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5  
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JAMIE TE'O

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11 Attorneys for Defendant  
PC MALL, INC.

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15

16 JAMIE TE'O,

17 Plaintiff,

18 v.

19 PC MALL, INC.; and DOES 1 through 150,  
20 inclusive,

21 Defendants.  
22

Case No. RG 09-453787

**[PROPOSED] CONSENT  
JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (also referred to herein as “Agreement”) is entered into by and  
4 between plaintiff, Jamie Te’o (“Plaintiff” or “Te’o”), and defendant PC Mall, Inc. (“Defendant”),  
5 with Te’o and Defendant together being referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Te’o is an individual residing in the State of California who seeks to promote awareness of  
8 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9 substances contained in various consumer and commercial products.

10 **1.3 Defendant**

11 PC Mall’s operating subsidiaries which sell to consumers, Onsale, Inc. and PC Mall Sales,  
12 Inc. (such entities collectively being referred to herein as “PC Mall”), employ ten or more persons  
13 and are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 Plaintiff alleges that PC Mall has manufactured, distributed, and/or sold controller card  
17 products with solder containing lead in the State of California without providing the requisite  
18 warnings for lead exposure required by Proposition 65. Lead is a substance listed pursuant to  
19 Proposition 65 as known to the State of California to cause birth defects and other reproductive  
20 harm.<sup>1</sup> Lead is referred to herein as the “Listed Chemical.”

21 **1.5 Product Description**

22 The products that are covered by this Consent Judgment are defined as follows: (a) controller  
23 cards (“cards”) with lead-containing solder and components; and (b) products into which cards that  
24 contain lead solder are integrated including, but not limited to, computer systems and their

25 \_\_\_\_\_  
26 <sup>1</sup> Lead is also listed as a Proposition 65 carcinogen; however, the State has adopted a safe  
27 harbor exposure level for lead as a carcinogen (15 ug/day) that is significantly higher than the level it  
28 has identified for lead as a reproductive toxicant under Proposition 65 (.5 ug/day), such that Parties  
are in agreement that only Proposition 65’s requirements regarding reproductive toxicity are  
potentially relevant in this particular case.

1 subcomponents (such as desktop computer CPUs, laptop computers, servers, hard drives and port  
2 replicators). Examples of forms of solder include, but are not limited to, solder, solder balls, solder  
3 spheres, solder paste, wave solder, solder joints, die bumps, and flip-chip bumps. All such cards with  
4 lead-containing solder, and components and products into which such cards that contain lead solder  
5 are integrated, are referred to herein as “Products.” Products that contain cards that are integrated  
6 into another product, such as a computer system or subcomponent thereof, prior to the sale or  
7 acquisition of the Product into which the motherboard is integrated, are referred to herein as  
8 “integrated products.” Products that are cards sold individually and not as a component integrated  
9 into another Product, such as a computer system or component thereof, are referred to herein as “non-  
10 integrated products.”

#### 11 **1.6 Notice of Violation**

12 On February 24, 2009, Te’o served PC Mall and all public enforcers entitled to receive it  
13 pursuant to Health & Safety Code § 25249.7(d), with a document entitled “60-Day Notice of  
14 Violation” (“Notice”) that provided PC Mall and such public enforcers with notice that Plaintiff  
15 intended to file and prosecute a lawsuit at the expiration of the 60-day notice period alleging that PC  
16 Mall was in violation of California Health & Safety Code § 25249.6 for failing to warn that certain  
17 Products that PC Mall sold exposed users in California to the Listed Chemical.

#### 18 **1.7 Complaint**

19 On May 21, 2009, in the absence of public prosecutor action, Te’o, who is acting in the  
20 interest of the general public in California, filed a complaint (Complaint or Action) in the Superior  
21 Court in and for the County of Alameda against Defendant, and Does 1 through 150, *Te’o v. PC*  
22 *Mall, Inc., et al.* and DOES 1 through 150, inclusive, Alameda County Superior Court Case No. RG-  
23 09-453787, alleging violations of California Health & Safety Code § 25249.6, based on the alleged  
24 exposures to the Listed Chemical contained in the Products PC Mall sold.

