

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOLLY YENCHA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

ZeoBIT LLC, a California limited liability
company,

Defendant.

Case No. 14-cv-00578

STIPULATION OF CLASS ACTION SETTLEMENT

This Stipulation of Class Action Settlement (the “Agreement” or “Settlement”) is entered into by and among Plaintiff Holly Yencha (“Yencha”), for herself individually and on behalf of the Settlement Class, and Defendant ZeoBIT, LLC (“ZeoBIT”; and Yencha and ZeoBIT are referred to collectively as the “Parties” or individually as a “Party”). This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and conditions hereof, and subject to the approval of the Court.

RECITALS

WHEREAS, on May 6, 2014, this action was filed in the United States District Court for the Western District of Pennsylvania by Yencha, who alleged claims for damages, injunctive, and declaratory relief against ZeoBIT, (*see* Dkt. 1);

WHEREAS, on July 14, 2014, ZeoBIT filed its answer and affirmative defenses to Yencha’s complaint, (Dkt. 8);

WHEREAS, on September 29, 2014, the Parties appeared before the Court for an initial scheduling conference. The Court entered the Parties’ proposed discovery plan (*see* Dkt. 15) and

advised the Parties to designate a neutral to conduct an early neutral evaluation (“ENE”) conference and discuss class certification;

WHEREAS, following the scheduling conference, the Parties met and conferred regarding their respective views of the claims and defenses asserted in the Action, and Plaintiff’s counsel presented the underlying forensics investigation their expert performed into the software at issue;

WHEREAS, the Parties selected the Honorable Edward A. Infante (ret.) of JAMS as the early neutral evaluator in this Action;

WHEREAS, on October 22, 2014, the Court appointed Judge Infante as the early neutral evaluator in this Action (*see* Dkt. 20);

WHEREAS, on January 6, 2015, the Parties convened the ENE before Judge Infante at JAMS in San Francisco, California;

WHEREAS, as the ENE proceeded, the Parties also discussed the potential to resolve the Action on a class-wide basis;

WHEREAS, as a result of their discussions at the ENE and with Judge Infante’s assistance, the Parties were able to reach a proposed class-wide resolution of the Action, as outlined in this Agreement;

WHEREAS, Yencha and Class Counsel have conducted a comprehensive examination of the law and facts relating to the matters at issue in the Action regarding Yencha’s claims and ZeoBIT’s potential defenses;

WHEREAS, the Parties engaged in extensive arms-length settlement negotiations, including with the assistance of a third-party neutral appointed by the Court;

WHEREAS, based on an analysis of the facts and the law applicable to Yencha’s claims

in the Action, and taking into account the burdens and expense of such litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving the claims of the Settlement Class, Yencha and Class Counsel have concluded that this settlement provides substantial benefits to the Settlement Class and the public as a whole, and is fair, reasonable, adequate, and in the best interest of Yencha and the Settlement Class; and

WHEREAS, ZeoBIT denies any liability or wrongdoing, but has similarly concluded that this Agreement is desirable in order to avoid the time, risk and expense of defending protracted litigation, and to resolve finally and completely the pending and potential claims of Yencha and the Settlement Class;

NOW, THEREFORE, the Parties stipulate and agree that any and all Released Claims against ZeoBIT and all other Released Parties, shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval, as a fair, reasonable and adequate settlement.

AGREEMENT

1. DEFINITIONS

Unless otherwise defined above, the following definitions shall define these terms for purposes of this Agreement:

1.1 “*Action*” means the case captioned *Yencha v. ZeoBIT, LLC*, No. 14-cv-00578, currently pending in the United States District Court for the Western District of Pennsylvania.

1.2 “*Approved Claim*” means a Claim Form, submitted by a Settlement Class Member that (a) is submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement; (b) is fully and truthfully completed and executed, with all

of the information requested in the Claim Form by a Settlement Class Member; (c) is signed by the Settlement Class Member, physically or electronically; and (d) is verified by the Settlement Administrator pursuant to Section 5.

1.3 “*Claim Form*” means the form attached hereto as Exhibit A, as approved by the Court. The Claim Form, to be completed by Settlement Class Members who wish to file a claim for a payment pursuant to this Agreement, shall be available for submission in electronic and paper format.

1.4 “*Claims Deadline*” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be set as a date no later than forty-five (45) days after the Final Approval Hearing. The date of the Claims Deadline shall be clearly set forth in the Preliminary Approval Order as well as in the Notice and the Claim Form.

