

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREW HILLMAN, *et al.*,

Plaintiffs,

v.

RINGLEADER DIGITAL, INC., *et al.*,

Defendants.

Civil Action No. 1:10-cv-08315-JGK

**DECLARATION OF DAVID A.
STAMPLEY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
APPROVAL OF CLASS ACTION
SETTLEMENT**

I, David A. Stampley, declare as follows:

1. I am an attorney-at-law duly licensed to practice before all of the courts of the States of New York and before this Court. I am a partner of KamberLaw, LLC ("KamberLaw"). I am one of the attorneys responsible for the handling of this litigation on behalf of KamberLaw, LLC. I make this declaration based upon my own personal knowledge. If called to testify, I could and would testify to the facts contained herein.

2. I have actively participated in this litigation since its inception and am fully familiar with those proceedings as well as the proceedings currently pending to resolve this matter. I make this declaration based upon my own personal knowledge. If called to testify, I could and would testify to the facts contained herein. I am competent to testify that the following facts are true and correct to the best of my knowledge.

3. For over three months prior to the filing of the complaint in this matter, I and attorneys under my direct supervision worked closely with co-counsel Joseph Malley and certain class representatives investigating facts and developing legal theories contained in the complaint. This pre-complaint effort required significant attorney and client time as well as consultations with certain non-legal, technical experts. Our research, confirmed through the settlement process,

is that the class consistent of a substantial proportion of U.S. iPhone users and that numerosity is satisfied. This case dealt with the creation of databases on consumers' mobile devices for purposes of tracking consumers in ways they would not expect or be able to control, and transferring that information to Ringleader Digital, a third-party provider of advertising services to websites of whom consumers were unaware. I believe this understanding allowed us to plead and negotiate this case with an understanding of Ringleader Digital's technical and business environment that motivated early settlement negotiations between the parties. Based on my experience, I believe the promptness of relief significantly enhances the benefit to consumers, particularly where that relief takes the form of injunctive provisions that promote consumers' privacy interests in their personal information.

4. In the course of representing the Named Plaintiffs in this litigation, our law firm committed attorney and staff time to thoroughly investigate the claims against Defendants before filing the lawsuit. This time included consultation with various experts as well as a review of Defendants' actions and relevant case law. Our law firm and that of Joseph Malley also committed attorney and staff time to engaging in discussions and informal discovery exchanges with a number of Defendants, which ultimately helped lead to a successful resolution of this matter.

5. Since shortly after the filing of this action, we sought to cooperate with the lawyers whom we had learned had brought a California action on similar legal theories. These efforts resulted in a single mediation, minimized the duplication of efforts, and maximized the benefit to the class.

6. Throughout my firm's involvement in this litigation, we ensured that the tasks necessary to prosecute the case were allocated among counsel appropriately and were conducted efficiently, without undue duplication of effort, and at minimal expense. Not being paid by the

hour, we had an incentive to conduct our efforts in an efficient manner. Similarly, as our firm was responsible for advancing all expenses, we had an incentive not to expend funds unnecessarily.

7. As of February 9, 2011, the total number of hours spent by the attorneys and support staff in my firm on this litigation was 320.50. The total combined lodestar amount, based on current hourly rates, is \$165,327.50. This figure is based on the rates my firm charges in litigation matters. We account for expenses separately, which are not duplicated in our professional billing rates. The attorney and support staff fees expended by my firm are as follows:

Attorney	Years of Practice	Hours	Hourly Rate	Total
Scott A. Kamber	20+	118.00	\$570	\$67,200.00
David Stampley	20	151.50	\$535	\$81,052.50
Dana Rubin	10	41.00	\$415	\$17,015.00
Total	NA	320.50	NA	\$165,327.50

8. I represent that the following disclosures contained herein relating to mediation and negotiation between the parties are with the consent of David McDowell of the law firm of Morrison Foerster and are not violative of any settlement or mediation privilege.

I. PRELIMINARY STATEMENT REGARDING SETTLEMENT

9. This case has been vigorously litigated from its commencement this settlement, which was only reached after a mediation session with mediator Rodney Max on or about November 23, 2010 and an additional two months of follow-up negotiations.

10. During the course of this litigation, we spent significant time engaging in extensive discussions and exchanges of information with Defendants. These conversations involved numerous multi-party telephone conferences and also involved the extensive exchange of information regarding the technology at issue and each Defendants role in the underlying dispute.

These negotiations involved exchanges of documents and follow up telephone conversations between both our experts and experts for these Defendants as well. I believe this process significantly facilitated the settlement of this litigation and substantially improved the meaningfulness of the injunctive relief ultimately obtained for the benefit of the Class.

11. Prior to mediation in this matter, and additional, face-to-face meeting was held in New York between David Stampley of KamberLaw, LLC, Jeremy Wilson of Wilson Trosclair & Lovins, PLLC, and representatives of Ringleader Digital. This meeting was attended by Ringleader Digital's Director of Technology and involved a frank discussion of the strengths and weaknesses of Plaintiffs claims in both lawsuits.

12. Counsel for Defendants asserted aggressive defenses in its motion to dismiss in the California Litigation and communicated to me their intent to assert those same defenses in this litigation.

13. Thus, the settlement in this case was not reached until our law firms along with Counsel in the California Litigation, *inter alia*, (1) thoroughly investigated the potential claims, including consultation with experts; (2) Defendants filed a motion to dismiss the Complaint in the California Litigation; (3) Defendants produced certain documents for discussion purposes; and (4) a face-to-face meeting with representatives (including the Director of Technology for Ringleader Digital); and (5) a mediation session and many hours of subsequent negotiations.

14. The settlement of this litigation was negotiated with the assistance and oversight of Rodney Max, after which the parties continued settlement discussions. The settlement is the product of dozens of hours of arm's length negotiations over the course of over several months between counsel for the parties. The parties did not discuss the amounts of any incentive fee or payment to class counsel until after the terms of the settlement were agreed upon.

15. The settlement is product of contested litigation and takes into consideration the significant risks specific to the case. It was negotiated by experienced counsel for Plaintiffs and Defendants with a solid understanding of both the strengths and weaknesses of their respective positions.

16. Plaintiffs believe this settlement represents an excellent result for the class, especially under the circumstances of this case. Substantial investigation, the motion to dismiss filed by Defendant Ringleader Digital and legal research informed Plaintiffs that, while they believe their case meritorious, it also had weaknesses which had to be carefully evaluated in determining what course (*i.e.*, whether to settle and on what terms, or to continue to litigate through class certification, summary judgment and a trial on the merits) was in the best interests of the class. As set forth in further detail below, despite the fact that Plaintiffs' allegations and claims were arguably supported by legal authority, expert opinion and other evidence, the specific circumstances involved here presented many uncertainties in Plaintiffs' ability to prevail if the case proceeded to a motion for class certification, summary judgment, and/or trial.

