

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (this “*Agreement*”) is entered into by and between plaintiff Peter Van Riper, individually and in his representative capacity (“*Plaintiff*”), and defendant SMDK Corporation, formerly SmartDisk Corporation, a Delaware Corporation (“*Defendant*”).

RECITALS

A. On or about February 28, 2006, Plaintiff filed a Complaint in the Superior Court of California for the County of Los Angeles entitled *Van Riper v. SmartDisk Corporation, a Delaware Corporation*, Case Number BC348134 (the “*Action*”).

B. On or about May 12, 2006, Defendant filed its Answer to Plaintiff’s Complaint. In its Answer, Defendant generally and specifically denied the allegations in the Complaint, any wrongdoing on behalf of Defendant, and that Plaintiff or the putative class are entitled to the relief requested or any other relief. In addition, Defendant raised several affirmative defenses.

C. After conducting discovery, the parties participated in a mediation. The mediation was held on May 17, 2007 and was conducted before the Hon. Judge Richard Silver (Ret.). With the assistance of Judge Silver and the continuing efforts of the parties, a settlement was reached. Those terms are embodied in this Agreement.

D. Plaintiff and Defendant have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action. Plaintiff and his counsel believe that the claims asserted in the complaint have merit. Defendant and its counsel believe that the causes of action asserted in the Complaint are without merit and that Defendant has a complete defense or defenses thereto. The Parties also have each looked at the uncertainties of trial and the benefits to be obtained under the proposed settlement and have considered the costs, risks, and delays associated with the continued prosecution of this litigation and the likely appeal of any rulings in favor of either Plaintiff or Defendant.

E Verbatim Corporation (“Verbatim”), a subsidiary of Mitsubishi Chemical Corporation, has purchased certain assets of Defendant, including Products that are the subject of this Agreement (*see Definition 1.19 below*). In order to make full use of its acquisition of such Products, Verbatim desires a prompt resolution of the Action so that it will be able to resell the Products subject to the terms of this Agreement. Therefore, in order to effect the prompt resolution of the action, and in order to obtain rights of enforcement as a third party beneficiary to this Agreement, Verbatim has agreed to reimburse certain Defendant settlement costs once full and binding class settlement and release is achieved.

F. Accordingly, it is now the intention of the Parties and the objective of this Agreement to avoid the costs of trial, settle and dispose of, fully and completely and forever, any and all claims and causes of action in the Action, and to allow Defendant and/or Verbatim to sell Products under the terms and conditions as described below.

1. DEFINITIONS. Unless otherwise indicated above, the following shall be defined terms for purposes of this Agreement. Some of the definitions in this section use terms that are defined later in the section. All defined terms are in bold italics and listed in alphabetical order:

1.1 As used herein, the term “**Action**” means the civil action pending in the Superior Court of California for the County of Los Angeles entitled, *Van Riper v. SmartDisk Corporation, a Delaware Corporation*, Case Number BC348134.

1.2 As used herein, the term “**Agreement**” means this Settlement Agreement and Release, including all exhibits hereto.

1.3 As used herein, the term “**Claim Form**” means the Claim Form, as approved by Plaintiff’s Counsel, Defendant’s Counsel, and the Court, to be provided to Class Members pursuant to Section 3.2 of this Agreement. The Claim Form shall be substantially in the form attached as **Exhibit 3** hereto.

1.4 As used herein, the terms “**Class**” and “**Class Members**” mean “All persons residing in California who, during the periods stated below purchased one or more of the following SmartDisk Corporation’s hard drive products:

- (a) CrossFire USB, 2/28/02 – 1/17/08,
- (b) CrossFire Combo, 2/28/02 – 1/17/08,
- (c) FireFly FireWire, 2/28/02 - 2/03
- (d) FireFly USB, 2/28/02 - 6/04,
- (e) FireLite USB, 2/28/02 - 10/04 [new line FireLite USB, 2/28/02-10/04],
- (e) FireLite FireWire, 2/28/02 – 1/17/08,
- (f) FirePower FireWire, 2/28/02 - 10/03), and
- (g) FirePower USB, 2/28/02 - 11/03).”

