintiff and Defendant.

W. **Plaintiff.** "Plaintiff" shall mean Eugene Rosenfeld.

X. **Preliminary Approval Order.** "Preliminary Approval Order" shall mean the order of the Court preliminarily approving this Settlement Agreement, in substantially the same form as that attached hereto as Exhibit "C."

Y. **Request for Exclusion.** "Request for Exclusion" shall mean any request by any Class Member for exclusion from the Settlement.

Z. **Settlement.** "Settlement" shall mean the agreement by the Parties to resolve this Litigation, the terms of which have been memorialized and provided for in this Settlement Agreement.

AA. **Settlement Agreement.** "Settlement Agreement" shall mean this Settlement Agreement and all the exhibits attached hereto.

BB. **Settlement Class Members.** "Settlement Class Members" shall have the same meaning as Class Members.

II. **REQUIRED EVENTS**

A. Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendant's Counsel shall take all reasonable and necessary steps, subject to the Court's availability, to obtain entry of the Preliminary Approval Order on or about December 8, 2008 and move for the Final Approval Order on or before February 27, 2009 (and based upon the date established by the Court for the Final Approval Hearing).

2. The Parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in the same form as that attached hereto as Exhibit "C."

3. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

4. In the event that the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, this Settlement Agreement is voidable by either of the

Parties. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

5. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement is essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

6. Upon Entry of the Final Approval Order, this Action shall be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court as provided in Section IX herein.

III. SETTLEMENT TERMS

A. Class Members that purchased one of the CX210X Notebooks for a specific purpose requiring 4 GB of RAM available, upon completion of a Claim Form, who (1) provide a written attestation, under penalty of perjury, setting forth (a) the intended purpose of purchasing the Notebook Computer, (b) that the Notebook Computer was purchased with 4 GB of RAM or thereafter it was expanded to 4 GB of RAM, and (c) that the Class Member was unable to use the Notebook Computer for the purpose set forth in subsection (a) above because the Class Member did not have use of 4 GB of RAM; (2) contacted Gateway on or before October 15, 2008 to complain that they were unable to access or utilize 4 GB of RAM; (3) did not receive a refund or other compensation from Gateway in response to the complaint described in paragraph (2) above;

(4) produce a receipt or other documentary proof of the amount paid for the CX210X Notebook Computer and any RAM purchased to upgrade the Notebook Computer; and (5) produce evidence of purchasing software or a similar program that required the use of 4 GB of RAM either independently or in connection with the use of other software or programs (*e.g.*, a Xerox copy of packaging identifying the software or other programs and the RAM specifications required for such usage) to demonstrate that the Notebook Computer could not be utilized for its intended purpose (as described in subsection (a) above), shall receive a refund of the purchase price of the Notebook Computer in an amount not to exceed \$2,500.00 (in exchange for return of the Notebook Computer) and a refund of any RAM purchased to expand the Notebook Computer to 4 GB of RAM in an amount not to exceed \$200.00.

B. Class Members that purchased one of the CX210X Notebooks with 4GB of RAM or thereafter purchased additional RAM to expand their computer to 4 GB of RAM on or before October 15, 2008, who are not eligible for relief under Paragraph A above or choose not to elect such relief, shall be entitled to receive a refund of up to fifty percent (50%) of the cost of the RAM purchased to expand a Notebook Computer to 4 GB of RAM in an amount not to exceed \$100.00 upon provision of a receipt or other proof of purchase of additional RAM to expand the Class Member's Notebook Computer to 4 GB of RAM.

C. Class Members that purchased one of the Notebook Computers, who are not eligible for relief under Paragraphs A or B above or choose not to elect such relief, upon completion of a Claim Form, shall be entitled to receive one of the following items from Gateway free of charge: (1) 1 GB flash drive; (2) 1 ethernet cord retractor; (3) 1 notebook cleaning kit; (4) 1 travel mouse; or (5) 1 notebook travel sleeve.

D. No Class Member shall be eligible for more than one category of relief per Notebook Computer serial number.

E. Gateway shall provide each Class Member submitting a valid Claim Form with the relief to which the Class Member is entitled within sixty (60) days of the Effective Date.

IV. CLAIMS ADMINISTRATION AND APPEALS

A. Gateway, with oversight by and reporting to Lead Class Counsel, will administer and be responsible for the claims process. Gateway will determine the validity of claims and examine the proof submitted on claims using its records and other available information. Thirty (30) days after the expiration of the Claims Period, Gateway shall submit a report to Lead Class Counsel regarding the basis for rejection of any claim(s).