17. Plaintiffs also took into account the actual costs of making any distribution to the Class, the size of the class and the financial wherewithal of the Defendants to be able to pay any judgment that may be able to be obtained after judgment and appeal.

18. These issues and others were considered by Plaintiffs and their counsel in deciding to settle the litigation on terms which would provide the class with injunctive relief that directly redresses the harm alleged in the complaint. In reaching the determination to settle, Plaintiffs and lead counsel have weighed the documentary evidence and legal authority supporting their allegations against the documents and legal authority that Defendants assert undercut Plain-

tiffs' claims, as well as Defendants' characterizations and interpretations of the evidence in this case.

19. On balance, considering all the circumstances and risks both sides faced, Plaintiffs came to the conclusion that settlement on the terms agreed upon was in the best interests of the class. The settlement confers substantial benefit on the class and eliminates the prejudice to the Class that may come with delay in resolution, the significant costs of continued litigation, the risk that certification would be denied, and the risk that summary judgment and/or trial would not be in Plaintiffs' favor. It is respectfully submitted that the settlement should be approved as fair, reasonable, and adequate.

20. The following is a summary of the nature of the settlement class's claims, the principal events that occurred during the course of this litigation, and the legal services provided by Counsel

II. FACTUAL SUMMARY OF PLAINTIFFS' CLAIMS

21. This lawsuit involves Defendants' alleged tracking of Plaintiffs' Internet activities through the use of Plaintiffs' mobile phone. Plaintiffs and members of the Class use their mobile devices to, *inter alia*, visit websites (including Defendants' websites), check and send emails, and text. Mobile advertising has become an almost \$3 billion a year industry. In an effort to gain an advantage in this market, advertisers, website publishers, and ad networks constantly seek new ways to track their website users and present them with targeted advertising relevant to their interests as expressed in their browsing habits.

22. Because cookies, the traditional method of tracking users, are not as useful on mobile devices, Defendant came up with a better way to track mobile device users. Defendant, using HTML5 software, created a database on the mobile devices of consumers who visited its

affiliates' websites, downloaded additional tracking code, and configured a Unique Device Identifier ("RLDGUID") to better track consumers. This was done for the purpose of systematic and continuous surveillance of consumers' mobile device habits.

23. Ringleader Digital's tracking code allowed access to, and disclosure of, consumers' personal information, including personal identifying information. Ringleader Digital's actions circumvented users' browser controls for managing web privacy and security without notice to them and without their consent.

24. In this litigation, Plaintiffs asserted claims for violations of the Computer Fraud and Abuse Act ("CFAA"); Electronic Communications Privacy Act 18 U.S.C. §2510 (the "ECPA"); Violations of Section 349 of New York General Business Law: Deceptive Acts and Practices; and Trespass to Personal Property / Chattels

25. This case affected millions of class members and dealt with highly technical areas of the implementation of the sharing of class member information between Internet sites by the use of Defendant Ringleader Digital's technology.

26. At all times, Defendants have denied and continue to deny they have engaged in any wrongdoing or committed, threatened to commit, or attempted to commit any wrongdoing of any kind, including that alleged in the complaint in this matter.

27. Scott A. Kamber was the point of contact between Plaintiffs and defense counsel in this action. While there were conceptual discussions of settlement by telephone there were no substantive discussions prior to the first mediation. In fact, it was the firm's position based on past experience that having a substantive dialogue on possible class-wide resolution without the assistance of a mediator could expose an early settlement to procedural attack.

28. Because of the nature of technology cases and the fact that I believed Ringleader Digital's technology presented an ongoing risk of harm to the class, Kamber worked with Defense Counsel to schedule mediation as quickly as possible. We agreed to Mr. Rodney Max because of his unrivaled reputation, experience, and demonstrated ability to resolve some of the most difficult litigations.

29. Prior to the mediation we had thoroughly researched the law and understood the strengths and weaknesses of our case.

30. On November 23 2010, representatives of Ringleader and Plaintiffs met with Mr. Max in Morrison Foerster's office in New York. Throughout the day, the parties' representatives met unilaterally with Mr. Max. In addition, representatives of the parties met with each other to view and discuss how Ringleader Digital's technology worked and possible ways to alleviate Plaintiffs' privacy concerns. After a full day of mediation, the parties agreed on all substantive relief. Present at the litigation were some of the most senior members of the Ringleader Digital's management team, including its CEO.

31. The most complex issue that had been agreed to but needed to be examined through further due diligence was the specific breadth of the injunctive relief. This was subsequently finalized over the next two months.

IV. PLAINTIFFS UNDERSTOOD CASE'S STRENGTHS AND WEAKNESSES

32. Based on the publicly available documents, documents received from Defendants, and their own investigation and consultations with experts, Plaintiffs believed they had adduced and would continue to adduce substantial evidence to support their claims. They also realized, however, that they faced considerable risks and defenses as the case proceeded. Some of the most serious risks are discussed in the following paragraphs. Plaintiffs carefully considered these

risks during the months leading up to the settlement and during their settlement discussions with Defendants.

33. Plaintiffs recognized that Defendants contended that Plaintiffs failed to adequately plead damages or losses attributable to and Defendants' conduct. While Plaintiffs have strong arguments to counter these contentions, they recognize this issue was unresolved and could turn in Defendants' favor.

34. Before advising our clients of and entering into the settlement agreement, we took into account, among other things, the criteria for determining whether a settlement is fair, reasonable, and adequate. The recognized criteria include: (a) the strength of plaintiffs' case; (b) the risk, expense, complexity, and likely duration of any further litigation; (c) the risk of certifying a class and then maintaining class action status through trial; (d) the amount offered in settlement; (e) the extent of discovery completed and the stage of the proceedings; and (f) the experience and views of counsel believe that, weighing the circumstances in light of these criteria, as further detailed below, the settlement is fair, reasonable, and adequate.

35. Together with my co-counsel as well as discussion with the Named Plaintiffs, we carefully assessed the probability of ultimate success on the merits *vis-à-vis* the risks of establishing liability and damages. While we believe our case is strong, we could not discount Defendants' defenses or the potential difficulties Plaintiffs would face in certifying a class. In addition, Defendants' are represented by very capable counsel whom we believe would mount a vigorous defense. Should litigation continue, the inevitable motion and appellate practice could easily extend the litigation for years.