1.5 As used herein, the term “**Class Notice**” means the legal notice of the terms of the proposed Settlement, as approved by Plaintiff’s Counsel, Defendant’s Counsel, and the Court, to be provided to Class Members pursuant to Section 3.2 of this Agreement. The Class Notice shall be substantially in the form attached as **Exhibit 2** hereto.

1.6 As used herein, the term “**Complaint**” means the Complaint on file in the case entitled, *Van Riper v. SmartDisk Corporation, a Delaware Corporation*, Case Number BC348134.

1.7 As used herein, the term “*Court*” means the Los Angeles County Superior Court where this Action is pending.

1.8 As used herein, the term “*Defendant*” means defendant SMDK Corporation, formerly SmartDisk Corporation, a Delaware Corporation.

1.9 As used herein, the term “*Defendant’s Counsel*” means The Moore Law Group.

1.10 As used herein, the term “*Fairness Hearing*” means the hearing at or after which the Court will make a final decision whether to approve this Agreement as fair, reasonable and adequate.

1.11 As used herein, the term “*Final Judicial Approval*” means the later of (1) the expiration of the time for filing an appeal if there are any objections filed by any Class Member; (2) the conclusion of any appeal taken if there are any objections filed by any Class Member; (3) the withdrawal of the last objection to the Settlement; or (4) the entry of the Final Order if there are no objections filed by any Class Member.

1.12 As used herein, the term “*Final Order*” means the order finally certifying the Class for settlement purposes only and approving the Settlement and this Agreement.

1.13 As used herein, the term “*Identifiable Class Members*” means all Class Members whose names and addresses are maintained by Defendant via Class Members’ registration of products and/or on-line purchase.

1.14 As used herein, the term “*Non-Identifiable Class Members*” means all Class Members who are Class Members whose names and address are not maintained by Defendant via Class Member’s registration and/or on-line purchase.

1.15 As used herein, the term “*Parties*” means Plaintiff and Defendant.

1.16 As used herein, the term “*Plaintiff*” means Peter Van Riper in his individual capacity and in his capacity as representative of the Class.

1.17 As used herein, the terms “*Plaintiff’s Counsel*” and “*Class Counsel*” mean the law firm of Westrup Klick, LLP.

1.18 As used herein, the term “*Preliminary Approval Order*” means the order concerning notice and setting the Fairness Hearing.

1.19 As used herein, the term “*Products*” means the hard drives identified in paragraph 1.4.

1.20 As used herein, the term “*Settlement*” means the settlement of this Action and related claims effectuated by this Agreement.

1.21 As used herein, the term “*Settlement Class*” means those persons who are members of the Class who have not properly and timely opted out of the Action.

1.22 As used herein, the term “*Settlement Class Member*” means any person who is included in the Settlement Class.

2. SETTLEMENT TERMS.

2.1 Corrective Measures. As a result of this litigation, Defendant has agreed that it and Verbatim will sell only those Products that are labeled with a capacity disclaimer. Defendant and Verbatim further agree that the capacity disclaimer on Products will be of a font size no less than that used on Products sold on 8/8/07, an example of which is attached hereto as Exhibit “1,” (provided, however, that if Verbatim reduces the size of the packaging panel bearing the capacity disclaimer it may reduce the size of the font in proportion thereto). The parties further agree that the capacity disclaimer shall be reasonably legible and located anywhere on the packaging visible to the consumer at the point of purchase; that the capacity disclaimer on Products will define the unit of measure in decimal terms, and that the capacity disclaimer on Products will state that the capacity may be shown as less as a function of the Operating System’s formatting and calculation methods (or a reasonable variant of the foregoing at Verbatim’s discretion in the event that Verbatim desires to sell the Products subject to the terms of this Agreement). For example, if a Product is labeled “20 GB”, the capacity disclaimer may read, “1MB = 1,000,000 bytes 1GB = 1,000,000,000 bytes. Due to formatting and differing calculation methods, your Operating System may report lower capacity available for storage. As a result your operating system may report fewer megabytes/gigabytes,” or “1GB = 1,000,000,000 bytes. Some of the capacity is used for formatting and other functions and thus is not available for data storage. As a result your operating system may report fewer megabytes/gigabytes.” As long as Defendant or Verbatim complies with the corrective measures set forth in this Section, Plaintiff will have no legal claims against either Defendant or Verbatim arising out of or relating to the capacity representations of the Products.