#### 25 **1.8 No Admission**

26 PC Mall denies the material factual and legal allegations contained in Te’o’s Notice and  
27 Complaint and maintains that all products it has sold in and/or distributed for sale or use in California  
28 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed

1 as an admission by PC Mall of any fact, finding, issue of law, or violation of law, nor shall  
2 compliance with this Consent Judgment constitute or be construed as an admission by PC Mall of any  
3 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by PC Mall.  
4 However, this Paragraph shall not diminish or otherwise affect PC Mall's obligations, responsibilities  
5 and duties under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
8 jurisdiction over the Parties and the allegations contained in the Complaint, that venue is proper in the  
9 County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this  
10 Consent Judgment.

11 **1.10 Effective Date**

12 For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on  
13 which notice is received by Defendant that this Consent Judgment has been entered by the Court.

14 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

15 After the Effective Date, PC Mall shall not sell, ship, or offer to be shipped for sale, to  
16 consumers located in California, Products that are (a) non-integrated products containing the Listed  
17 Chemical, or (b) Products that are integrated products sold in PC Mall's own brand name that contain  
18 the Listed Chemical in the non-integrated product placed within them, unless such Products are sold  
19 or shipped with the clear and reasonable warning set out in this Section 2.1, comply with the  
20 "Reformulation Standards" set forth in Section 2.3, or are otherwise exempted pursuant to  
21 Section 2.2.

22 **2.1 Consumer Warnings**

23 Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed with  
24 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
25 likely to be read and understood by an ordinary individual under customary conditions before  
26 purchase or use. Any warning issued pursuant to this Section 2.1 shall be provided in a manner such  
27 that the consumer or user understands to which *specific* Product the warning applies, so as to  
28 minimize if not eliminate the chance that an over warning situation will arise.

1 Sections 2.1(a), 2.1(b)(i), 2.1(b)(ii) and 2.1(b)(iii) below describe PC Mall’s options for  
2 satisfying its warning obligations with respect to the preceding paragraph (where applicable)  
3 depending, in part, on the manner of sale.

4 (a) **Transactions Occurring in Retail Stores.**

5 From the Effective Date, when required under this Consent Judgment, a warning may be  
6 given by:

7 (i) affixing the following language to the packaging or label of, or directly on, each Product  
8 sold in a retail store in California that states:

9 WARNING: The solder used in this product contains lead, a chemical  
10 known to the State of California to cause birth defects and  
11 other reproductive harm. Please wash hands after  
12 handling internal components and circuit boards and  
13 avoid inhalation of fumes if heating the solder<sup>2</sup>;

12 or

13 (ii) providing one or more signs posted at or near the point of sale or display of the Products  
14 in a retail store in California that state:

15 WARNING: The solder used in this product contains lead, a chemical  
16 known to the State of California to cause birth defects and  
17 other reproductive harm. Please wash hands after  
18 handling internal components and circuit boards and  
19 avoid inhalation of fumes if heating the solder.<sup>3</sup>

18 or

19 WARNING: The solder used in products identified in the list attached to  
20 this sign contain lead, a chemical known to the State of  
21 California to cause birth defects and other reproductive  
22 harm. Please wash hands after handling internal components  
23 and circuit boards and avoid inhalation of fumes if heating  
24 the solder.

23 [List of Products]

24 <sup>2</sup> For integrated products, PC Mall may add the words “the controller card in” immediately  
25 prior to “this product” in the above warning or any of the warning formulations that follow below.

26 <sup>3</sup> A point of sale warning provided pursuant to the above shall be prominently placed with  
27 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
28 likely to be read and understood by an ordinary individual under customary conditions of use or  
purchase and shall be placed or written in a manner such that the consumer understands to which  
*specific* Products the warnings apply so as to minimize if not eliminate the chances that an  
overwarning situation will arise.