36. Another risk considered was the need for and reliance on expert witnesses were the case to proceed to a class certification hearing and then to trial. To establish liability and

damages in a case of this sort, expert testimony would be essential. The evaluation and development of complex factual issues would require substantial expert testimony, of which a jury's acceptance is always far from certain, regardless of how distinguished the source. Settlement of this action avoids the costs of competing experts and the risk of jury fact-finding that could result in a dispositive finding or ruling against Plaintiffs and the class members.

37. In reaching the settlement, Plaintiffs and counsel weighed the duration and cost of the litigation that would be necessary to undertake a further motion for class certification, trial and any appeals, against the likelihood of obtaining a better result than the settlement provides and determined that, under the circumstances, the settlement is fair, reasonable and adequate. We believe the settlement falls within the parameters of settlements in similar actions and is justified in light of the substantial benefits conferred on the class members as well as the risks avoided.

38. Plaintiffs believe they could have prevailed on the merits of the case. Defendants were just as adamant that Plaintiffs would fail. There was a very real risk, as discussed above, that Plaintiffs would not prevail on their motion for class certification or at trial. Had Plaintiffs successfully reached trial, Plaintiffs faced the risk that the jury would not understand Plaintiffs' allegation, that Plaintiffs would not convince a jury that Defendants caused loss to Plaintiffs, or that Plaintiffs had suffered any loss. There was also the very real risk that even if Plaintiffs prevailed at trial, Defendants would appeal, which would take years to resolve and bore the risk of reversal.

39. I have participated directly in the mediation and negotiation efforts and the preparation of the petition for approval of the proposed settlement now before this Court. Throughout our mediation and negotiation efforts and in advising our clients of the proposed settlement, Plaintiff's counsel's has at all times considered the fairness, reasonableness, and adequacy of the

settlement for the class, taking into account: the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of any further litigation; the risk of certifying a class and then maintaining class action status through trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; and the experience and views of Plaintiffs' counsel.

40. Against the backdrop of counsels' collective experience in prosecuting complex class actions, co-counsel and I have considered the claims set forth in the complaint and our continued confidence in the merit of those claims, the scope of relief offered in the settlement compared to the potential relief at the conclusion of litigation, and the risks and costs of continued litigation. Taking these factors into account, it is my opinion the proposed settlement is fair, reasonable, and adequate, well within the range of possible approval, and therefore deserving of the Court's preliminary approval.

41. While I believe the legal standard applicable to a settlement that does not provide a class-wide release and is presented pursuant to Rule 23(b)(2) does not require the same showing as for a settlement under Rule 23(b)(3), it is my opinion this settlement does fulfill the more stringent (b)(3) standard. Further, the agreed injunctive relief specifically redresses the consequences of the conduct set forth in the complaint and does not require a release of any damages claim the class may have.

42. Further, proposed class counsel have diligently investigated and prosecuted this matter, dedicating substantial resources to the investigation of the claims at issue in the action, and have successfully negotiated the settlement of this matter to the benefit of the class.

43. KamberLaw's firm resume is attached hereto as Exhibit A.

44. The parties proposed Order for the final resolution of this matter is attached hereto as Exhibit B.

45. In addition, the settlement agreement reached between the parties is attached hereto as Exhibit C.

III. CONCLUSION

46. Having considered the foregoing, and evaluating Defendants' likely defenses at trial, it is the informed judgment of Plaintiffs and their counsel, based on all proceedings to date and their extensive experience in litigating complex actions and class actions, that the proposed settlement of this matter before this Court is fair, reasonable, and adequate, and in the best interests of the class.

47. For all of the foregoing reasons, class counsel respectfully requests that this Court approve the settlement.

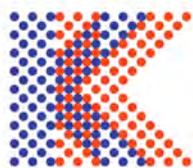
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: February 10, 2011
New York, New York

s/David A. Stampley
David A. Stampley
KamberLaw, LLC
100 Wall Street, 23rd Floor
New York, New York 10005
Telephone: (212) 920-3072
Facsimile: (212) 920-3081
dstampley@kamberlaw.com

One of the attorneys for Plaintiff,
individually and on behalf of a class of
similarly situated individuals

EXHIBIT A



KamberLaw, LLC
100 Wall Street, 23rd Floor
New York, New York 10005
t 212.920.3072 f 212.920.3081

KamberLaw, LLP
1180 South Beverly Drive, Ste. 601
Los Angeles, California 90035
t 310.400.1050 f 310.277.0635

www.kamberlaw.com

Practice

KamberLaw excels in litigating complex cases brought as class actions or by plaintiff groups. The firm acts with the spirit of public service and community-mindedness that has motivated its attorneys throughout their legal careers. Our attorneys share a common goal of seeking justice through meaningful, timely vindication of consumer rights.

We specialize in cases of corporate violations of consumers' privacy rights, leading one federal judge to observe, "The attorneys of KamberLaw have made a showing that they possess experience and expertise in the areas of consumer privacy and technology matters" We believe these cases must be approached with skilled legal insight—plus a confident grasp of the defendant's information technology model and business environment. That is why our unique technology expertise and our backgrounds as defense counsel, corporate compliance counsel, and consultants are important factors in our success. We are capable of explaining what went wrong and communicating a thoughtful view of how to make it right. This leads to resolutions that provide timely relief to affected consumers while promoting better business-to-consumer relationships.

With ten attorneys in offices in New York and California, KamberLaw is committed to advancing the cause of consumer rights from coast to coast. Listed below are some of the cases that exemplify our firm's work and its attorneys' leadership.

Selected Cases

Privacy, Security, and Information Technology

Lane v. Facebook, No. 5:08-cv-03845-RS (N.D. Cal. 2010). Lead counsel in data privacy case relating to Facebook's Beacon technology.

Slater v. Tagged, Inc., No. 3:09-cv-03697-EMC (N.D. Cal. 2010). Co-lead counsel in data privacy case involving social network website's acquisition and use of consumers' email address book information.

Valdez-Marquez v. Netflix, No. 5:09-cv-05903-JW (N.D. Cal. 2010). Co-lead counsel in case involving privacy consequences of release of anonymized records from customer database.

In Re ATI Tech. HDCP Litigation, No. 5:06-CV-01303-JW (N.D. Cal. 2009). Co-lead counsel in case that resulted in settlement correcting risk of harm to computer users caused by digital rights management (DRM) software on music CDs. Settlement included replacement of all affected music CDs and an award of additional music CDs to class members.

Lalo v. Apple (N.D. Cal.) (active). Co-lead counsel in cases involving the use of Adobe Flash to override the privacy and security settings on consumers' browsers to track and profile consumers.

"Flash cookie" cases (multiple actions in N.D. Cal.; S.D.N.Y) (active). Co-lead counsel in cases involving the use of Adobe Flash to override the privacy and security settings on consumers' browsers to track and profile consumers. Settlement pending.