1.5 “*Class Counsel*” means attorneys Rafey S. Balabanian, Benjamin H. Richman, and Courtney C. Booth of Edelson PC.

1.6 “*Class Representative*” means the named plaintiff in the Action, Holly Yencha.

1.7 “*Court*” means the United States District Court for the Western District of Pennsylvania, the Honorable Joy Flowers Conti presiding, or any judge of this court who shall succeed her as the Judge assigned to this Action.

1.8 “*Cy Pres Recipients*” means the Carnegie Mellon CyLab Usable Privacy and Security Laboratory, and the National Consumer Law Center

1.9 “*Defendant*” means Defendant ZeoBIT, LLC.

1.10 “*Defendant’s Counsel*” means Barbara A. Scheib of Cohen and Grigsby P.C., and Matthew D. Brown and Matthew D. Caplan of Cooley LLP.

1.11 “*Email Notice*” means the legal notice summarizing the terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to the Settlement Class via electronic mail (as further provided for in Section 4 below). The Email Notice shall be substantially similar to the form attached hereto as Exhibit B.

1.12 “*Escrow Account*” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defendant at a depository institution insured by the Federal Deposit Insurance Corporation. The money in the Escrow Account shall be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less. The costs of establishing and maintaining the Escrow Account shall be paid from the Settlement Fund.

1.13 “*Fee Award*” means the amount of attorneys’ fees and reimbursement of costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

1.14 “*Final Approval Hearing*” means the hearing before the Court where the Parties will request that the Final Judgment be entered by the Court approving this Settlement Agreement, the Fee Award, and any incentive award to the Class Representative. The Final Approval Hearing shall be no earlier than seventy (70) days after the Notice Date or such other time as the Court shall set.

1.15 “*Final Judgment*” means the final judgment to be entered by the Court approving the class settlement of the Action in accordance with this Agreement after the Final Approval Hearing.

1.16 “*Final Settlement Date*” means one business day after the Final Judgment becomes “Final.” For purposes of this Section, “Final” means that all of the following have

occurred: (i) the time expires for filing or noticing any appeal of the Court's Final Judgment approving this Agreement; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Fee Award, completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration, rehearing en banc, or petitions for review and/or *certiorari*, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*.

1.17 “MacKeeper” means any version of MacKeeper software, whether partial or complete, including all updates thereto, sold by ZeoBIT or by any other entity on or before the date of entry of the Preliminary Approval Order.

1.18 “Notice” means notice of this proposed settlement and the Final Approval Hearing, consisting of Email Notice and Website Notice.

1.19 “Notice Date” means the day by which the Notice set forth in Section 4, other than the second “final notice” email, is complete, which shall be a date no later than twenty-eight (28) days after entry of the Preliminary Approval Order.

1.20 “Objection/Exclusion Deadline” means the date by which a written objection to this Agreement must be filed with the Court or a request for exclusion by a Person within the Settlement Class must be postmarked or delivered to the Settlement Administrator, which shall be designated as a date forty-five (45) days after the Notice Date, or such other date as ordered by the Court.

1.21 “*Person*” means, without limitation, any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assigns.

1.22 “*Plaintiffs*” (singular “*Plaintiff*”) means Holly Yencha and the Settlement Class Members, collectively.

1.23 “*Preliminary Approval Order*” means the order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and approving the form and manner of the Notice, a proposed version of which will be agreed upon by the Parties and submitted to the Court in conjunction with Plaintiff’s motion for preliminary approval of the Agreement.

1.24 “*Released Claims*” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, claims, contracts or agreements, expenses, costs, attorneys’ fees and/or obligations (including “Unknown Claims” as defined below), whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims) against the Released Parties, or any of them, arising out of the facts, transactions, events, matters, occurrences, acts, disclosures, statements, misrepresentations, omissions, or failures to act regarding the design, use, marketing, advertising, functionality, operation, and/or performance of MacKeeper, including all claims that were

brought or could have been brought in the Action, belonging to any and all Plaintiffs and Releasing Parties.