B. In the event that Defendant's Counsel and Class Counsel cannot resolve any disagreements over the validity of any disputed claims after meeting and conferring regarding the same, and the Class Member wishes to pursue an appeal of the denial of the claim, Class Counsel will submit a written claim for reimbursement ("Appeal Claim"), which will not exceed two (2) pages in length, to the Honorable Dickran M. Tevrizian (ret.), and serve a copy by mail on Defendant's Counsel, not later than twenty (20) days after the meet and confer process is terminated. Gateway will have twenty-three (23) days from the date of mailing to file a written response to the Appeal Claim, which will not exceed two (2) pages in length, to the Honorable Dickran M. Tevrizian (ret.), and to serve the same on Lead Class Counsel. Judge Tevrizian will decide the appeal on the papers and his determination will be final and binding. Judge Tevrizian's fees and costs will be split 50/50 between Lead Class Counsel and Gateway unless Judge Tevrizian determines, in his sole discretion, that a different apportionment should occur in

the interests of justice.

V. NOTIFICATION TO CLASS MEMBERS

A. Gateway shall be responsible, subject to the Court approving the same, for the following notice program:

1. Gateway shall provide direct notice to all Class Members for which Gateway has addresses by sending the Class Notice to all such Class Members by electronic mail ("e-mail") or United States mail (in the event that no e-mail address is available for the Class Member) and shall also provide publication notice to all Class Members by publishing the Class Notice in non-color copy on one-sixth of a page of a weekday (Monday - Thursday) edition of *USA Today*. Gateway shall provide Class Notice to the Class Members within thirty (30) days of the entry of the Preliminary Approval Order.

B. The Class Notice will also be posted in a prominent location on Lead Class Counsel's website (www.sfmnlaw.com). The Parties shall also work cooperatively so that all other pertinent information to submit a claim, request exclusion from the Settlement, object to the Settlement or provide notice of an intention to appear in Court, is provided to all Class Members at www.sfmnlaw.com.

C. The Claims Period shall run for a period of thirty (30) days after the entry of the Final Approval Order, and the Class Notice will set forth a claims deadline of thirty (30) days after the date set by the Court for the Final Approval Hearing, which date will be extended in the event that the Final Approval Order is not entered on that date until thirty (30) days after the entry of the Final Approval Hearing.

D. All costs of the notice program will be paid by Gateway. There shall be no charge

to Gateway for the posting of the Class Notice on Lead Class Counsel's website or for posting any other information on such website.

E. Proof of Notice. No later than ten (10) days prior to the Final Approval Hearing, Gateway shall provide an affidavit to the Court, with a copy to Class Counsel, attesting that notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

VI. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to Lead Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice and/or the website referenced in the Class Notice. Any Request for Exclusion must be postmarked or delivered not later than the date specified in the Court's Preliminary Approval Order. Any Request for Exclusion shall state the name, address and telephone number of the person/entity requesting exclusion and contain a clear statement communicating that such person/entity elects to be excluded from the Settlement Class and elects to be excluded from any judgment entered pursuant to this Settlement.

B. Any Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. Class Counsel shall report the names of all individuals who have submitted a Request for Exclusion to the Court not less than ten (10) days prior to the Final Approval Hearing.

VII. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

A. The Parties will request that the Court enter an order requiring any Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, to file a written notice of objection by the Objection Date. Such objections shall state the name, address and telephone number of the person/entity and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person/entity wishes to be considered by the Court.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objections to the Settlement Agreement, in accordance with such Class Member's due process rights. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Class Counsel and Defendant's Counsel at the addresses set forth in the Class Notice and/or the website referenced in the Class Notice, by no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

VIII. RELEASE, DISMISSAL OF ACTION AND JURISDICTION OF COURT

A. By this Settlement Agreement and the following Release, Defendant is released from any and all claims or causes of action that were, or could have been, asserted by the named Plaintiff or any member of the Class against the Defendant, based upon the alleged inability to upgrade the Notebook Computers at issue to 4 GB of RAM, as alleged in the Action. Without assuming that the Release given by this Settlement Agreement is a general release, Plaintiff and Class Members expressly waive and relinquish to the fullest extent permitted by law, the rights provided by Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his settlement with the debtor.