ISP behavioral ad targeting cases (multiple jurisdictions, active). Lead counsel in six data privacy cases in various jurisdictions against ISPs engaging in interception and analysis of customers' Internet communications for behavioral ad-targeting.

Valentine v. NebuAd (No. 3:08-cv-05113-THE) (N.D. Cal.) (active). Lead counsel in data privacy case involving ECPA (Wiretap Act) implications of online ad-serving company's use of behavioral targeting technology.



In re Sony BMG CD Technologies, No. 05-cv-09575 (S.D.N.Y. 2006). Co-lead counsel in case that resulted in settlement correcting risk of harm to computer users caused by digital rights management (DRM) software on music CDs. Settlement included replacement of all affected music CDs and an award of additional music CDs to class members.

Weaver v. WebTV, No. 793551 (Santa Clara Sup Ct., Cal. 2003). Co-lead counsel in certified nationwide consumer class action case alleging consumer fraud and deceptive advertising of computer services and capabilities. The settlement provided the class with a collective award with a guaranteed minimum face value of six million dollars.

Wormley v. GeoCities, No. 196032 (Los Angeles Sup. Ct., Cal. 2000). Class Counsel in consumer class action for privacy violations that is believed to be the first Internet privacy case to recover a benefit for affected class members.

Blackford v. At Home Corp. et al., No. 416131 (San Mateo Sup. Ct.) Co-lead counsel in consumer class action relating to internet connectivity.

Tepper v. AT&T, No. 99/18034 (New York Supreme Ct., Westchester County) Lead counsel in consumer class action regarding use of improper boosting of signal strength for cellular phones.

Consumer Protection and Products Liability

Lofton v. Bank of America, No. 3:07-cv-05892 (N.D. Cal. 2009). Lead counsel in class action alleging deceptive imposition of “fuel-related fees” in connection with airline ticket purchases. Settled for over \$2,000,000 in cash, in addition to other relief.

McFerren v. AT&T Mobility, No. 08-CV-151322 (Fulton Cty. Sup. Ct. 2009). Lead counsel in class action settlement involving 16 related cases against largest wireless service provider in the nation. Settlement provided virtually full refunds to a nationwide class of consumers who alleged that unauthorized charges for mobile content were placed on their cell phone bills.

In re Pet Foods Product Liability Litigation, No. 07-2867 (D.N.J. 2008). Appointed co-lead counsel in class action involving largest pet food recall in United States history. Settlement provided \$24 million common fund and \$8 million in charge backs.

Barrett v. RC2 Corp., No. 07 CH 20924 (Cook Cty., Ill. 2008). Appointed co-lead counsel in lead paint recall case involving Thomas the Tank toy trains. Settlement valued at over \$30 million provided class with full cash refunds and reimbursement of certain costs related to blood testing.

In re HP Power Plug and Graphic Card Litigation, No. 06-2254 RMW (N.D. Cal. 2008). In class action relating to defective personal computer power plugs, settlement provided for free repairs and reimbursement of affected consumers’ out-of-pocket expenses.

Investor and Shareholder Derivative Actions

Stassi et al. v. Loch Harris, No. GN 200180 (Travis Cty. Dist. Ct., Tex. 2003). Brought derivative action on behalf of technology development company that successfully obtained dissolution of corporation and distribution of assets to shareholders.

In re Command Systems, No. 98-cv-3279 (S.D.N.Y. 1999). Securities class action against technology company in which participating shareholders recovered over 80% of their losses.



Selected Attorney Biographies

The attorneys of KamberLaw have been recognized as leaders in their fields by state and federal legislatures, national and international media groups, the courts, and peers. We have testified before Congress and a variety of federal and state agencies on various consumer issues and have been asked to work on federal and state legislation involving issues of import to consumers. Our attorneys have appeared on national and international television and radio programs to discuss the intersection of technology and the law, and class action and consumer protection issues more generally.

Our reputation for leadership in class action litigation has led state and federal courts to appoint us lead counsel in many high-profile class action suits. Our attorneys speak at seminars on consumer protection and technology issues to corporate and consumer audiences in the United States and around the world. They lecture on consumer issues and class action law at law schools and are asked to serve as testifying experts in cases involving various consumer issues.

Scott A. Kamber, a founding member of KamberLaw, has served as lead counsel in dozens of class actions resulting in hundreds of millions of dollars in relief for his clients. His cases have set precedents for Internet privacy rights and data breach liability.

Mr. Kamber worked as a financial consultant and, after entering private legal practice, represented both plaintiffs and defendants in a wide range of commercial litigations, initially at the defense firm of Hughes Hubbard & Reed. His experience and understanding of defense continues to inform his philosophy of effective litigation.

His interest in Internet privacy rights began in the 1990s when he resolved what is believed to be the first Internet privacy case to recover a benefit for impacted class members. His interest in consumer rights and technology extends to new media, and he has led standard-setting litigations and resolutions involving digital rights management software for computer software, video games, and music. He is the only plaintiff's class action attorney invited to speak at the international conference of data protection and privacy commissioners and, in an upcoming speech, by the Israeli Ministry of Justice, where he will be speaking on the topic of coordinating private class actions with government enforcement.

In pursuing these matters, Mr. Kamber has gained extensive courtroom experience and tried over 15 cases to verdict. Beyond litigation, Mr. Kamber's commitment to the value of effective negotiation and dispute resolution has served him in an active and broad international law practice that has taken him to over 30 countries, handling negotiations on five continents and structured transactions with the Olympic Committees of several Eastern European and Latin American nations. Mr. Kamber has worked to vindicate the rights of African torture victims and worked with the President of the United Nations General Assembly. He frequently lectures on international matters and is a regular speaker and moderator for the Center for International Legal Studies based in Austria.

Mr. Kamber graduated *cum laude* from the University of California Hastings College of the Law in 1991 where he was *Order of the Coif*, Articles Editor for the *Hastings Constitutional Law Quarterly* and a member of the Moot Court Board. He graduated with University and Departmental Honors from The Johns Hopkins University in 1986. He is admitted to practice in the State of New York as well as the United States Supreme Court, the United States Courts of Appeals for the Second and Ninth Circuits, and the United States District Courts for the Southern and Eastern Districts of New York. Mr. Kamber is well versed in the procedures and practices of numerous arbitration forums, both domestic and international.

David A. Stampley, a partner at KamberLaw, handles class actions involving consumer data privacy and security, which have been the subject-matter focus of Mr. Stampley's practice for over ten years.