1.25 *“Released Parties”* means ZeoBIT and any and all of its present or former heirs, executors, estates, administrators, predecessors, successors, assigns, parents, subsidiaries, associates, affiliated and related entities, employers, employees, agents, representatives, consultants, independent contractors, directors, managing directors, officers, partners, principals, members, attorneys, accountants, financial and other advisors, investment bankers, insurers, underwriters, shareholders, lenders, auditors, investment advisors, and any and all present and former companies, firms, trusts, corporations, officers, directors, other individuals or entities in which ZeoBIT has a controlling interest or which is affiliated with any of them, or any other representatives of any of these Persons and entities. The definition of Released Parties specifically excludes Kromtech Alliance Corp.

1.26 *“Releasing Parties”* means Plaintiff Yencha and the Settlement Class Members who do not validly and timely request to be excluded from the proposed settlement (whether or not such Settlement Class Members submit claims) and all of the their present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees. To the extent a Settlement Class Member is not an individual, Releasing Parties also includes all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, and predecessors-in-interest.

1.27 *“Settlement Administration Expenses”* means the expenses incurred by the Settlement Administrator in providing Notice, processing claims, objections, and requests for exclusion, establishing and maintaining the settlement website and Escrow Account,

administering payments for Approved Claims (including costs of mailing checks), and any costs incurred in sending the CAFA notices described in Section 4.2 below.

1.28 “Settlement Administrator” means Rust Consulting, a third-party settlement administrator selected by the Parties, subject to the Court’s approval, to oversee the distribution of Notice, oversee the distribution of the CAFA notices, and conduct the processing and payment of Approved Claims to Settlement Class Members as set forth in this Agreement.

1.29 “Settlement Class” means all Persons in the United States and its territories who purchased MacKeeper on or before the date of entry of the Preliminary Approval Order. Excluded from the Settlement Class are: (1) the Judge presiding over the Action and members of her family; (2) ZeoBIT, ZeoBIT’s subsidiaries, parent companies, successors, predecessors, and any entity in which ZeoBIT or its parents have a controlling interest and their current or former officers, directors, and employees; (3) Persons who properly execute and file a timely request for exclusion from the Settlement Class in accordance with Section 4.5 below; (4) Class Counsel and Defendant’s counsel; (5) any Person whose claims in the Action have been finally adjudicated or otherwise released; and (6) the legal representatives, successors or assigns of any such excluded Persons.

1.30 “Settlement Class Member(s)” means a Person who falls within the definition of the Settlement Class as set forth above.

1.31 “Settlement Fund” means a non-reversionary cash settlement fund to be established by Defendant in the amount of two-million dollars (\$2,000,000.00), which shall be paid into the escrow account in two equal installments of one-million dollars (\$1,000,000) each as follows: the first installment to be paid within twenty-eight (28) days after entry of the Preliminary Approval Order, and the second installment to be paid within twenty-eight (28) days

after the Final Settlement Date. The Settlement Fund shall be used for payments to Settlement Class Members, including Approved Claims and any payment to *Cy Pres* Recipients, all Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative. The Settlement Fund includes all interest that shall accrue on the sums deposited in the Escrow Account. The Settlement Administrator shall be responsible for all tax filings with respect to any earnings on the Settlement Fund and the payment of all taxes that may be due on such earnings.

1.32 “*Unknown Claims*” means claims that could have been raised in the Action and that Plaintiff and/or the Settlement Class Members do not know or suspect to exist, which, if known by him, her, or it, might affect his, her or its agreement to release the Released Parties of the claims specified herein or might affect his, her or its decision to agree, object, or not object to the settlement. Upon the Final Settlement Date, for the purpose of the Released Claims, Settlement Class Members and Plaintiff shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code, and any law or legal principle of similar effect in any jurisdiction, whether federal or state. Section 1542 of the California Civil Code provides as follows:

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.

1.33 “*Website Notice*” means the legal notice of terms of this Settlement Agreement, as approved by Class Counsel, Defendant’s Counsel, and the Court, to be provided to Settlement Class Members on a website to be established by the Settlement Administrator (as further

provided for in Section 4.1(b) below). The Website Notice shall be substantially similar to the form attached hereto as Exhibit C.

2. SETTLEMENT RELIEF

2.1 Monetary Payments to Settlement Class Members

(a) Settlement Class Members shall have until the Claims Deadline to submit an Approved Claim. Each Settlement Class Member with an Approved Claim will be paid a *pro rata* share of the amount in the Settlement Fund, after payment of Settlement Administration Expenses, the Fee Award, and any incentive award to the Class Representative, up to a maximum payment of thirty nine dollars and ninety five cents (\$39.95) per Settlement Class Member with an Approved Claim.