1                   **(b) Mail Order Catalog and Internet/Telephone Order Sales.**

2                   Where required under this Consent Judgment, PC Mall may satisfy Proposition 65 warning  
3 obligations for Products that are sold by mail order catalog or from the Internet or telephone/facsimile  
4 order to California residents or businesses by providing a warning: (i) in the mail order catalog;  
5 (ii) on the website; and/or (iii) with the product when it is shipped to an address in California as  
6 further specified in Sections 2.1(b)(i), (ii), and/or (iii), as applicable:

7                   **(a) Catalog Warning.** Any warning provided in a catalog from which  
8 mail order or telephone order purchases are received must be in the same type size or larger as the  
9 Product description text within the catalog.<sup>4</sup> The following warning shall be provided on the same  
10 page and in the same location as the display and/or description of the Product:

11                   WARNING: The solder used in this product contains lead, a chemical  
12                   known to the State of California to cause birth defects and  
13                   other reproductive harm. Please wash hands after  
                          handling internal components and circuit boards and  
                          avoid inhalation of fumes if heating the solder.

14                   Where it is impracticable to provide the warning on the same page and in the same location as  
15 the display and/or description of the Product, PC Mall may utilize the designated triangular symbol  
16 shown in the warning language immediately below to cross reference the example warning and shall  
17 define the term “designated symbol” with the following language on the inside of the front cover of  
18 the catalog or on the same page as any order form for the Product(s):

19                   WARNING: The solder used in certain products identified with this  
20                   symbol ▲ and offered for sale in this catalog contain  
21                   lead, a chemical known to the State of California to cause  
22                   birth defects and other reproductive harm. Please wash  
                          hands after handling internal components and circuit  
                          boards and avoid inhalation of fumes if heating the  
                          solder.

23                   The designated symbol must appear on the same page and in close proximity to the display and/or  
24 description of the Product. On each page where the designated symbol appears, PC Mall must

25  
26                   

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<sup>4</sup> If PC Mall elects to provide warnings in mail order catalogs, then the warnings must be  
27 included in all catalogs offering to sell one or more Products submitted for printing after the Effective  
28 Date.

1 provide a header or footer directing the consumer to the warning language and definition of the  
2 designated symbol.

3                   **(b) Internet Website Warning.** A warning may be given in conjunction  
4 with the sale of a Product via the Internet, provided it appears either: (a) on the same web page on  
5 which the Product is displayed with its features described and related details provided; (b) on the  
6 same web page as the order form for the Product; (c) on the same page as the price for the Product; or  
7 (d) on one or more web pages displayed to a purchaser during the checkout process. The following  
8 warning statement shall be used and shall appear in any of the above instances adjacent to or  
9 immediately following the display, description, or price of the Product for which it is given in the  
10 same type size or larger as the product description text:

11                   WARNING: The solder used in this product contains lead, a chemical  
12                   known to the State of California to cause birth defects and  
13                   other reproductive harm. Please wash hands after  
14                   handling internal components and circuit boards and  
15                   avoid inhalation of fumes if heating the solder.

16                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
17 display, description, or price of the Product for which a warning is being given, provided that the  
18 following warning statement also appears elsewhere on the same web page:

19                   WARNING: Products identified on this page with the following  
20                   symbol use solder that contains lead, a chemical known to  
21                   the State of California to cause birth defects and other  
22                   reproductive harm: ▲. Please wash hands after handling  
23                   internal components and circuit boards and avoid  
24                   inhalation of fumes if heating the solder.

25                   **(c) Package Insert or Label Warning.** For all Products sold by catalog  
26 or via the Internet or by telephone, a warning may be provided with the Product when it is shipped  
27 directly to an individual or business in California by either: (a) affixing the following warning  
28 language to the packaging, labeling, or directly to a specific Product; (b) inserting a warning card  
measuring at least 4" x 6" in the shipping carton which contains the following warning language; or  
(c) placing the following warning statement on a written price quotation or the packing slip or

1 customer invoice on the line directly below the description of the Product on the price quotation,  
2 packing slip or customer invoice:

3           WARNING: The solder used in this product contains lead, a chemical  
4           known to the State of California to cause birth defects and  
5           other reproductive harm. Please wash hands after  
6           handling internal components and circuit boards and  
7           avoid inhalation of fumes if heating the solder.

7 Alternatively, PC Mall may place the following language on the price quotation, packing slip or  
8 invoice, or in a separate notice to be mailed to the consumer within seventy-two (72) hours of their  
9 scheduled receipt of the Product, provided that it specifically identifies the Product and is set forth in  
10 lettering of the same size or larger as the description of the Product:

11           WARNING: The solder used in the following product(s) contain lead,  
12           a chemical known to the State of California to cause birth  
13           defects or other reproductive harm. Please wash hands  
14           after handling internal components and circuit boards and  
15           avoid inhalation of fumes if heating the solder.

