

SETTLEMENT AGREEMENT

Agreement Relating to Class Actions Proposed for
Certification in the Following Matters:

In the Ontario Superior Court of Justice (Court File No. 02-6522-CP)

PAUL McARTHUR

Plaintiff

v.

CANADA POST CORPORATION, CYBERSURF CORP. AND 3WEB CORP.

Defendants

In the Supreme Court of British Columbia (Court File No. S022535)

JOHN CHEN

Plaintiff

v.

CANADA POST CORPORATION, CYBERSURF CORP. AND 3WEB CORP.

Defendants

Paul McArthur and John Chen, in their capacity as proposed class representatives (the “Plaintiffs”) and the Defendants, Canada Post Corporation, Cybersurf Corp. and 3web Corp. (collectively, the “Parties”) hereby enter into this Agreement (hereinafter defined) providing for settlement of the proposed class actions described below, subject to the approval of the Ontario Superior Court of Justice and the Supreme Court of British Columbia (together, the “Courts”).

WHEREAS a Statement of Claim proposing a class action issued March 28, 2002 has been filed and served on the Defendants in Ontario by Paul McArthur and a Writ of Summons and Statement of Claim proposing a class action issued May 7, 2002 has been filed and served on the Defendants in British Columbia by John Chen (together, these claims shall be referred to as the “Actions”);

WHEREAS Plaintiff’s counsel in Ontario, namely, the law firm of Scarfone Hawkins LLP (“Scarfone”) and Plaintiff’s counsel in British Columbia, namely, the law firm of Poyner Baxter (“Poyner”) have conducted settlement negotiations with the Defendants, specifically Ontario counsel, Fasken Martineau DuMoulin LLP (“Fasken”) for Canada Post Corporation and McCarthy Tetrault LLP (“McCarthy”) for Cybersurf Corp. and 3web Corp. and British Columbia counsel, Fasken, for Canada Post Corporation and McCarthy for Cybersurf Corp. and 3web Corp.;

WHEREAS neither of the Actions has been certified as a class action to date;

WHEREAS the Defendants have denied and continue to deny the Plaintiffs’ claims in the Actions, have denied and continue to deny any wrongdoing or liability of any kind anywhere to the Plaintiffs or the Class Members (hereinafter defined) the Plaintiffs seek to represent, and have raised and intend to continue to raise numerous affirmative defences;

WHEREAS based upon an analysis of the claims of the Class Members, taking into account the extensive burdens and expense of litigation, including the risks and uncertainty associated with the proposed certification of class actions, protracted trials and appeals, as well as the fair, cost-effective and assured method of resolving claims of the Class Members provided for in this Agreement, the Plaintiffs and the Plaintiffs’ counsel have concluded that this Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interest of the Class Members;

WHEREAS Defendants and their counsel have similarly concluded that this Agreement is desirable in order to avoid the time, risks and expense of defending multiple and protracted litigation and to resolve finally and completely the pending and potential claims relating to the CD ROMS Acquired (hereinafter defined) by the Class Members;

WHEREAS the Plaintiffs assert that there are common aspects to the Class Members' claims, and given the willingness of the Defendants to settle those claims on the basis set forth in this Agreement, the Parties agree that certification of the Actions as class actions subject to this Agreement is a preferable procedure for resolving the Class Members' claims, subject to obtaining court approval of this Agreement;

WHEREAS the Parties intend by this Agreement to resolve fully and finally all of the claims for or relating to the CD ROMS Acquired by the Class Members, including representations, omissions or other conduct by the Defendants that occurred or are alleged to have occurred during the Acquisition of the CD ROMS now owned by the Class Members;

WHEREAS the Parties agree that this Agreement, any certification of the Actions as Class Actions, and any approval of this Agreement by the Courts, will not constitute any admission by the Defendants, or be used as any evidence against the Defendants or any one of them, of liability or damages or for any other purpose in these Actions or in any other proceeding or matter;

NOW THEREFORE subject to the approval of the Courts in Ontario and British Columbia, this Agreement embodies the provisions for the resolution of the proposed class actions brought against the Defendants in the Provinces of Ontario and British Columbia, and of any other issues in any other provinces and territories in Canada relating to CD ROMS as defined in this Agreement;

1. **Interpretation**

1.1 Definitions

In this Agreement, all capitalized terms shall have the meanings set out in Appendix A.