(b) To the extent that any funds remain in the Settlement Fund after all payments to Settlement Class Members with Approved Claims have been made, such funds shall be distributed to the *Cy Pres* Recipients *pro rata*.

(c) Within fifty-six (56) days after the Final Settlement Date, or such other date as the Court may set, the Settlement Administrator shall pay from the Settlement Fund all Approved Claims by check, which will be mailed to the claimants of the Settlement Class via first-class mail. All cash payments issued to Settlement Class Members via check will state on the face of the check that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance.

(d) To the extent that a check issued to a Settlement Class Member is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Settlement Fund for distribution to the *Cy Pres* Recipients. In no event will the funds represented by an uncashed check constitute abandoned or unclaimed property.

3. RELEASES

3.1 Settlement Class Members' Release. Upon the Final Settlement Date, the Releasing Parties, and each of them, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties.

3.2 Class Representative's Release. Upon the Final Settlement Date, Plaintiff Yencha and her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees fully, finally and forever release, relinquish, and discharge the Released Parties from all Released Claims, Unknown Claims, and any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, damages (including but not limited to punitive, exemplary or multiple damages), charges, penalties, losses, rights, actions, causes of action, claims, contracts or agreements, expenses, costs, attorneys' fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct, individual or representative, of every nature and description whatsoever, whether based on the UCL or other federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States (including both direct and derivative claims).

Plaintiff Yencha, individually and on behalf of each of her present, former, and future heirs, executors, administrators, representatives, agents, attorneys, partners, predecessors-in-interest, successors, assigns, and legatees, fully understands that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff Yencha and/or her counsel to be true and expressly accepts and assumes the risk of such

possible difference in facts and agrees that this Agreement shall remain effective notwithstanding any such difference in facts. Plaintiff Yenchu acknowledges and agrees that this waiver is an essential and material term of this release and the settlement that underlies it and that without such waiver the settlement would not have been accepted.

4. NOTICE TO THE CLASS

4.1 Notice to the Settlement Class will be disseminated as follows:

(a) *Direct Notice.* The Settlement Administrator shall send Email Notice, which shall be substantially similar to the form attached as Exhibit B, which shall include an electronic link to the Claim Form, to each Person in the Settlement Class for whom ZeoBIT has a valid email address no later than the Notice Date, or on such other date determined by the Court. For emails that immediately result in a bounce-back or are otherwise undeliverable, the Settlement Administrator shall attempt to re-send the Email Notice prior to the Notice Date. Further, fourteen (14) days prior to the Objection/Exclusion Deadline, the Settlement Administrator will disseminate another copy of the Email Notice, adding to the subject line of the email "FINAL NOTICE." All Email Notice shall inform the Settlement Class how to file claims and objections and how to request exclusion.

(b) *Settlement Website.* Starting no later than the start of the dissemination of Email Notice to the Settlement Class, the Website Notice shall also be provided on a website, which shall be established by the Settlement Administrator and shall include the ability to electronically file Claim Forms online. The Website Notice shall be substantially similar to the form attached as Exhibit C.

4.2 *CAFA Notice.* Not later than ten (10) days after the Agreement is filed with the Court, the Settlement Administrator shall serve upon the relevant government officials notice of

the proposed settlement in accordance with 28 U.S.C. § 1715.

4.3 All objections and any papers submitted in support of such objection, shall be considered by the Court at the Final Approval Hearing only if, on or before the Objection/Exclusion Deadline approved by the Court, the Person making the objection (1) either files copies of such papers he or she proposes to submit at the Final Approval Hearing with the Clerk of the Court or, if represented by counsel, files copies of such papers through the Court's Case Management/Electronic Case Filing (CM/ECF) system, and (2) sends copies of such papers via mail, hand, or overnight delivery service to both Class Counsel and Defendant's counsel. Any Settlement Class Member who intends to object to this Agreement must present the objection in writing, which must be personally signed by the objector, and must include: (1) the objector's name, address, email address, and contact phone number; (2) an explanation of the basis upon which the objector claims to be a Settlement Class Member; (3) all grounds for the objection, including all citations to legal authority and evidence supporting the objection; (4) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and (5) a statement indicating whether the objector intends to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court).