14           *[delineate list products for which warning is given].*

15 PC Mall shall, in either of these instances, in conjunction with providing the warning (except where it  
16 has been provided by on a written price quotation issued prior to consummation of a sales  
17 transaction), also inform the consumer, in a conspicuous manner, that he or she may return the  
18 Product for a full refund (including shipping costs for both the receipt and the return of the product)  
19 within fifteen (15) days of his or her receipt of the Product.

20           **2.2 Exceptions To Warning Requirements**

21           The warning requirements set forth in Section 2.1 shall not apply to:

- 22           (i) Subject to implementation of Section 2.5 below, any Product (a) manufactured before  
23           the Effective Date, or (b) which is offered as a part for any such Product;  
24           (ii) Reformulated Products (as defined in Section 2.3 below); or  
25           (iii) Any Product in which the only possible point of exposure to the Listed Chemical is  
26           embedded in a manner that a consumer would not come into contact with the Listed  
27           Chemical under any reasonably anticipated use, such as Products which are not  
28           expected to be serviced by users other than those with specialized information

1 technology and related occupational health and safety training, including servers,  
2 storage or storage and array systems, port replicators, and network infrastructure  
3 equipment for switching, signaling and transmission.  
4

### 5 **2.3 Reformulated Products**

6 “Reformulated Products” are defined as follows: any Product containing less than or equal to  
7 one-tenth of one percent (0.1%) lead by weight in each solder material, including all forms of solder  
8 as identified in Section 1.5, unless that material is embedded in a manner that a consumer ordinarily  
9 would not come into contact with the lead under any reasonably anticipated use.<sup>5</sup>

### 10 **2.4 Reformulation Commitment**

11 PC Mall hereby commits that all of its own branded Products that it offers for sale to  
12 consumers in California after October 31, 2009, if any, shall qualify as Reformulated Products  
13 pursuant to Section 2.3.

### 14 **2.5 Public Information Commitment**

15 In a good faith effort to inform consumers about the risk of exposure to lead in Products  
16 manufactured before the Effective Date and which are not otherwise exempted pursuant to Section  
17 2.2 above, PC Mall hereby commits that it will provide the following on a web page addressing  
18 environmental/regulatory issues for a period of three years:

19 Certain controller cards sold in California contain lead solder. Lead is a  
20 chemical known to the State of California to cause birth defects and  
21 other reproductive harm. Please wash hands after handling such  
internal components and avoid inhalation of fumes if heating solder.

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22 <sup>5</sup> Consistent with the European Union’s Reduction of Hazardous Substances regulations  
23 (“RoHS”), the lead by weight standard set forth above shall not apply to specialty solders used in  
24 cards, including specialty solders used with glass and ceramic microcomponents, lead in high melting  
25 temperature type solders, solders used in pin connector systems or to form connections between the  
26 pins and the package of microprocessors, solders used to complete a viable electrical connection  
27 between a semiconductor die and carrier within an integrated circuit flip chip package, solders used  
28 for the soldering to machined through hole discoidal and planar array ceramic multilayer capacitors,  
and/or solder used for transducers used in high-powered loudspeakers, provided that such solders (a)  
are embedded or otherwise used in a card such that a consumer or worker (other than specially  
trained service provider) would not come into contact with them under any reasonably anticipated use  
or (b) constitute no more than five percent (5%) of the total amount of all non-embedded solder used  
in the card in question.

1     **3.     MONETARY PAYMENTS**

2             **3.1     Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3     Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be \$2,000. The  
4     foregoing amount of civil penalties was calculated in light of PC Mall’s prompt cooperation with  
5     Te’o in resolving this matter. These civil penalties are to be apportioned in accordance with  
6     California Health & Safety Code §25192, with 75% of these funds remitted to the State of  
7     California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%  
8     of the penalty remitted to Jamie Te’o as provided by California Health & Safety Code §25249.12(d).