Plaintiff and the Settlement Class Members recognize that, even if they may later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and Judgment, Plaintiff and the Settlement Class Members fully, finally, and forever settle and release any and all of the Released Claims. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement.

B. This Settlement Agreement and Release does not affect the rights of Class Members who timely and properly request exclusion from the Settlement Agreement.

C. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not

limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

D. Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all Class Members, except those who have opted out in accordance with the terms and provisions hereof; (ii) the Defendant shall not be subject to liability or expense of any kind to any Class Member(s) except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendant in any federal or state court in the United States or any other tribunal.

IX. ATTORNEYS' FEES AND INCENTIVE AWARD

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, shall be paid by Defendant, subject to the limitations contained herein.

B. Gateway has agreed to pay, subject to Court approval, and to support the award of attorneys' fees, costs and expenses in the total sum of Three Hundred Thousand Dollars (\$300,000), which shall be paid upon application by Class Counsel to the Court. In no event shall Gateway be required to pay Plaintiff, Class Members, Lead Class Counsel, Class Counsel or other counsel in aggregate any attorneys' fees, costs or expenses in an amount greater than \$300,000 for any activity related in any way to this Action or Litigation. Such award shall be

paid by check or wire transfer (at Lead Class Counsel's election) to Shepherd, Finkelman, Miller & Shah, LLP and shall be delivered to Lead Class Counsel within twenty-one (21) days after the date the Final Approval Order is entered. In the event that the Final Approval Order is reversed, and such reversal becomes final (*i.e.*, all appeals and avenues of review are exhausted), Lead Class Counsel and Class Counsel shall remit the full amount of any attorneys' fees, costs and expenses to Gateway within twenty-one (21) days of such reversal becoming final.

C. Given the efforts of the Plaintiff on behalf of the Class Members, Defendant has agreed to pay Plaintiff a two thousand five hundred dollars (\$2,500) Incentive Award. Such award shall be paid by check to "Eugene Rosenfeld" and shall be delivered to Lead Class Counsel within ten (10) days after the Effective Date.

D. Failure by Gateway to make any payment required by this Settlement Agreement shall entitle the aggrieved party to recover damages from Gateway, including interest at the rate of six percent (6%) per annum plus attorneys' fees, expenses and other costs of collection.

X. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. Lead Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiff and Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Lead Class Counsel and Plaintiff and constitutes their legal, valid and binding obligation.

B. Defendant, through its undersigned attorneys, represents and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Defendant of this

Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendant. This Settlement Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

XI. MISCELLANEOUS PROVISIONS

A. This Settlement Agreement, and the exhibits and related documents hereto, are not to be used in evidence and shall not at any time be construed or deemed to be any admission or concession by Defendant with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendant specifically denies all of the allegations made in connection with the Litigation. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation, and all Parties shall be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement

Agreement or to affect its construction.

D. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in a writing signed by all of the Parties.

E. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

F. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

G. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her or its own costs of the Litigation.

H. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

I. Proper notice shall be given to Plaintiff and Defendant of all applications for Court approval or Court orders required under this Settlement Agreement.

J. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be

construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

K. All of the exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supercede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Litigation.

L. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or as to any disagreement regarding the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, shall be submitted to the Honorable Dickran M. Tevrizian (ret.) for resolution pursuant to the procedures and terms outlined in Paragraph IV.B. above.

M. Notices. All notices to the Parties of counsel required by this Settlement Agreement shall be made in writing and communicated by electronic and regular mail to the following addresses:

If to Lead Class Counsel or Class Counsel:


James E. Miller
Laurie Rubinow
Shepherd, Finkelman, Miller & Shah, LLP
65 Main Street
Chester, CT 06412
Telephone: 860/526-1100
Facsimile: 860/526-1120
Email: jmiller@sfmslaw.com
lrubinow@sfmslaw.com

If to Defendant or Defendant's Counsel:

Jeffery D. McFarland
Stan Karas
Quinn, Emanuel, Urquhart, Oliver & Hedges, LLP
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017-2543
Telephone: 213/443-3000
Facsimile: 213/443-3100
Email: jeffmcfarland@quinnemanuel.com
stankaras@quinnemanuel.com

IN WITNESS WHEREOF, Plaintiff and Defendant and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: November 18, 2008