4.4 Any Settlement Class Member who fails to timely mail or file a written objection with the Court and notice of his or her intent to appear at the Final Approval Hearing in accordance with the terms of Section 4.3 and as detailed in the Notice shall not be permitted to object to this Agreement at the Final Approval Hearing, and shall be foreclosed from seeking any review of this Agreement by appeal or other means and shall be deemed to have waived his, her

or its objections and be forever barred from making any such objections in the Action or any other action or proceeding.

4.5 A member of the Settlement Class may request to be excluded from the Settlement Class in writing by a request postmarked on or before the Objection/Exclusion Deadline approved by the Court and specified in the Notice. In order to exercise the right to be excluded, a member of the Settlement Class must timely send a written request for exclusion to the Settlement Administrator providing his or her name, address, email address, phone number, a signature, the name and number of the case, and a statement that he or she wishes to be excluded from the Settlement Class. A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as Settlement Class Members by the Agreement, if approved. Any Person in the Settlement Class who properly excludes themselves from the Settlement Class in accordance with the terms of this Agreement shall not: (i) be bound by any orders of the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement.

5. SETTLEMENT ADMINISTRATION

5.1 The Settlement Administrator shall, under the Court's supervision, administer the relief provided by this Settlement Agreement by processing Claim Forms in a rational, responsive, cost-effective, and timely manner. The Settlement Administrator shall maintain reasonably detailed records of its activities under this Agreement. The Settlement Administrator shall ensure that all such records will be made available to Class Counsel and Defendant's

Counsel upon request. The Settlement Administrator shall also provide reports and other information to the Court as the Court may require. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel with information concerning Notice, administration, and implementation of the Settlement Agreement. Should the Court request, the Parties, in conjunction with the Settlement Administrator, shall submit a timely report to the Court summarizing the work performed by the Settlement Administrator, including a report of all amounts from the Settlement Fund paid to Settlement Class Members on account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

(a) Receive objections, requests to be excluded from the Settlement Class, and other requests from Settlement Class Members and promptly provide to Class Counsel and Defendant's Counsel copies thereof upon receipt. If the Settlement Administrator receives any objections, requests for exclusion, or other requests from Settlement Class Members after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendant's Counsel;

(b) Provide reports to Class Counsel and Defendant's Counsel, including without limitation, reports regarding the number of Claim Forms received and the amount of the payments sought, the number thereof approved by the Settlement Administrator, and the categorization and description of Claim Forms rejected, in whole or in part, by the Settlement Administrator; and

(c) Make available for inspection by Class Counsel and Defendant's Counsel Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

5.2 The Settlement Administrator may reject a Claim Form, or any part of a claim for

a payment reflected therein, where the Person submitting the Claim Form does not appear to be a Settlement Class Member. In addition, the Settlement Administrator shall be obliged to employ reasonable procedures to screen claims for abuse or fraud and deny Claim Forms where there is evidence of abuse or fraud. The Settlement Administrator shall determine whether a Claim Form submitted by a Settlement Class Member is an Approved Claim and shall reject Claim Forms that fail to comply with the instructions thereon or the terms of this Agreement, after giving the claimant a reasonable opportunity to provide any requested missing information. In no event shall any Settlement Class Member have more than twenty-one (21) days after being noticed by the Settlement Administrator of any question or deficiency in the submitted Claim Form to answer such question or cure such deficiency.

6. TERMINATION OF SETTLEMENT

6.1 Action Status if Settlement Not Approved. This Settlement Agreement is being entered into for settlement purposes only. If the Court conditions its approval of either the Preliminary Approval Order or the Final Judgment on any modifications of this Settlement Agreement that are not acceptable to all Parties, or if the Court does not approve the Settlement or enter the Final Judgment, or if the Final Settlement Date does not occur for any reason, then this Settlement Agreement will be deemed null and void *ab initio*. In that event, then (a) the Preliminary Approval Order, and the Final Judgment (if applicable) and all of its provisions will be vacated by its own terms, including, but not limited to, vacating conditional certification of the Class, vacating conditional appointment of Plaintiff Yench as class representative, and vacating conditional appointment of Class Counsel as counsel to the class, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, and (c)(i) no term or draft of this Settlement Agreement, (ii) nor any part of the Parties' settlement discussions,

negotiations, or documentation (including any declaration or brief filed in support of the motion for preliminary approval or motion for final approval), (iii) nor any rulings regarding class certification for settlement purposes (including the Preliminary Approval Order and, if applicable, the Final Judgment), will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding. If the Court does not approve the settlement or enter the Final Judgment for any reason, or if the Final Settlement Date does not occur for any reason, Defendant shall retain all its rights, for example, to object to the maintenance of the Action as a class action, to move for summary judgment, and to assert defenses at trial, and nothing in this Settlement Agreement or other papers or proceedings related to the settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, or for any other purpose.