2.2 Right to Cure. If Plaintiff asserts that Defendant violated any provision of the above corrective measures, Plaintiff shall notify Defendant’s counsel, in writing, and Defendant shall have ten (10) days to initiate reasonable cure measures or challenge the alleged violation. In the event, Defendant opts to challenge the alleged violation, both Plaintiff and Defendant agree, within 30 days of the cure letter, to submit letter briefs to Judge Richard Silver (Ret.), for final determination and ruling. The prevailing party shall be entitled to reasonable attorneys’ fees and costs.

2.3 Award to the Settlement Class. All Identifiable Class Members, during the period of February 28, 2002 through February 28, 2006, who do not opt out of the settlement, shall automatically be entitled to receive \$10 pursuant to Sections 3.2 through 3.8 of this Agreement. Further, Non-Identifiable Class Members who submit a valid and timely Claim Form will be entitled to receive \$10 pursuant to Sections 3.2 though 3.8 of this Agreement.

2.4 Incentive Award to Plaintiff. The Parties agree that the Plaintiff, subject to the Court’s approval, shall be entitled to an incentive award of \$1,500 in recognition of the risk to Plaintiff as the class representative in commencing the lawsuit, both financial and otherwise; the amount of time and effort spent by Plaintiff as the class representative; and for serving the public interest. Accordingly, in the event this Agreement receives Final Judicial Approval, Defendant

shall pay, within ten (10) days after Final Judicial Approval, an incentive award of \$1,500 to Plaintiff separate and apart from any benefits to be paid to the Class.

2.5 Attorneys' Fees and Non-Settlement Implementation Costs. The Parties agree that Class Counsel shall be entitled to request, subject to the Court's approval, an award of attorneys' fees and costs not to exceed \$112,500. Defendant agrees not to oppose such a request. Accordingly, in the event this Agreement receives Final Judicial Approval, Defendant shall pay, within ten (10) days after Final Judicial Approval, attorneys' fees and costs, as approved by the Court, in a sum not to exceed \$112,500, separate and apart from any benefits to be paid to the Class.

2.6 Settlement Implementation Costs. Defendant shall bear all costs of providing the Class Notice and setting up and maintaining the Class Notice and Claim Form on its web-page, in the manner prescribed in Section 3.2 of this Agreement and all costs associated with the administration of the Settlement.

2.7 Except as otherwise set forth herein, the parties shall bear all of their own costs, fees and expenses relating to or arising out of the Action and/or this settlement.

3. CLASS SETTLEMENT PROCEDURES.

3.1 Settlement Approval. As soon as practicable after the signing of this Agreement, Plaintiff shall file an application for a Preliminary Approval Order, preliminarily approving this Agreement as fair, reasonable and adequate, approving the Class Notice and Claim Form, and setting the date and time of the Fairness Hearing.

3.2 Class Notices. Subject to Court approval, the Parties agree that within 15 days after entry of the Preliminary Approval Order, Defendant shall mail the Class Notice to all Identifiable Class Members. Prior to the mailing, Defendant shall conduct a National Change of Address Search ("NCOA") of all Identifiable Class Members. In addition, subject to Court approval, the Parties agree that within 15 days after entry of the Preliminary Approval Order, Defendant shall post, for a period of 6 months, the Class Notice and Claim Form, in a downloadable format, on its web-page or any web-page where Class Members may be redirected because of the sale of SmartDisk assets.