Mr. Stampley has previously served as an Assistant Attorney General in the New York State Attorney General's office, where he led landmark, multistate cases to protect consumers' online privacy and



security in enforcement against DoubleClick, Ziff Davis Media, Eli Lilly (the prozac.com data breach), and AOL/Netscape (SmartDownload spyware). In that role, he coordinated cases and policy issues with regulators in the U.S. and abroad, consumer advocacy organizations, and Internet industry representatives. Mr. Stampley gained extensive trial experience as an Assistant District Attorney in the premier public prosecutor's organization, the Manhattan D.A.'s office. Among his 30 trials, he served as co-counsel in *People v. Edward Leary*, the case of the Manhattan Subway Bomber.

For Neohapsis, a highly regarded provider of information risk management and security consulting services, Mr. Stampley managed digital forensics services. He regularly served as a member of Neohapsis' consulting teams performing information technology audits. Mr. Stampley also served as General Counsel, routinely reviewing the terms of engagements for Neohapsis' expert services and for Neohapsis' engagement of expert service-providers.

In the private sector, he also served as Director of Privacy for Reynolds & Reynolds, a global Fortune 1000 technology solutions provider, where he integrated privacy and security compliance standards into the solutions development life cycle. He regularly participated in the evaluation of privacy and security standards for Reynold's solutions and in its engagement of technology service providers.

Mr. Stampley served as an invited expert on the Platform for Privacy Preferences (P3P) Vocabulary Working Group of the WorldWide Web Consortium (W3C). He is a Certified Information Privacy Professional and has been a Certified Information Systems Security Professional.

Mr. Stampley is a 1991 graduate of the University of Virginia School of Law where he was a Dillard Fellow and received his B.A. from Mississippi State University in 1979. He clerked for the Honorable Lenore L. Prather on the Supreme Court of Mississippi. He is admitted to practice in the State of New York, the United States District Courts of the Southern and Eastern Districts of New York, and the United States Supreme Court. Prior to entering the legal profession, Mr. Stampley worked in application design and development in the information technology field.

Deborah Kravitz, senior counsel at KamberLaw, has a unique career history that spans the corporate world, U.S. government, and a high-profile private practice. She has focused on complex civil and criminal litigation, including SEC enforcement and securities litigation, white-collar criminal defense, and corporate compliance. In addition to practicing with defense firms of national and international stature, most recently with Heller Ehrman, Ms. Kravitz served as a federal prosecutor in the Tax Division of the Department of Justice. In addition, as the chief compliance officer of a global company serving the oil and gas industry, Ms. Kravitz was an integral member of the senior management team and was responsible for the implementation of a global compliance program during a period of time when the company was under a deferred prosecution agreement arising from violations of the Foreign Corrupt Practices Act. This broad range of experience allows Ms. Kravitz to develop practical solutions to a wide array of commercial, litigation, and compliance matters.

Ms. Kravitz graduated with honors from the University of Maryland School of Law in 1991, where she was an assistant editor for the *Law Review* and member of the Moot Court Board. Following law school, Ms. Kravitz clerked for the Honorable Deborah K. Chasanow in the U.S. District of Maryland. Ms. Kravitz received her B.A. in International Studies from the Johns Hopkins University in 1987. She is admitted to practice in the State of Maryland and the District of Columbia.

Dana B. Rubin, a senior associate at KamberLaw, focuses on a wide range of class action issues. Previously, Ms. Rubin played a role in numerous private and class actions on behalf of shareholders and consumers. She has also represented both plaintiffs and defendants in employment litigation and civil rights matters.

Ms. Rubin received her J.D. in 1999 from Fordham University School of Law, where she was an Associate Editor of the *Intellectual Property, Media & Entertainment Law Journal*. She graduated with honors from the University of Maryland, College Park in 1993. Ms. Rubin is admitted in the State Courts of New York and the United States District Courts for the Southern and Eastern Districts of New York and is a member of the New York State Bar Association.



Grace E. Parasmó, an associate at KamberLaw focuses on class action lawsuits involving employment, consumer and antitrust claims. Previously Ms. Parasmó participated in cases involving wage and hour claims, Truth in Lending Act violations, and consumer protection claims. She has also worked in the New York State Attorney General's office.

Ms. Parasmó received her J.D. in 2006 from New York Law School, where she was the Executive Articles Editor for the *New York Law School Law Review*. She received a B.A. from Fordham University. Ms. Parasmó is admitted in the Southern and Eastern Districts of New York, and is a member of the Federal Bar Council, the National Employment Lawyers Association, and the New York County Lawyers' Association.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDREW HILLMAN, *et al.*,

Plaintiffs,

v.

RINGLEADER DIGITAL, INC., *et al.*,

Defendants.

Civil Action No. 1:10-cv-08315-JGK

**[PROPOSED]
ORDER APPROVING CLASS ACTION
SETTLEMENT, JUDGMENT, AND
DISMISSAL**

This matter came before the Court for hearing pursuant to the Plaintiffs' Notice of Motion For Approval Of Class Action Settlement; Plaintiffs' Brief in Support of Motion for Approval of Class Action Settlement; Declaration of David A. Stampley; Declaration of Jeremy R. Wilson; and the parties' Settlement Agreement (the "Settlement") (attached as Exhibit C to the February 10, 2011 Declaration of David A. Stampley).

The Court, having considered all papers filed with the Court related to this issue and the proceedings held herein, and taking into consideration the solely injunctive nature of the relief agreed to by the parties and the lack of any relinquishing of rights to seek damages by the members of Class other than Plaintiffs, and otherwise being fully informed in the premises and good cause appearing therefore, hereby ORDERS as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over the subject matter of this action and all Class members, and jurisdiction to consider and enter this Final Approval Order and Judgment.

2. The Court hereby finds that the Class meets all the requirements for certification pursuant to 23(b)(2) of the Federal Rules of Civil Procedure. The Class is defined as:

All individuals or entities in the United States who, from
September 16, 2008 through the date of class certification, had a

Ringleader Digital database or any other identifying tag or mark placed on their mobile device by Ringleader Digital.

Excluded from the Class are the Judge in this case and the Judge's immediate family, the Court staff for this Court, and any judge or staff involved in any appellate proceedings regarding this litigation.

3. In light of the fact that this Settlement is entered into pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, the solely injunctive nature of the relief accorded under the Settlement, and the lack of any relinquishing of rights to claims for damages by the members of Class other than Plaintiffs, the Court finds that notice to the Class is unnecessary under Rule 23(c)(2).

4. The Court appoints as lead counsel, under Rule 23(g) of the Federal Rules of Civil Procedure, Scott A. Kamber and David A. Stampley of the law firm of KamberLaw, LLC and Jeremy R. Wilson of the law firm of Wilson, Trosclair & Lovins, PLLC.