1.2 Gender and Number

In this Agreement, unless the context other requires, words importing the singular include the plural and vice versa and words importing gender include both genders.

2. Refund Offer for Class Members

2.1 Refund Offer

2.1.1 All Class Members shall be entitled to receive a refund payment equal to the full amount of the original retail price of \$9.95 and any applicable taxes (the “Refund Price”) upon following the Refund Procedure set out in Article 2.2.

2.1.2 All Class Members who receive the Refund Price may at their option choose to receive 3 months of 3web Corp. XS Internet Service at no cost whatsoever to the Class Member.

2.2 Refund Procedure

2.2.1 Any Class Member who wishes to receive the benefit of the Refund Offer shall present and return their CD ROM to any Canada Post Outlet.

2.2.2 Upon return of the CD ROM to the Canada Post Outlet, the Class Member shall be entitled to receive the Refund Price upon the execution of a release in favour of the Defendants in the form appended hereto and marked Appendix B, and shall have the option of receiving 3 months of 3web Corp. XS Internet Service at no cost whatsoever to the Class Member.

2.2.3 In the event a Class Member chooses to receive 3 months of 3web Corp. XS Internet Service, Cybersurf/3web shall send to the Class Member by pre-paid mail a cd-rom that grants the Class Member access to 3web Corp. XS Internet Service for 3 months at no cost whatsoever to the Class Member.

2.2.4 Class Members shall have 45 days from the date of the publication of the Notice to Owners to return CD ROMS to a Canada Post Outlet, failing which the obligations of the Defendants’ under the Refund Offer shall terminate.

3. Opting Out

3.1A Class Member who wishes to be excluded from this Agreement must indicate his/her intention to opt out by filing written notice with Class Counsel as indicated in Appendix D postmarked or delivered on or before **[DRAFTING NOTE: DATE TO BE INSERTED IS TO BE 30 DAYS FROM DATE OF PUBLICATION OF NOTICE AS PER ARTICLE 9.2(A)].**

3.2 On the Court Approval Date, this Agreement will be binding on all Class Members, wherever they reside, except those who file with Class Counsel, as provided for in Article 3.1, written notice of their intention to opt out of this Agreement.

4. Administration of Settlement

- 4.1 Canada Post on behalf of the Defendants shall be responsible for co-ordinating the Refund Offer through its Outlets and shall administer this settlement diligently and in good faith according to the terms of this Agreement.
- 4.2 The processes for the delivery of the Refund Offer will be subject to reasonable audit and review by Class Counsel and/or their experts, consultants or agents for the purpose of determining that the Defendants are complying with the terms of this Agreement.
- 4.3 If, in the opinion of Class Counsel, the terms of this Agreement are not being performed in a manner consistent with this Agreement, and if the Defendants have not remedied the alleged problems after having been given reasonable notice of them, Class Counsel may bring a motion to the Courts for directions.

5. Court Approval / Other Legal Proceedings

- 5.1 The terms of this Agreement are subject to and conditional upon a final judgment of court approval in both British Columbia and Ontario. Unless so approved by both Courts, this Agreement is of no force and effect.

6. Effect of Non-Approval or Termination

- 6.1 If the condition to which this Agreement is subject, as set out in Article 5, is not satisfied as provided therein:
 - 6.1.1 this Agreement shall be null and void and shall have no force and effect, and no party to this Agreement shall be bound by any of its terms, except for the terms of this Article;
 - 6.1.2 this Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement; and

6.1.3 this Agreement, the fact of its negotiation and execution, the certification of the British Columbia Class and/or Ontario Class and any approval of this Agreement by any court shall not constitute any admission by the Defendants or be used as evidence against the Defendants for any purpose or in any proceeding or matter. For greater certainty, this Agreement shall not constitute an admission by the Defendants that either of the Actions should be certified as class actions and the fact or terms of this Agreement or anything connected with it shall not be used in any way in support of certification of either of the Actions or any other legal proceeding as a class action.