James E. Miller
Attorney for Plaintiff

Dated: November 18, 2008

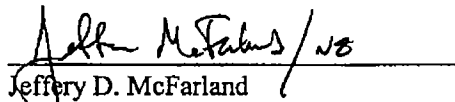

Jeffery D. McFarland
Attorney for Defendant

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Eugene Rosenfeld v. Gateway, Inc.
Civil Action No. 08-03381-SVW (CTx)

CLAIM FORM AND RELEASE

**Must Be Postmarked Or Provided To Delivery Service
(e.g., UPS, Federal Express) No Later Than:**
_____, 2009

Please send all completed Claim Forms and Releases, as well as any documents or other information to support your Claim, and any Notebook computer that you are returning to claim a full refund, to the following address:

Gateway, Inc.
Attn: Gateway Notebook Memory Settlement Administrator
[full address to be supplied by Gateway]

Please Type or Clearly Print The Following Information:

PART I: CLAIMANT IDENTIFICATION

Model Number of Notebook
(If You Have More Than One Covered Notebook, Please Complete A Separate Claim Form For Each Notebook)

Purchaser's Name (First, Middle, Last)

Street Address

City State Zip Code

Area Code Telephone Number (work)

Area Code Telephone Number (home)

Area Code Telephone Number (mobile)

Electronic Mail: _____

PART II: ELECTION OF REMEDIES

(PLEASE NOTE THAT YOU CAN ONLY CHOOSE ONE REMEDY)

A. CX210X, CX210S, M285E, M285-E SB, M285G And M7225C Notebook Purchaser Election For Refund Of Purchase Price Of Notebook: I declare, under penalty of perjury, that I purchased the above identified CX210X, CX210S, M285E, M285-E SB, M285G or M7225C Notebook for a specific purpose requiring 4 gigabytes ("GB") of random access memory ("RAM"). Specifically, I purchased the Notebook at issue for the following purpose: _____

[please provide a detailed response in the space provided above]. I also declare, under penalty of perjury, that the Notebook was purchased with 4 GB of RAM or that, after the purchase, it was expanded to 4 GB of RAM, and that I was unable to use the Notebook for its intended purpose because I did not have use of 4 GB of RAM in the manner that I intended or expected to use such memory. I contacted Gateway on or before October 15, 2008 to complain that I was unable to access or utilize 4 GB of RAM and I did not receive a refund or other compensation from Gateway in response to this complaint.

I have attached a receipt or other proof of the amount that I paid for the CX210X, CX210S, M285E, M285-E SB, M285G or M7225C Notebook and any RAM purchased to upgrade the Notebook. I also have attached proof of purchasing software or a similar program that required the use of 4 GB of RAM either independently or in connection with the use of other software or programs (e.g., a copy of packaging identifying the software or other programs and the RAM specifications required for such usage) to demonstrate that the Notebook could not be utilized for its intended purpose. I also have enclosed the Notebook computer at issue in an appropriate notebook/laptop shipping box for which I am seeking reimbursement of the purchase price for the Notebook computer and any RAM purchased to upgrade the Notebook. I understand that I will receive the amount that I paid for such Notebook purchase up to \$2,500.00, and a refund of any RAM purchased to expand the Notebook to 4 GB of RAM up to \$200.00, but that I will not receive payment of more than \$2,700.00 for any reason if I choose relief under this Section. I understand that, if for any reason, my Claim is not honored, my Notebook will be promptly returned to me. **(Please attach or enclose all requested documents and materials)**

OR

B. CX210X, CX210S, M285E, M285-E SB, M285G And M7225C Notebook Purchaser Election For Refund Of RAM Purchased: I declare, under penalty of perjury, that I purchased the above identified CX210X, CX210S, M285E, M285-E SB, M285G or M7225C Notebook and that I subsequently purchased RAM to upgrade this Notebook to 4 GB of RAM. I have attached a receipt or other proof of the amount that I paid for the RAM to expand the memory capacity of this CX210X, CX210S, M285E, M285-E SB, M285G or M7225C Notebook. I understand that I will receive fifty percent (50%) the amount that I paid for such RAM up to \$100.00. I understand that I will not receive payment of more than \$100.00 for any reason if I choose relief under this Section. **(Please attach or enclose all requested documents and materials)**

OR

C. Class Member's Selection Of Free Product: I declare, under penalty of perjury, that I purchased one of the Gateway Notebooks at issue (*i.e.*, a CX210X, CX210S, M285E, M285-E SB, M285G, M7225C, M7309H, M153XL and/or DX42X), and I hereby elect to receive the following item from Gateway free-of-charge:

_____ 1 GB flash drive;

_____ 1 ethernet cord retractor;

_____ 1 notebook cleaning kit;

_____ 1 travel mouse; or

_____ 1 notebook travel sleeve.

Please choose only one free product if you are choosing relief under Category C.