5. The parties conducted extensive arm's-length negotiations, including a face-to-face mediation session, in good faith that resulted in the proposed Settlement.

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby approves the Settlement and finds that said Settlement is, in all respects, fair, reasonable, and adequate with respect to the Class, and directs that the Settlement be consummated in accordance with the terms and conditions set forth therein.

7. The Court hereby imposes the following injunction against Ringleader Digital, Inc.:

a. Ringleader Digital will use commercially reasonable efforts to engage with the Mobile Marketing Association to develop data-specific industry standards for the privacy and information security of mobile device advertising information—that is, standards gov-

erning the collection, use, and transfer of information from and about mobile device users that is passed from publishers of websites designed for use with mobile devices to service providers such as Ringleader Digital by means of mobile device-based web advertisement requests. If the Mobile Marketing Association successfully develops such data-specific industry standards, Ringleader Digital will abide by them.

b. Ringleader Digital will delete and/or cause to be deleted all information in its possession and/or control that has previously been collected using the mobile-device-resident Ringleader Digital Global User Identification (“RLD GUID”) from mobile device users who have opted out of the Ringleader Digital mobile advertising platform.

c. Ringleader Digital will abide by Worldwide Web Consortium (W3C) standards that apply to storage of the Ringleader Digital mobile advertising platform RLD GUID on mobile devices.

d. Ringleader Digital shall refer to and, where possible, provide a hyperlink to the Ringleader Digital privacy policy in the database description for any Ringleader Digital database stored on a user’s mobile device, to the extent permitted by mobile device operating system.

e. Ringleader Digital will clarify opt-out language for its mobile advertising platform to the extent necessary to ensure mobile device users are provided with clear notice of the means to opt out via the RLD GUID, the means to preserve their opt-out choice, and the effect of opting out.

f. Ringleader Digital will not perform best match analysis or otherwise attempt to uniquely identify mobile device users using information it acquires from the mobile de-

vices whose users have opted out via the RLD GUID of the Ringleader Digital mobile advertising platform.

g. For all mobile publishers with which Ringleader Digital agrees to provide its targeted advertising technology, Ringleader Digital shall require by contract that such entity comply with notice standards that substantially conform on those described in the Network Advertising Initiative's ("NAI") Self-Regulatory Code of Conduct (the "2008 Code"). In particular, Ringleader Digital shall require, by contract, that the owner or operator of a website for which Ringleader Digital provides targeted advertising services shall clearly and conspicuously post notice, or ensure that such notice be made available in a clear and conspicuous manner on the website where data are collected for targeted advertising purposes. Such notice shall contain (1) a statement of the fact that targeted advertising is occurring; (2) a description of types of data that are collected for targeted advertising by Ringleader Digital; (3) an explanation of how, and for what purpose, that data will be used or transferred to third parties; and (4) a conspicuous link to Ringleader Digital's proprietary opt-out mechanism.

h. Ringleader Digital shall cause its opt-out databases shall carry a "0" modifier to indicate opt-out status.

8. The injunctive provisions set forth above in paragraphs 7(a) through 7(h), above, shall be in force through December 31, 2014.

9. Any person making a complaint for perceived violations of any provision contained within paragraphs 7(a) through 7(h), above, must comply with the following procedures concerning notice and opportunity to cure before pursuing any court action to enforce said terms: If any person covered within the scope of this Injunction perceives a violation of any provision contained in paragraphs 7(a) through 7 (h), such person shall notify Ringleader Digital of the

violation in writing (“Written Notice”), either (a) by letter, addressed to Ringleader Digital, Inc., 286 Fifth Avenue, Sixth Floor, New York, New York 10001, or (b) by email, addressed to privacy@ringleaderdigital.com. Upon receipt of the Written Notice, Ringleader Digital shall have thirty (30) days to investigate and opportunity to cure the perceived violation and notify the complainant of its actions in response to the Written Notice. Only after Ringleader Digital has been afforded thirty (30) days to investigate, cure the perceived violation, and notify the complainant of its actions in response to the Written Notice shall the person(s) claiming that particular violation pursue a court action to enforce the terms contained in paragraphs 7(a) through 7(h), above.

10. Solely as to the named Plaintiffs in this matter, Andrew Hillman, Charlie Aughenbaugh, Arlando Cooks, Marissa Dean, G.G., a minor by and through parent Rhonda Gueringer, Ryan Groeneweg, Billy Gueringer, Dawn Harbin, Kenneth Harrison, J.N., a minor by and through parent Semyon Narosov, Stephanie Owens, Maulik Parikh, Charmaine Smith, Brooke Stafford, Tony Weber, Richard Weiner, and Steve Williams (the “Named Plaintiffs”), this matter is hereby dismissed with prejudice and without costs, except as set forth in the Settlement.

11. Upon this Judgment’s becoming final, the above-captioned Named Plaintiffs, on behalf of themselves, their successors, and their assigns, and any other persons now or in the future claiming through or on behalf of them as individuals, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged all of such Plaintiffs’ claims against Defendant Ringleader Digital, Inc., or its officers, directors, employees, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns, including any and all actual or potential claims, actions, causes of action, liabilities, damages (whether actual, nominal, punitive, exemplary, or otherwise), injunctive relief, costs, fees, attorneys’ fees, or

penalties of any kind that, for the class period as defined in the Hillman and Aughenbaugh Litigations (as defined herein) that: (i) arise in whole or in part out of, or relate to, the use of Ringleader Digital's mobile device advertising platform and technology, including but not limited to the Ringleader Digital Media Stamp technology; or (ii) are, have been, or could have been asserted under the same or similar claims alleged in *Hillman, et al. v. Ringleader Digital, Inc., et al.*, No. 10-CV-8315 (S.D.N.Y.) (the "Hillman Litigation") or *Aughenbaugh, et al. v. Ringleader Digital, Inc., et al.*, Case No. 8:10-cv-01407-CJC –RNB (C.D. Cal.) the ("Aughenbaugh Litigation").

12. This Judgment is a final judgment in this matter as to all claims among Defendants, on the one hand, and Named Plaintiffs, on the other.

13. This Court finds, for purposes of Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and expressly directs entry of judgment as set forth herein.

14. As provided for in paragraph fourteen (14) of the Settlement, the Court approves and orders an award in the amount of \$_____ to pay Plaintiffs' counsel's attorneys' fees and costs to reimburse Plaintiffs' counsel for payment of costs and expenses reasonably incurred in prosecuting and settling of this matter. Such award shall be allocated amongst plaintiffs' counsel according to its contribution to the successful resolution of the case as determined in the exercise of reasonable discretion by Class Counsel. As provided for in paragraph eleven (11) of the Settlement, the Court approves a incentive awards to Named Plaintiffs in this action in the amount of \$30,000, to be equally divided among the Named Plaintiffs.