6.2 Treatment of Settlement Fund if Settlement Terminated. Unless otherwise ordered by the Court, in the event the Settlement Agreement is terminated for any reason, then within ten (10) business days after the Parties have provided the Court with notice that they are invoking this Section 6.2, the Settlement Administrator shall return the Settlement Fund (including accrued interest), less expenses and any costs which have either been disbursed or incurred, including taxes and tax expenses, to Defendant pursuant to written instructions from Defendant's Counsel. At the request of Defendant's Counsel, the Settlement Administrator or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to Defendant.

6.3 Termination Clause. If, prior to the Final Approval Hearing, any Persons who would otherwise be Settlement Class Members have timely requested exclusion from the

Settlement Class in accordance with the provisions of this Agreement, the Preliminary Approval Order, and the Notice given pursuant thereto, and the number of such Persons seeking exclusion exceeds one thousand (1,000), ZeoBIT shall have, in its sole and absolute discretion, the option to terminate this Settlement Agreement. ZeoBIT may terminate the Settlement Agreement by serving written notice of termination on the Court and Class Counsel by hand delivery or overnight courier within five (5) business days after being informed in writing by the Settlement Administrator that there are one thousand (1,000) or more such requests for exclusion timely filed. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (iii) no term or draft of this Settlement Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation will have any affect or be admissible into evidence, for any purpose, in this Action or any other proceeding.

7. PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL ORDER

7.1 Promptly after the execution of this Settlement Agreement, Class Counsel shall submit this Agreement together with its Exhibits to the Court and shall move the Court for entry of a Preliminary Approval Order of the settlement set forth in this Agreement, certification of the Settlement Class for settlement purposes only, appointment of Class Counsel and the Class Representative, set a Final Approval Hearing date and approve the Notice and Claim Form for dissemination, substantially in the form attached as Exhibits A, B and C.

7.2 At the time of the submission of this Agreement to the Court as described above, Class Counsel and Defendant's Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth in this Agreement.

7.3 After Notice is given, Class Counsel, on behalf of the Class Representative, shall request from the Court a Final Judgment. The Final Judgment will (among other things):

(a) find that the Court has personal jurisdiction over all Settlement Class Members and that the Court has subject matter jurisdiction to approve the Agreement, including all attached exhibits;

(b) approve the Agreement and the proposed settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members; direct the Parties and their counsel to implement and consummate the Agreement according to its terms and provisions; and declare the Agreement to be binding on, and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and the Releasing Parties;

(c) find that the Notice implemented pursuant to the Agreement (1) constituted the best practicable notice under the circumstances; (2) constituted notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action, their right to object or exclude themselves from the proposed Agreement, and to appear at the Final Approval Hearing; (3) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) met all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clauses of the United States Constitution, and the rules of the Court;

(d) find that the Class Representative and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Agreement;

(e) dismiss the Action (including all individual claims and class action claims presented thereby) on the merits and with prejudice, without fees or costs to any party except as

provided in the Settlement Agreement;

(f) incorporate the releases set forth in Section 3, make the releases effective as of the Final Settlement Date, and forever discharge the Released Parties as set forth in this Agreement;

(g) permanently bar and enjoin all Settlement Class Members who have not been properly excluded from the Settlement Class from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in, any lawsuit or other action in any jurisdiction based on the Released Claims;

(h) authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement Agreement and its implementing documents (including all exhibits to this Agreement) as (1) shall be consistent in all material respects with the Final Judgment, or (2) do not limit the rights of Settlement Class Members; and

(i) without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement, and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose.

8. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES; INCENTIVE AWARD

8.1 Class Counsel is entitled to petition the Court for reasonable attorneys' fees and expenses from the Settlement Fund. Class Counsel shall file, and the Settlement Administrator shall post to the settlement website referenced in Section 4.1(b), its papers supporting the Fee Award fourteen (14) days before the Objection/Exclusion Deadline. Class Counsel has agreed to limit their request for attorneys' fees and expenses to no more than one-third (1/3) of the

Settlement Fund. ZeoBIT may oppose Class Counsel's petition for attorneys' fees and expenses.