3.3 Proof of Notice. No later than seven (7) days before the Fairness Hearing, Defendant shall file with the Court, and serve upon Plaintiff's Counsel, a declaration confirming that an NCOA search was conducted and the Class Notice was mailed to all Identifiable Class Members by first class mail and that the Class Notice and Claim Form was posted in a downloadable format on Defendant's web-page or any web-page where Class Members may be redirected because of the sale of SmartDisk assets.

3.4 Distribution of Settlement Award. All Identifiable Class Members who do not opt-out of the settlement shall automatically be mailed \$10 within 10 days after Final Judicial Approval. Further, Non-Identifiable Class Members who do not opt-out of the settlement, and who timely submit a valid Claim Form, shall be mailed \$10, either within 10 days after Final Judicial Approval, or within 30 days after submitting a valid and timely claim form, whichever is the later of the two.

3.5 Disputes. In the event of any dispute over the Settlement, the parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, the parties shall submit the dispute to the Judge Silver for final determination.

3.6 Objections. Any Class Member who wishes to object to the Settlement must file a written objection with the Court, and serve copies on Class Counsel and Defendant's counsel, no later than 45 days following the date the Class Notice was first mailed and/or posted on Defendant's web-page. The objection must set forth, in clear and concise terms, the legal and factual arguments supporting the objection. Unless otherwise requested by the Court, Class Members shall not be entitled to speak at the final approval hearing unless they have submitted a timely written objection pursuant to this paragraph.

3.7 Exclusion from the Class. The Class Notice shall permit any prospective Class Member to elect not to be part of the Class and not to be bound by this Agreement, provided that the affected person mails a request for exclusion from the settlement to Class Counsel no later than 45 days following the last date the Class Notice was mailed and/or posted on Defendant's web-page. The person requesting exclusion must sign the request for exclusion personally. No later than seven (7) calendar days prior to the Fairness Hearing, Class Counsel shall prepare a list of Class Members who have excluded themselves from the Class in a valid and timely manner, and shall deliver that list to the Court, with service on Defendant's Counsel.

3.8 Claim Forms. Any Class Member who wished to submit a Claim Form must do so by mailing the Claim Form to Class Counsel, with a postmark date no later than 6 months following the date the Class Notice was first mailed and/or posted on Defendant's web-page. Further, in order for the Claim to be considered, it must include at a minimum, the serial number of the product, and the signature of the Class Member.

4. DISMISSAL OF ACTION AND RELEASES.

4.1 Approval of This Agreement. As soon as practicable after execution of this Agreement, counsel for all Parties will jointly take all necessary and appropriate steps to secure the Court's approval of this Agreement.

4.2 Final Order. At or before the Fairness Hearing, Class Counsel shall move for the Final Order.

4.3 Effect of Agreement If Settlement Is Not Approved. This Agreement was entered into only for the purpose of settlement. In the event that the Court does not approve the settlement, or the Final Order is not entered for any reason, then this Agreement shall be deemed null and void *ab initio*.

4.4 Dismissal of the Action with Prejudice. The Court's Final Order granting approval of this Agreement shall include provisions for the dismissal of this Action with prejudice and the entry of a final judgment of dismissal. Notwithstanding the dismissal of the Action, the parties stipulate that the Court shall retain jurisdiction to enforce this Agreement pursuant to Code of Civil Procedure section 664.6.

4.5 Release As To All Class Members. Effective upon the date of Final Judicial Approval, Plaintiff and each member of the Settlement Class, release Defendant, and each of its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, attorneys, insurers and reinsurers, and its and their respective successors and predecessors in interest (including but not limited to Verbatim), affiliates, parents, subsidiaries, and each of their company-sponsored employee benefit plans and all of their respective officers, directors, employees, administrators, fiduciaries, trustees and agents (the “*Released Parties*”), from the “*Released Claims.*” For purposes of this Agreement, the *Released Claims* are defined as all claims, liabilities, demands, debts, accounts, obligations, actions, and causes of action, at law or in equity, of any kind or nature whatsoever (collectively “*Claims*”) that were alleged, arise out of or relate to the Claims asserted in the Complaint.