**PART III: SUBMISSION TO JURISDICTION OF COURT AND
ACKNOWLEDGMENTS**

I submit this Claim Form and Release under the terms of the Settlement Agreement dated as of November 18, 2008 ("Agreement"). I also submit to the jurisdiction of the United States District Court for the Central District of California, with respect to my claim as a Class Member and for purposes of enforcing the release set forth herein. I further acknowledge that I am bound by and subject to the terms of any judgment that may be entered in the Litigation. I agree to furnish additional information to Gateway, Inc. or Plaintiff's Lead Counsel to support this claim, if required to do so. I have not submitted any other claim covering the purchase of the Notebook identified above and know of no other person or entity having done so on my behalf. I am not an employee, officer or director of Gateway, Inc., and I am not a person or entity which distributes or sells the Notebook computers at issue in this case. I also am not one of the Judge(s) to whom this matter is assigned.

PART IV: RELEASE

By participating in this settlement, I hereby release and forever discharge Gateway, Inc. and its parents, subsidiaries, affiliates, employees, principals, agents and representatives from any and all rights, claims, demands and damages of any kind, known or unknown, existing or arising in the future, and accordingly hereby expressly, voluntarily, knowingly and advisedly waive any and all rights granted to me under California Civil Code, Section 1542 resulting from or related to any claim that the Notebook computer at issue could not be upgraded to 4 GB of RAM and/or that I could not fully utilize 4 GB of RAM installed in the Notebook computer. California Civil Code Section 1542 states:

“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.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____, in _____,
(Month/Year) (City)

(State/County)

(Sign your name here)

(Type or print your name here)

(Capacity of person signing - if applicable)

PART V: SUBSTITUTE FORM W-9

**Request for Taxpayer Identification Number ("TIN") and Certification
SECTION I**

NAME: _____

Check appropriate box:

- | | | |
|---|---------------------------------------|--------------------------------|
| <input type="checkbox"/> Individual/Sole Proprietor | <input type="checkbox"/> Pension Plan | |
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Partnership | <input type="checkbox"/> Trust |
| <input type="checkbox"/> IRA | <input type="checkbox"/> Other | |

Enter TIN on appropriate line.

- For individuals, this is your Social Security Number ("SSN").
- For sole proprietors, you must show your individual name, but you may also enter your business name or "doing business as" name. You may enter either your SSN or your Employer Identification Number ("EIN").
- For other entities, it is your EIN.

----- or -----
Social Security Number Employer Identification Number

SECTION II

For Payees Exempt from Backup Withholding

If you are exempt from backup withholding, enter your correct TIN in Section I and write "exempt" on the following line: _____

SECTION III

Certification

UNDER THE PENALTY OF PERJURY, I CERTIFY THAT:

1. The number shown on this form is my correct TIN; and
2. I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the Internal Revenue Service that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, you must cross out Item 2 above.

SEE ENCLOSED FORM W-9 INSTRUCTIONS

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this _____ day of _____, in _____,
(Month/Year) (City)

(State/County)

(Sign your name here)

(Type or print your name here)

(Capacity of person signing - if applicable)

ACCURATE CLAIMS PROCESSING CAN TAKE A SIGNIFICANT AMOUNT OF TIME.

THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation.
3. Keep a copy of your Claim Form and supporting documentation for your records.
4. If you desire an acknowledgment of receipt of your Claim Form, please send it Certified Mail, Return Receipt Requested or through similar means.
5. If you move or your address changes, please send your new address to the address supplied at the top of this Claim Form.
6. If you have any questions regarding the completion of this Claim Form, please contact one of the following attorneys for the Class:

James E. Miller
Laurie Rubinow
Shepherd, Finkelman, Miller & Shah, LLP
65 Main Street
Chester, CT 06412
Telephone: (860) 526-1100
Facsimile: (860) 526-1120
Toll-Free: (866) 540-5505
Email: jmiller@sfmslaw.com
rubinow@sfmslaw.com

IMPORTANT: Do not send the completed Claim Form or other documents and materials to the above attorneys. Instead, the completed Claim Form and any required supporting documents or materials must be sent to Gateway, Inc. at the address provided on the first page of this Claim Form.