7. **Final Judgment**

7.1 The Parties will jointly submit proposed judgments approving this Agreement in both Courts. Each proposed judgment shall provide that, subject to the terms of this Agreement, the judgment constitutes:

7.1.1 the full and final resolution and release of all claims and causes of action that have or could have been raised by any Class Member in the Actions, or either of the Actions;

7.1.2 a full and final release by all Class Members against the Defendants and each of them and their respective employees, directors, officers, agents and independent contractors (the "Releasees") from any and all liability or damages for representations, omissions or other conduct by any of the Releasees that occurred during or in connection with any Acquisition of the CD ROM or in connection with the Refund Offer or any other benefits or remedies pursuant to this Agreement; and

7.1.3 a covenant by all Class Members not to make any claim or commence or maintain any action or proceeding against any third party including any person or corporation or the Crown arising from or in connection with any representations, omissions or other conduct by any of the Releasees that occurred during or in connection with any Acquisition of any CD ROM, or in connection with the offering of the Refund Offer, or any other benefits or remedies pursuant to this Agreement, in which any claim could arise against the Releasees, or any of them, for contribution, or indemnity, or any other relief over.

8. **Jurisdiction of Courts**

The Ontario Superior Court of Justice and the Supreme Court of British Columbia shall retain exclusive and continuing jurisdiction over the class action claims and the Class Members, respectively, of the Ontario Class and the British Columbia Class.

9. **Notices**

- 9.1 The Defendants shall publish notice of this settlement and court approval thereof as set out below in Article 9.2.
- 9.2 After the Court Approval Date, the Defendants shall provide notice of this settlement and court approval thereof, as follows:
- (a) The Defendants shall publish a Notice to Owners in the form set-out in Appendix D in each of the Canadian daily newspapers set out in Appendix C. This publication shall take place on two consecutive days within 14 days after the Court Approval Date; and
 - (b) In addition, Cybersurf/3web will forward a copy of the Appendix D Notice to Owners in PDF format (Adobe Acrobat) and by electronic mail to the last known e-mail address of each Class Member to the extent that such e-mail addresses are available to Cybersurf/3web or either of them. This electronic mail notification will be sent within 10 days of the Court Approval Date.
- 9.3 All expenses relating to the publication of notices and the sending of notices by electronic mail pursuant to this Agreement shall be borne by the Defendants.

10. No Oral Modifications or Waivers

No amendment or termination of any provision of this Agreement shall be effective unless it is in writing and is executed by or on behalf of each of the Parties. No Party will be deemed to have waived the exercise of any right or obligation under this Agreement unless such waiver is in writing and signed by or on behalf of the Party.

11. Enurement

This Agreement shall enure to the benefit of and be binding upon each of the Parties and each Class Member and each of their respective successors and personal representatives.

12. Legal Fees and Expenses

In addition to the relief and benefits provided under this Agreement, Canada Post Corporation, Cybersurf Corp. and 3web Corp., agree, on a joint and several basis, to pay the reasonable fees and disbursements of Class Counsel in an amount to be mutually agreed upon or as determined by the Courts at the time of motion/application for certification of the Actions and for approval of this Agreement.

Canada Post Corporation, Cybersurf Corp. and 3web Corp., agree to negotiate with Class Counsel in good faith in an attempt to reach agreement on the amount to be paid for legal fees and expenses and furthermore agree to participate in a mediation session before the Honourable Mr. Justice Warren Winkler of the Ontario Superior Court of Justice in that regard.

Court approval of this Agreement and implementation of the settlement on behalf of Class Members are not conditional upon or in any way related to agreement on or court determination of the amount to be paid for legal fees and expenses.

13. Governing Law

This Agreement shall be interpreted in accordance with the laws of the Province of the class to which the Class Member belongs.