9             PC Mall shall issue two separate checks for the penalty payment: (a) one check made payable  
10     to “Hirst & Chanler LLP in Trust For OEHHA” in the amount of \$1,500, representing 75% of the  
11     total penalty; and (b) one check to “Hirst & Chanler LLP in Trust for Jamie Te’o” in the amount of  
12     \$500, representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
13     payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Jamie  
14     Te’o, whose information shall be provided to Defendant at least twenty calendar days before the  
15     payment is due.

16             All payments shall be delivered to Plaintiff’s counsel at the following address on or before  
17     July 10, 2009:

18             HIRST & CHANLER LLP  
19             Attn: Proposition 65 Controller  
20             2560 Ninth Street  
21             Parker Plaza, Suite 214  
22             Berkeley, CA 94710-2565

22     **4.     REIMBURSEMENT OF FEES AND COSTS**

23             The Parties acknowledge that Te’o and his counsel offered to resolve this dispute without  
24     reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
25     issue to be resolved after the material terms of the agreement had been settled. PC Mall then  
26     expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
27     finalized. The Parties then reached an accord on the compensation due to Te’o and his counsel under  
28

1 the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5 for all  
2 work performed through the Court’s approval of this agreement.

3 Under the private attorney general doctrine, PC Mall shall reimburse Te’o and his counsel  
4 \$26,000 for fees and costs incurred as a result of investigating, bringing this matter to that  
5 Defendant’s attention, litigating, and negotiating a settlement in the public interest and seeking the  
6 Court’s approval of the settlement agreement. The payment required pursuant to this section shall be  
7 made payable to “Hirst & Chanler LLP” and shall be delivered on or before July 10, 2009, at the  
8 following address:

9 HIRST & CHANLER LLP  
10 Attn: Proposition 65 Controller  
11 2560 Ninth Street  
12 Parker Plaza, Suite 214  
13 Berkeley, CA 94710-2565

## 13 5. RELEASE OF ALL CLAIMS

### 14 5.1 Release of Defendant and Downstream Entities

15 In consideration of the promises and agreements herein contained, and for the payments to be  
16 made pursuant to Sections 3 and 4, Te’o, on behalf of himself, his past and current agents, attorneys,  
17 successors, and/or assignees, and acting in a representative capacity on behalf of the general public,  
18 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
19 and releases all claims, including, without limitation, all actions, and causes of action, in law or in  
20 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses  
21 (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature  
22 whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against  
23 Defendant and each of its respective officers, directors, attorneys, representatives, shareholders,  
24 agents, and employees, sister entities, corporate affiliates, subsidiaries, successors and assigns, as  
25 well as their downstream customers, purchasers, and users (collectively “releasees”). This release is  
26 limited to those claims that arise under Proposition 65, as such claims relate to PC Mall’s alleged  
27 failure to warn about exposures to the Listed Chemical contained in the Products.  
28

1 The Parties further understand and agree that, except as provided for above, this release shall  
2 not extend upstream to any entities that manufactured the Products or any component parts thereof, or  
3 any distributors or suppliers who sold the Products or any component parts thereof to PC Mall. The  
4 foregoing is not, however, intended to limit any release set forth in, or direct or indirect effect of,  
5 prior settlements or judgments Plaintiff or other enforcers of Proposition 65 have entered into with  
6 such upstream entities. This Agreement also does not release any downstream party (including  
7 integrators) that either caused exposure to the Listed Chemical from Products not supplied to them by  
8 PC Mall or, which in the future, alters a Product purchased from PC Mall in such a way as to cause  
9 the Product to violate the Reformulation Standards; nor does it release such a downstream party if it,  
10 where required by contract or law, fails to transmit on to a consumer or user, the requisite warnings  
11 provided by PC Mall in the manner set forth in Section 2.1 of in this Agreement.

## 12 **5.2 Defendant's Release of Te'o**

13 Defendant and PC Mall waive any and all claims against Te'o, his attorneys, and other  
14 representatives for any and all actions taken or statements made (or those that could have been taken  
15 or made) by Te'o and his attorneys and other representatives, whether in the course of investigating  
16 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with  
17 respect to the Products.