EXHIBIT B

LEGAL NOTICE

If you purchased a Gateway Notebook Computer in the CX210X, CX210S, M285E, M285-E SB, M285G, M7225C, M7309H, M153XL or DX42X series, you could get benefits from a class action settlement.

A court authorized this notice. This is not a solicitation from a lawyer.

- A nationwide settlement has been reached in a class action settlement about whether certain Gateway Notebook computers had the capacity to be upgraded to 4 GB of RAM as advertised.
- Your legal rights are affected whether you act, or don't act, so please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

EXCLUDE YOURSELF	This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendant, Gateway, Inc., about the legal claims released in this settlement.	Deadline: February 16, 2009
OBJECT	Write to the Court about why you don't like the settlement.	Deadline: February 16, 2009
GO TO A HEARING	Ask to speak in Court about the settlement.	Deadline: February 16, 2009
SUBMIT A CLAIM	Make a claim for relief under the settlement.	Deadline: [to be determined]
DO NOTHING	Give up rights to be part of any other lawsuit against the Defendant about legal claims released by the settlement.	No Deadline

- These rights and options - and the deadlines to exercise them - are explained in this notice.
- **Who's Included?** If you received this notice by e-mail or by mail, you have been identified as someone who may be included in this class action settlement. Class members are people in the United States who purchased one of the Gateway computers identified above. For a more detailed definition of the Class, please see the full Settlement Agreement at www.sfmslaw.com.
- **What's This About?** A lawsuit was brought against Gateway, Inc. claiming that certain Notebook computers were advertised as being capable of being upgraded to 4 giga-bytes ("GB") of random access memory ("RAM"), when they could not be upgraded in this way. Gateway denies these allegations and stands behind its products. A copy of the Complaint filed can be accessed at www.sfmslaw.com.
- **What Benefits Do I Get?** Depending upon which Gateway computer you purchased and other circumstances, you may be able to return the computer and get the full purchase price back (up to \$2,500), you may be able to obtain reimbursement for RAM purchased (up to \$100) or you may be entitled to receive a free product from Gateway by making a claim. You should read the Settlement Agreement carefully to determine which category of relief you may qualify for.
- **How Do I Get Benefits?** You must complete a Claim Form, which may have been e-mailed or mailed to you with this notice or which can be downloaded at www.sfmslaw.com or which you can obtain by calling (toll-free) 866-540-5505, and mail it to Gateway at the address provided on the Claim Form.
- **What Are My Legal Rights?** If you don't want to be legally bound by the settlement, you must exclude yourself by February 16, 2009. If you want to object to the settlement or speak in court about the settlement, you must submit the paperwork described in the Settlement Agreement by February 16, 2009. If you want to submit a claim to get the benefits of the settlement, you must do so by April __, 2009. The Court will hold a hearing in this case, known as *Rosenfeld v. Gateway, Inc.*, Civil Action No. 08-03381-SVW (Ctx)(United States District Court for the Central District of California), on March __, 2009 to consider whether to approve the settlement, and the request by the lawyers representing Class members for attorneys' fees and expenses. You or your own lawyer may ask to appear and speak at the hearing at your own cost, but you don't have to. For detailed information regarding all of the terms of the settlement, where to send any requests for exclusion, objections or requests to appear in Court, the Court's address or any other information, please visit www.sfmslaw.com or contact James E. Miller or Laurie Rubinow of the law firm, Shepherd, Finkelman, Miller & Shah, LLP, who represent the Class, (toll-free) at 866-540-5505, or at jmiller@sfmslaw.com or lrubinow@sfmslaw.com.
Please do not contact the Court with questions regarding this notice.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EUGENE ROSENFELD, On Behalf
of Himself and All Others Similarly
Situated,

Plaintiff,

vs.

GATEWAY, INC.,

Defendant.