8.2 The Settlement Administrator, within five (5) days after the later of (a) the Final Settlement Date or (b) receipt of wire instructions from Class Counsel, pay Class Counsel from the Settlement Fund the Fee Award via electronic transfer to an account designated by Class Counsel. Class Counsel is solely responsible for distributing the Fee Award to any attorney that may claim entitlement to attorneys' fees or costs in the Action. Defendant is not responsible for Class Counsel's allocation of the Fee Award. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

8.3 Class Counsel has agreed to limit its request for any incentive award for Plaintiff Yenchu to one thousand dollars (\$1,000.00). ZeoBIT may oppose Class Counsel's petition for an incentive award. Class Counsel shall file, and the Settlement Administrator shall post to the settlement website referenced in Section 4.1(b), its papers supporting any incentive award fourteen (14) days before the Objection/Exclusion Deadline.

8.4 The Settlement Administrator, within five (5) days after the Final Settlement Date, shall pay from the Settlement Fund the amount of any Court-approved incentive award for Plaintiff Yenchu via check, to be sent care of Class Counsel. Should the Court award less than the amount sought in the petition, the difference between the amount sought and the amount awarded shall remain in the Settlement Fund to pay Approved Claims of Settlement Class Members or be given to the *Cy Pres* Recipients.

9. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

9.1 If the Final Settlement Date does not occur for any reason, or in the event that this

Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated then this Agreement shall be canceled and terminated subject to Section 9.2 unless Class Counsel and Defendant's Counsel mutually agree in writing to proceed with the Agreement. Notwithstanding anything in this Agreement, the Parties agree that the Court's failure to approve, in whole or in part, the attorneys' fees or incentive award sought by Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.

9.2 If this Agreement is terminated or fails to become effective for any reason, the Parties and the Settlement Class Members shall be restored to their respective positions in the Action as of the date of the signing of this Agreement. In such event, any Final Judgment or other order, including but not limited to certifying any class for settlement purposes, entered by the Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties and the Settlement Class Members shall be returned to the *status quo ante* with respect to the Action as if they had never entered into this Agreement.

10. MISCELLANEOUS PROVISIONS

10.1 The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Agreement. The Parties, Class Counsel, and Defendant's Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Judgment, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Agreement.

10.2 All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Settlement Class. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any provisions of this Agreement.

10.3 The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by the Releasing Parties and each or any of them, on the one hand, against the Released Parties, and each or any of them, on the other hand.

10.4 The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.

10.5 The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have read and understand fully this Agreement and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

10.6 Whether or not the Final Settlement Date occurs or the Settlement Agreement is terminated, neither this Agreement nor the settlement contained in this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the settlement:

(a) is, may be deemed, or shall be used, offered or received against the Released Parties, or each or any of them, as an admission, concession, or evidence of, the validity of any Released Claims, the truth of any fact alleged by the Plaintiffs, the deficiency of any defense that has been or could have been asserted in the Action, the violation of any law or

statute, the reasonableness of the settlement amount or the fee award, or of any alleged wrongdoing, liability, negligence or fault of the Released Parties, or any of them;

(b) is, may be deemed, or shall be used, offered, or received against the Settlement Class as an admission, concession, or evidence of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by the Released Parties, or any of them;

(c) is, may be deemed, or shall be used, offered, or received against the Released Parties, or each or any of them, as an admission or concession with respect to any liability, negligence, fault or wrongdoing as against any Released Parties, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. However, the settlement, this Agreement, and any acts performed and/or documents executed in furtherance of or pursuant to this Agreement and/or Settlement may be used in any proceedings as may be necessary to effectuate the provisions of this Agreement. However, if this Settlement Agreement is approved by the Court and the Final Settlement Date occurs, any of the Parties or any of the Released Parties may file this Agreement and/or the Final Judgment in any action that may be brought against such Party or Parties in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim;

(d) is, may be deemed, or shall be construed against Plaintiff Yench, the Settlement Class or each or any of them, or against the Released Parties, or each or any of them, as an admission or concession that the consideration to be given hereunder represents an amount equal to, less than, or greater than that amount that could have or would have been recovered

after trial; and

(e) is, may be deemed, or shall be construed as or received in evidence as an admission or concession against Plaintiff Yench, the Settlement Class, or each and any of them, or against the Released Parties, or each or any of them, that any of Plaintiff Yench's claims are with or without merit or that damages recoverable in the Action would have exceeded or would have been less than any particular amount.