## 18 **6. COURT APPROVAL**

19 This Agreement is not effective until it is approved and entered by the Court and shall be null  
20 and void if, for any reason, it is not approved and entered by the Court within one year after it has  
21 been fully executed by all Parties, in which event any monies that have been provided to Plaintiff or  
22 his counsel, pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days  
23 after receiving written notice from Defendant that the one-year period has expired.

## 24 **7. SEVERABILITY**

25 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement  
26 are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not  
27 be adversely affected.  
28

1     **8.     ATTORNEYS' FEES**

2             In the event that a dispute arises with respect to any provision of this Agreement, the  
3 prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable costs  
4 and attorneys' fees incurred in connection with such dispute.

5     **9.     GOVERNING LAW**

6             The terms of this Agreement shall be governed by the laws of the State of California and  
7 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
8 rendered inapplicable by reason of law generally, or as to the Products, then Defendant shall provide  
9 written notice to Te'o of any asserted change in the law, and shall have no further obligations  
10 pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

11    **10.    NOTICES**

12            Unless specified herein, all correspondence and notices required to be provided pursuant to  
13 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class,  
14 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
15 other party at the following addresses:

16            To Te'o:  
17            Proposition 65 Coordinator  
18            HIRST & CHANLER LLP  
19            2560 Ninth Street  
20            Parker Plaza, Suite 214  
21            Berkeley, CA 94710-2565

22            To PC Mall:  
23            Rob Newton, Esq.  
24            PC Mall, Inc.  
25            2555 W. 190th Street  
26            Torrance, CA 90504-6002

27            and an email copy to: [rfalk@mofocom](mailto:rfalk@mofocom) and [jleetaylor@mofocom](mailto:jleetaylor@mofocom).

28            Any Party, from time to time, may specify in writing to the other Party a change of address to which  
all notices and other communications shall be sent.

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Agreement may be executed in counterparts and by facsimile, each of which shall be  
3 deemed an original, and all of which, when taken together, shall constitute one and the same  
4 document.

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Te'o agrees to comply with the reporting form requirements referenced in Health & Safety  
7 Code § 25249.7(f).

8 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

9 Te'o and Defendant agree to mutually employ their best efforts to support the entry of this  
10 Agreement as a Consent Judgment and obtain approval of it by the Court in a timely manner. The  
11 Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required  
12 to obtain judicial approval of this Agreement. Accordingly, the Parties agree to file a Motion to  
13 Approve the Agreement (the "motion"), the first draft of the memorandum of points and authorities  
14 for which shall be prepared by Defendant's counsel. Except as provided in Section 4.1 above,  
15 Defendant and PC Mall shall have no additional responsibility to Plaintiff's counsel pursuant to Code  
16 of Civil Procedure § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred  
17 with respect to the preparation and filing of the motion or with regard to Plaintiff's counsel appearing  
18 for a hearing thereon.

19 **14. MODIFICATION**

20 This Agreement may be modified only: (1) by written agreement of the Parties and upon  
21 entry of a modified Settlement Agreement by the Court thereon; or (2) upon a successful motion of  
22 any Party and entry of a modified Settlement Agreement by the Court.  
23  
24  
25  
26  
27  
28

1 **15. AUTHORIZATION**

2 The undersigned are authorized to execute this Agreement on behalf of their respective Parties  
3 and have read, understood, and agree to all of the terms and conditions of this Agreement.

<p>4 <b>AGREED TO:</b></p> <p>5 Date: <u>June, 16, 2009</u></p> <p>6 By: <u><i>Jamie Te'o</i></u> Plaintiff, Jamie Te'o</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Defendant, PC Mall, Inc.</p>
<p>7 <b>APPROVED AS TO FORM:</b></p> <p>8 Date: <u>6.16.09</u></p> <p>9 HIRST &amp; CHANLER LLP</p> <p>10 By: <u><i>Cliff Chanler</i></u> Clifford A. Chanler Attorneys for Plaintiff Jamie Te'o</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: _____</p> <p>MORRISON &amp; FOERSTER LLP</p> <p>By: _____ Robert L. Falk Attorneys for Defendant PC Mall, Inc.</p>

11 **IT IS SO ORDERED.**

12 Date: \_\_\_\_\_ JUDGE OF THE SUPERIOR COURT