15. Without affecting the finality of this Judgment in any way, this Court hereby retains exclusive jurisdiction over (a) implementation of the Settlement; (b) any award established

pursuant to the Agreement, including interest earned thereon; and (c) all other proceedings related to the implementation and enforcement of the terms of the Agreement and/or the Settlement. The time to appeal from this Judgment shall commence upon its entry. Without limiting the generality of the foregoing, any dispute concerning the provisions of this Judgment, including but not limited to any suit, action or proceeding in which the provisions of this Judgment are asserted as a defense in whole or in part to any claim or cause of action asserted by any named Plaintiff herein or otherwise raised as an objection, shall constitute a suit, action or proceeding arising out of or relating to this Judgment. Solely for purposes of any such suit, action or proceeding, to the fullest extent possible under applicable law, the named Defendants and the named Plaintiffs herein are deemed to have irrevocably waived and to have agreed not to assert, whether by way of motion, as a defense or otherwise, any claim, argument or objection that they are not subject to the jurisdiction of this Court or that this Court is in any way an improper venue or an inconvenient forum.

16. In the event that this Judgment does not become Final, this Judgment shall be rendered null and void and shall be vacated, *nunc pro tunc*.

17. Without further order of the Court, the parties settling hereunder may agree to reasonable extensions of time to carry out any of the provisions of the Settlement.

Dated: _____

Hon. John G. Koeltl
United States District Judge

EXHIBIT C

SETTLEMENT AGREEMENT

WHEREAS, Ringleader Digital, Inc. ("Ringleader Digital"), on the one hand and, on the other hand, Andrew Hillman, Charlie Aughenbaugh, Arlando Cooks, Marissa Dean, G.G., a minor by and through parent Rhonda Gueringer, Ryan Groeneweg, Billy Gueringer, Dawn Harbin, Kenneth Harrison, J.N., a minor by and through parent Semyon Narosov, Stephanie Owens, Maulik Parikh, Charmaine Smith, Brooke Stafford, Tony Weber, Richard Weiner, and Steve Williams (the "Named Plaintiffs"), who have filed complaints in various courts against Ringleader Digital, raising claims based on substantially similar allegations (Ringleader Digital and the Named Plaintiffs collectively referred to herein as the "Parties" for purposes of this Settlement Agreement);

WHEREAS, counsel for Ringleader Digital on the one hand and, on the other hand, counsel for plaintiffs in the Hillman and the Aughenbaugh Litigations (as defined herein) ("Settlement Counsel"), have negotiated settlement terms from October and throughout November 2010, which negotiations culminated in mediation on November 23, 2010 before mediator Rodney A. Max;

WHEREAS, Ringleader Digital denies all liability with respect to the claims alleged in the complaints filed by the Named Plaintiffs, and all litigation arising out of or relating to the same or similar claims; and

WHEREAS, Ringleader Digital and the Named Plaintiffs, through their respective counsel, wish to enter into a compromise and effect a settlement (the "Settlement") to avoid the uncertainty and expense of litigation and to achieve a fair, reasonable, and adequate resolution of the pending litigation —

NOW THEREFORE, the Named Plaintiffs, on behalf of themselves, enter into the following Settlement Agreement (the "Settlement Agreement") with Ringleader Digital, which Settlement Agreement shall be effective as of February 8, 2011:

1. Ringleader Digital will use commercially reasonable efforts to engage with the Mobile Marketing Association to develop data-specific industry standards for the privacy and information security of mobile device advertising information — that is, standards governing the collection, use, and transfer of information from and about mobile device users that is passed from publishers of websites designed for use with mobile devices to service providers such as Ringleader Digital by means of mobile device-based web advertisement requests. If the Mobile Marketing Association successfully develops such data-specific industry standards, Ringleader Digital will abide by them.

2. Ringleader Digital will delete and/or cause to be deleted all information in its possession and/or control that has previously been collected using the mobile-device-resident Ringleader Digital Global User Identification ("RLD GUID") from mobile device users who have opted out of the Ringleader Digital mobile advertising platform.

3. Ringleader Digital will abide by Worldwide Web Consortium (W3C) standards that apply to storage of the Ringleader Digital mobile advertising platform RLD GUID on mobile devices.

4. Ringleader Digital shall refer to and, where possible, provide a hyperlink to the Ringleader Digital privacy policy in the database description for any Ringleader Digital database stored on a user's mobile device, to the extent permitted by mobile device operating system.

5. Ringleader Digital will clarify opt-out language for its mobile advertising platform to the extent necessary to ensure mobile device users are provided with clear notice of the means to opt out via the RLD GUID, the means to preserve their opt-out choice, and the effect of opting out.

6. Ringleader Digital will not perform best match analysis or otherwise attempt to uniquely identify mobile device users using information it acquires from the mobile devices whose users have opted out via the RLD GUID of the Ringleader Digital mobile advertising platform.

7. For all mobile publishers with which Ringleader Digital agrees to provide its targeted advertising technology, Ringleader Digital shall require by contract that such entity comply with notice standards that substantially conform on those described in the Network Advertising Initiative's ("NAI") Self-Regulatory Code of Conduct (the "2008 Code"). In particular, Ringleader Digital shall require, by contract, that the owner or operator of a website for which Ringleader Digital provides targeted advertising services shall clearly and conspicuously post notice, or ensure that such notice be made available in a clear and conspicuous manner on the website where data are collected for targeted advertising purposes. Such notice shall contain (1) a statement of the fact that targeted advertising is occurring; (2) a description of types of data that are collected for targeted advertising by Ringleader Digital; (3) an explanation of how, and for what purpose, that data will be used or transferred to third parties; and (4) a conspicuous link to Ringleader Digital's proprietary opt-out mechanism.

8. Ringleader Digital shall cause its opt-out databases shall carry a "0" modifier to indicate opt-out status.

9. The injunctive provisions set forth above in paragraphs 1 through 8, above, shall be in force through December 31, 2014.

10. Any person making a complaint for perceived violations of any provision contained within paragraphs 1 through 8, above, must comply with the following procedures concerning notice and opportunity to cure before pursuing any court action to enforce the terms contained in paragraphs 1 through 8, above. If any person covered within the scope of this Settlement Agreement perceives a violation of any provision contained in paragraphs 1 through 8, above, such person shall notify Ringleader Digital of the violation in writing ("Written Notice"), either (a) by letter, addressed to Ringleader Digital, Inc., 286 Fifth Avenue, Sixth Floor, New York, New York 10001, or (b) by email, addressed to privacy@ringleaderdigital.com. Upon receipt of the Written Notice, Ringleader Digital shall have thirty (30) days to investigate and opportunity to cure the perceived violation and notify the

complainant of its actions in response to the Written Notice. Only after Ringleader Digital has been afforded thirty (30) days to investigate, cure the perceived violation, and notify the complainant of its actions in response to the Written Notice shall the person(s) claiming that particular violation pursue a court action to enforce the terms contained in paragraphs 1 through 8, above. Ringleader shall provide a copy of any such notices to Class Counsel within 14 days of receipt.