4.6 Defendant’s Release of Plaintiff. Effective upon the date of Final Judicial Approval, Defendant, and its employees, officers, and directors hereby release Plaintiff and Plaintiff’s counsel from any claims of abuse of process, malicious prosecution, or any other claims arising out of the institution, prosecution, assertion, or resolution of this action, including, but not limited to, claims for attorneys’ fees, costs of suit, or sanctions of any kind.

5. ADDITIONAL PROVISIONS.

5.1 No Admission of Liability or Wrongdoing. This Agreement reflects the compromise and settlement of disputed claims among the Parties. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law (including, but not limited to, matters respecting class certification) by any person, including Defendant, and shall not be offered or received in evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession. Defendant has denied and continues to deny each of the claims and contentions alleged by Plaintiff in the Action. Defendant has repeatedly asserted and continues to assert defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability arising out of any of the facts or conduct alleged in the Action.

5.2 Fair, Adequate and Reasonable Settlement. The Parties believe this Settlement is a fair, adequate and reasonable settlement of this Class Action and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement was reached after extensive negotiations.

5.3 Real Parties in Interest. In executing this Agreement, the Plaintiff warrants and represents that he, in his representative capacity on behalf of the Class, is the only person having any interest in any of the claims that are described or referred to herein, or in any of the pleadings, records, and papers in the Action, and, except as provided herein, neither said claims nor any part thereof have been assigned, granted or transferred in any way to any other person, firm or entity.

5.4 Third Party Beneficiary. In executing this Agreement, the Parties stipulate that Verbatim is intended to be a third party beneficiary of this Agreement, and thereby agree to

confer upon and provide Verbatim with the rights of a third party beneficiary under this Agreement.

5.5 Voluntary Agreement. This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm or entity.

5.6 Binding On Successors. This Agreement shall bind and inure to the benefit of the respective successors, assigns, legatees, heirs, and personal representatives of each of the Parties.

5.7 Parties Represented By Counsel. The Parties hereby acknowledge that they have been represented in negotiations for and in the preparation of this Agreement by independent counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of its legal effect.

5.8 Authorization. Each party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each party is fully entitled and duly authorized to give this complete and final general release and discharge.

5.9 Construction and Interpretation. Neither Party nor any of the Parties' respective attorneys shall be deemed the drafter of this Agreement for purposes of interpreting any provision hereof in any judicial or other proceeding that may arise between or among them.

5.10 Headings. The various headings used in this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement.

5.11 Exhibits. The exhibits to this Agreement are integral parts of the Agreement and Settlement and are hereby incorporated and made a part of this Agreement.

5.12 Modifications and Amendments. No amendment, change or modification of this Agreement or any part thereof shall be valid unless in writing signed by the Parties.

5.13 Governing Law. This Agreement is entered into in accordance with the laws of the State of California and shall be governed by and interpreted in accordance with the laws of the State of California, without regard to its conflict of law principles.

5.14 Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents and other assurances and shall do any and all acts or things reasonably necessary in connection with the performance of his or its obligations hereunder to carry out the express intent of the Parties hereto.

5.15 Execution Date. This Agreement shall be deemed executed upon the last date of execution by all of the undersigned counsel.

5.16 Continuing Jurisdiction. The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Agreement.

5.17 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies of executed copies of this Agreement may be treated as originals.

5.18 Severability. Should any paragraph, sentence, clause or provision of this Agreement be held invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability, without invalidating the remainder of such provision or the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective counsel of record, have so AGREED.

Dated: _____
_____ PETER VAN RIPER

Dated: _____ SMARTDISK CORPORATION

By: _____
Its: _____

APPROVED AS TO FORM:

Dated: _____ THOMAS E. MOORE III, Cal. Bar No. 115107
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By: _____
THOMAS E. MOORE III

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Attorneys for Plaintiff