14. Counterparts

This Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

Dated: Canada Post Corporation

By: _____

Dated: Cybersurf Corp.

By: _____

Dated: 3web Corp.

By: _____

Dated:

Scarfone Hawkins LLP
On their own behalf and as counsel to Paul McArthur

Dated:

Poyner Baxter
On their own behalf and as counsel to John Chen

Appendix A

Definitions

“3web” means 3web Corp., a corporation incorporated pursuant to the laws of the Province of Ontario and a wholly-owned subsidiary of Cybersurf;

“3web Corp. XS Internet Service” means the premium internet service provided by 3web Corp. to its customers, and to be provided under the Refund Offer at no cost whatsoever to Class Members;

“Acquisition” means the purchase of CD ROM by a Class Member and **“Acquired”** with reference to a Class Policy has a comparable meaning;

“Actions” means, collectively, the proceedings commenced by the Statement of Claim issued in Ontario on March 28, 2002 and the Writ of Summons and Statement of Claim issued in British Columbia on May 7, 2002, as described in the preamble to this Agreement;

“Agreement” means this agreement, including any appendices hereto, including any modifications made by any further written agreement among the Parties;

“British Columbia Class” means all Class Members who are resident in British Columbia on the Court Approval Date;

“Canada Post Corporation” means a Crown Corporation incorporated pursuant to the *Canada Post Corporation Act*, R.S.C. 1985, c. C-10;

“Canada Post Outlet” means any Canada Post Outlet which offered the CD ROM for sale and **“Outlet”** shall have a comparable meaning;

“CD ROM” means the Cybersurf/3web CD ROM containing installation software that was to provide free e-mail and unlimited free internet access sold by Canada Post through a Canada Post Outlet;

“Class Counsel” means the law firms of Scarfone and Poyner;

“Class Member” means any person who purchased a CD ROM through any Canada Post Outlet at a retail price of \$9.95, exclusive of applicable taxes, the packaging of which displayed the words “Free Internet for Life”, on or after September 27th, 2000;

“Court Approval Date” means the latest of the dates on which the orders/judgments of the Ontario Superior Court of Justice and the Supreme Court of British Columbia approving this Agreement and any order(s) / judgment(s) contemplated by Article 7 are made.

“Courts” means the Ontario Superior Court of Justice and the Supreme Court of British Columbia, together, as defined in the preamble to this Agreement;

“Cybersurf” means Cybersurf Corp., a corporation incorporated pursuant to the laws of the Province of Alberta and trading publically on the Canada Venture Exchange;

“Notice to Owners” means the notice described in Article 9 which shall be approved by the Courts;

“Ontario Class” means all Class Members who are not members of the British Columbia Class;

“Parties” means the Plaintiffs and Defendants, collectively, as defined in the preamble to this Agreement;

“Plaintiffs” means, together, Paul McArthur and John Chen, as defined in the preamble to this Agreement;

“Refund Offer” means the refund offer provided by the Defendants described in Article 2;

“Refund Price” means the refund price described in Article 2.1; and

“Refund Procedure” means the refund procedure described in Article 2.2.

Appendix B

Release

**CANADA POST CORPORATION,
CYBERSURF CORP. and 3WEB CORP.**

I, _____, acknowledge that I purchased
(print name)
a CD ROM providing "Internet for Life" through Canada Post Corporation between September 27,
2000 and July 31, 2001 and that I have returned the CD ROM in exchange for the Retail Price of \$9.95
plus applicable tax paid, which monies were received by me on the _____ day of
_____, 2003. I release Canada Post Corporation, Cybersurf Corp. and 3web Corp.
from all existing claims and costs related to the CD ROM purchased and representations made with
respect to that purchase.

WITNESS *(Signature)*

RECIPIENT *(Signature)*

Address:

Tel: () _____

Appendix C

Canadian Newspapers

The Globe and Mail
St. John's Evening Telegram
Halifax Chronicle Herald
The Gazette
La Presse
Toronto Star
Winnipeg Free Press
Calgary Herald
The Vancouver Sun