10.7 The headings used in this Agreement are used for the purpose of convenience only and are not meant to have legal effect.

10.8 The Recitals are incorporated by this reference and are part of the Settlement Agreement.

10.9 The waiver by one Party of any breach of this Agreement by any other Party shall not be deemed as a waiver of any other prior or subsequent breaches of this Agreement.

10.10 The Parties must execute and deliver any additional papers, documents, and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

10.11 This Agreement and its Exhibits set forth the entire agreement and understanding of the Parties with respect to the matter set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. This Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

10.12 Any inconsistency between this Settlement Agreement and the attached exhibits will be resolved in favor of this Settlement Agreement.

10.13 Except as otherwise provided in this Agreement, each Party shall bear its own fees and costs.

10.14 Plaintiff Yenchu represents and warrants that she has not assigned, granted, or transferred any claim or right or interest therein as against the Released Parties to any other Person and that she is fully entitled to release the same.

10.15 Nothing in this Agreement, the negotiations, and the mediation relating thereto is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including without limitation the attorney-client privilege or work product immunity, by any Party.

10.16 Each counsel or other Person executing this Settlement Agreement, any of its Exhibits, or any related settlement documents on behalf of any party to this Agreement warrants and represents that such Person has the full authority to do so and has the authority to take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

10.17 This Agreement may be executed in one or more counterparts. Signature by digital, facsimile, or in PDF format will constitute sufficient execution of the Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court if the Court so requests.

10.18 This Settlement Agreement shall be binding on, and inure to the benefit of, the successors and assigns of the Parties to this Agreement and the Released Parties except to the extent expressly stated.

10.19 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Agreement, and all Parties to this Agreement submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

10.20 This Settlement Agreement and any claim, cause of action, or dispute among the Parties arising out of or relating to this Settlement Agreement shall be governed by, interpreted under, and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to any conflict-of-law principles that may otherwise provide for the application of the law of another jurisdiction.

10.21 This Agreement is deemed to have been prepared by counsel for all Parties, as a result of arms'-length negotiations among the Parties with the aid of a neutral mediator. Whereas all Parties have contributed substantially and materially to the preparation of this Agreement, it shall not be construed more strictly against one party than another.

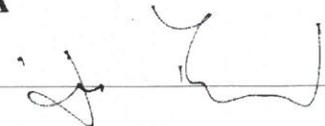
10.22 Where this Settlement Agreement requires notice to the Parties, such notice shall be sent to Class Counsel and Defendant's Counsel.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

HOLLY YENCHA

Dated: 3/05/2015

By (signature):  _____

Name (printed): Holly Yencha

ZEOBIT, LLC

Dated: _____

By (signature): _____

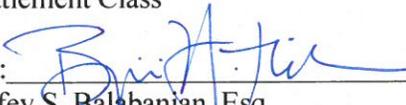
Name (printed): _____

Its (title): _____

APPROVED AS TO FORM BY COUNSEL:

Dated: March 6, 2015

EDELSON PC
Attorneys for Plaintiff Yencha and the
Settlement Class

By:  _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Dated: March ____, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By: _____
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.

HOLLY YENCHA

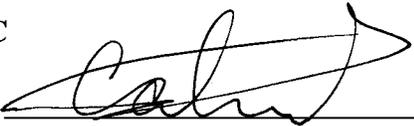
Dated: _____

By (signature): _____

Name (printed): _____

ZEOBIT, LLC

Dated: 3/5/15

By (signature):  _____

Name (printed): Terger Saveliev

Its (title): General Counsel

APPROVED AS TO FORM BY COUNSEL:

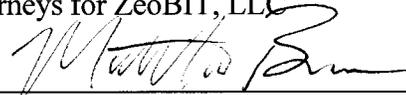
Dated: March __, 2015

EDELSON PC
Attorneys for Plaintiff Yencha and the
Settlement Class

By: _____
Rafey S. Balabanian, Esq.
Benjamin H. Richman, Esq.
Courtney C. Booth, Esq.

Dated: March 5, 2015

COOLEY LLP
Attorneys for ZeoBIT, LLC

By:  _____
Matthew D. Brown, Esq.
Matthew D. Caplan, Esq.