11. Ringleader Digital shall pay thirty thousand dollars (\$30,000), to be divided equally among Named Plaintiffs as and for incentive awards. Ringleader Digital agrees that this amount is fair and reasonable for the effort expended by Named Plaintiffs and agrees that it shall not challenge or oppose the award or payment of such incentive awards.

12. The Named Plaintiffs will release and forever discharge Ringleader Digital, together with its officers, directors, employees, agents, attorneys, predecessors, successors, insurers, affiliates, and assigns from any and all Released Claims. "Released Claims" means any and all actual or potential claims, actions, causes of action, liabilities, damages (whether actual, nominal, punitive, exemplary, or otherwise), injunctive relief, costs, fees, attorneys' fees, or penalties of any kind that, for the class period as defined in the Hillman and Aughenbaugh Litigations (as defined herein): (i) arise in whole or in part out of, or relate to, the use of Ringleader Digital's mobile device advertising platform and technology, including but not limited to the Ringleader Digital Media Stamp technology; or (ii) are, have been, or could have been asserted under the same or similar claims alleged in *Hillman, et al. v. Ringleader Digital, Inc., et al.*, No. 10-CV-8315 (S.D.N.Y.) (the "Hillman Litigation") or *Aughenbaugh, et al. v. Ringleader Digital, Inc., et al.*, Case No. 8:10-cv-01407-CJC -RNB (C.D. Cal.) the ("Aughenbaugh Litigation").

13. Ringleader Digital and the Named Plaintiffs agree that execution of this Settlement is conditioned upon (i) the request, within fourteen (14) days of execution of this Settlement Agreement to transfer of Aughenbaugh Litigation to the Southern District of New York for consolidation with the Hillman Litigation; (ii) dismissal with prejudice of all defendants other than Ringleader Digital in the Hillman and Aughenbaugh Litigation upon entry of a final approval order; and (iii) the parties' joint request for a stay of all other claims for injunctive relief arising under the same or similar claims alleged in the Hillman or Aughenbaugh Litigation; however, the Parties represent that they are aware of no such pending litigation.

14. Ringleader Digital will pay a total of six hundred seventy thousand dollars (\$670,000), as attorneys' fees and costs to all plaintiffs' counsel of record in the Hillman and Aughenbaugh Litigations as of the effective date of this Settlement Agreement. Ringleader Digital agrees that this amount is fair and reasonable for the effort expended in the prosecution in this case and agrees that it shall not challenge or oppose the award or payment of such attorneys' fees, and costs. Other than as expressly provided in this Settlement, the Named Plaintiffs and Ringleader Digital (as amongst themselves) shall each bear their own fees, costs, and expenses in the Litigation. If the Court awards the full amount of fees requested, Ringleader Digital may defer payment of up to one-hundred twenty-five thousand dollars (\$125,000) for up to three (3) years (until 2014) upon agreement for adequate security with Settlement Counsel. If necessary, the Parties will engage in mediation to agree to adequate security. Payment of fees and costs will occur upon final judgment and extinction of appeal rights.

15. The Parties agree to seek approval for this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(b)(2) by application to the court before which the Hillman Litigation is pending.

16. The Parties further agree that notice is not required by the Federal Rules of Civil Procedure in the case of a Rule 23(b)(2) class certification and settlement. Therefore, the Parties will propose to the Court that no notice be required to certify the proposed class and to approve the proposed settlement.

17. This Settlement and all of the commitments and obligations it imposes on the Parties are contingent on final approval of the Settlement Agreement by the Court in substantially the same form as proposed. Such final court approval shall include the dismissal with prejudice of the Hillman and Aughenbaugh Litigation as against Ringleader Digital and all other defendants. If the Court does not approve the Settlement or if a reviewing court overturns Court approval of the Settlement, then this Settlement Agreement shall be void *ab initio*, shall have no force and effect, and shall impose no obligations on the Parties, except that the Settlement and all settlement discussions between the Parties will remain inadmissible, undiscoverable, and strictly confidential to the maximum extent permitted by law.

18. The commitments made by the Parties hereunder are, upon approval by the Court and exhaustion of any appeals, enforceable by the Court as a matter of contract. Upon final Court approval of the proposed Settlement, the commitments made by Ringleader Digital in paragraphs 1 through 8, above, will be reduced to an injunction, enforceable by the Court or the Named Plaintiffs. The Court will retain jurisdiction for purposes of enforcement of this Settlement Agreement and all other Settlement provisions, including injunctive relief, approved by the Court.

19. The Parties waive the application of any applicable law, regulation, holding or rule of construction providing that ambiguities in an agreement shall be construed against the party drafting such agreement.

20. The Parties will cooperate with respect to any public statements regarding this Settlement.

21. Each of the undersigned representatives of the Parties represent that it is fully authorized to enter into, and to execute, this Settlement Agreement on behalf of that Party or Parties. The undersigned further represent that they will provide signatures of the actual parties consenting to this agreement within two (2) weeks of the signing of this Settlement Agreement. Any plaintiff not providing such signature shall be dropped from the list of representative plaintiffs in this Agreement.

22. This Settlement Agreement, when fully executed by all of the representatives of the Parties for whom a signature line is provided below, is binding and effective as of the date specified above, even if this Settlement Agreement is never superseded by a more detailed settlement agreement. Ringleader Digital, the Named Plaintiffs, and Settlement Counsel shall, however, use their best efforts to agree upon and submit this Settlement to the Court for Approval within thirty (30) days after the date this Settlement Agreement is signed.

23. This Settlement Agreement may be signed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

For Ringleader Digital, Inc.



Bob Walczak
Chief Executive Officer,
Ringleader Digital, Inc.

Dated: 2/8/11

For the Named Plaintiffs



Scott A. Kamber
KAMBERLAW, LLC
100 Wall Street, 23rd Floor
New York, New York 10005
Proposed Class Counsel, on behalf of Plaintiffs
individually and on behalf of the Class

Dated: 2/8/11



Jeremy R. Wilson
WILSON TROSCLAIR & LOVINS, PLLC
302 North Market Street, Suite 510
Dallas, Texas 75202
Proposed Class Counsel, on behalf of Plaintiffs
individually and on behalf of the Class

Dated: 2/8/11