CASE NO. CV 08-03381 SVW (CTx)

[PROPOSED] PRELIMINARY
APPROVAL ORDER

The parties, having filed a joint motion for an order preliminarily approving the Settlement Agreement and Release ("Agreement") entered into by Plaintiff, Eugene Rosenfeld, and Defendant, Gateway, Inc., the Court, having reviewed such Motion and the Agreement and exhibits attached thereto, and the supporting papers submitted therewith, including the Declaration of the Honorable Dickran M. Tevrizian (ret.), who served as a private mediator in this case, and the Court being fully advised;

IT IS HEREBY ORDERED THAT:

1. The Agreement and the settlement set forth therein are preliminarily approved as fair, reasonable and adequate.
2. The Settlement Class set forth in the Agreement is conditionally certified for purposes of settlement only.
3. Plaintiff is hereby appointed as the Class Representative.
4. Shepherd, Finkelman, Miller & Shah, LLP is hereby appointed as Lead Class Counsel.
5. The Court finds that the manner and content of the notice specified in the Agreement and the class notice will provide the best practicable notice to the Settlement Class Members and fully satisfies the requirements of Fed. Rule Civ. P. 23 and due process. Accordingly, Defendant shall provide notice of the hearing on final approval and notice of the proposed settlement, by causing notice to be sent by e-mail or first-class mail, as well as by

1 publication notice, to the Settlement Class Members as set forth in Section V of the Agreement.
2 The Court authorizes the parties to make minor revisions to the notice and claim form as they may
3 jointly deem necessary or appropriate, without the necessity of further Court action or approval,
4 provided that no such change shall affect the substantive or procedural rights of any member of the
5 Settlement Class.

6 6. A final approval hearing shall be held by this Court to consider and finally
7 determine:

8 a. Whether the Agreement should be finally approved as fair, reasonable and
9 adequate;

10 b. Whether attorneys' fees and expenses should be awarded to Plaintiff's
11 counsel, as provided for in Section IX of the Agreement;

12 c. Whether an incentive award should be awarded to the Class Representative,
13 as provided for in Section IX of the Agreement; and

14 d. The merits of any objections to the Agreement and the settlement set forth
15 therein, or any of its terms.

16 The final approval hearing described in this paragraph may be postponed, adjourned, or continued
17 by order of the Court without further notice to the Settlement Class Members.

18 7. Any Settlement Class Member who does not request exclusion, and who objects to
19 approval of the proposed settlement in compliance with the requirements of the Agreement, may
20 appear at the final approval hearing in person or through counsel to show cause why the proposed
21 settlement should not be approved as fair, reasonable, and adequate.

22 8. However, no person (other than representatives of the named parties) may be heard
23 at the final approval hearing, or file papers or briefs, unless, on or before the date set forth in the
24 class notice, such person files with the Clerk of the Court and serves on Lead Class Counsel and
25 Defendant's Counsel a timely written objection and notice of intent to appear, in accordance with
26 the procedures specified in the class notice and on the settlement website designated in the class
27 notice. Any Settlement Class Member who does not make his or her objection to the settlement in

1 the manner provided herein and in the Agreement and in compliance with applicable law, shall be
2 deemed to have waived such objection or right to intervene for purposes of appeal, collateral
3 attack or otherwise.

4 9. Any Settlement Class Member who desires exclusion from the settlement must
5 mail, by the date set forth in the class notice, a written request for exclusion to the addresses set
6 forth on the settlement website designated in the class notice. All persons who properly submit
7 requests for exclusion shall not be part of the settlement and shall have no rights with respect to
8 the settlement.

9 10. If the Agreement is finally approved, the Court shall enter a final order and
10 judgment approving the Agreement. Said final order and judgment shall be fully binding with
11 respect to all Settlement Class Members who did not request exclusion by the date set forth in the
12 class notice, in accordance with the terms of the class notice and the Agreement.

13 11. All discovery and other pretrial proceedings in this action and any other action
14 asserting like claims against Defendant are stayed and suspended until further order of this Court,
15 except as otherwise agreed to by the parties or as may be necessary to implement the Agreement or
16 this Order.

17 12. In the event that the proposed settlement as provided in the Agreement is not
18 approved by the Court, or entry of a final order and judgment does not occur for any reason, then
19 the Agreement, all drafts, negotiations, discussions and documentation relating thereto, and all
20 orders entered by the Court in connection therewith, shall become null and void. In such event,
21 the Agreement and all negotiations and proceedings relating thereto shall be withdrawn without
22 prejudice to the rights of any and all parties thereto, who shall be restored to their respective
23 positions as of the date of the execution of the Agreement.

24 13. The dates of performance of this Order are as follows:

25 a. The class notice shall be published and otherwise disseminated in
26 accordance with Section V of the Agreement. Defendant shall complete the dissemination of all
27 class notices by January 8, 2009.

