

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

EUGENE ROSENFELD, On Behalf of Himself and All Others Similarly Situated,

Plaintiff,

vs.

GATEWAY, INC.,

Defendant.

CASE NO. CV 08-03381 SVW (CTx)

[PROPOSED] PRELIMINARY APPROVAL ORDER

The parties, having filed a joint motion for an order preliminarily approving the Settlement Agreement and Release ("Agreement") entered into by Plaintiff, Eugene Rosenfeld, and Defendant, Gateway, Inc., the Court, having reviewed such Motion and the Agreement and exhibits attached thereto, and the supporting papers submitted therewith, including the Declaration of the Honorable Dickran M. Tevrizian (ret.), who served as a private mediator in this case, and the Court being fully advised;

IT IS HEREBY ORDERED THAT:

- 1. The Agreement and the settlement set forth therein are preliminarily approved as fair, reasonable and adequate.
2. The Settlement Class set forth in the Agreement is conditionally certified for purposes of settlement only.
3. Plaintiff is hereby appointed as the Class Representative.
4. Shepherd, Finkelman, Miller & Shah, LLP is hereby appointed as Lead Class Counsel.
5. The Court finds that the manner and content of the notice specified in the Agreement and the class notice will provide the best practicable notice to the Settlement Class Members and fully satisfies the requirements of Fed. Rule Civ. P. 23 and due process. Accordingly, Defendant shall provide notice of the hearing on final approval and notice of the proposed settlement, by causing notice to be sent by e-mail or first-class mail, as well as by

1 publication notice, to the Settlement Class Members as set forth in Section V of the Agreement.

2 The Court authorizes the parties to make minor revisions to the notice and claim form as they may
3 jointly deem necessary or appropriate, without the necessity of further Court action or approval,
4 provided that no such change shall affect the substantive or procedural rights of any member of the
5 Settlement Class.

6 6. A final approval hearing shall be held by this Court to consider and finally
7 determine:

8 a. Whether the Agreement should be finally approved as fair, reasonable and
9 adequate;

10 b. Whether attorneys' fees and expenses should be awarded to Plaintiff's
11 counsel, as provided for in Section IX of the Agreement;

12 c. Whether an incentive award should be awarded to the Class Representative,
13 as provided for in Section IX of the Agreement; and

14 d. The merits of any objections to the Agreement and the settlement set forth
15 therein, or any of its terms.

16 The final approval hearing described in this paragraph may be postponed, adjourned, or continued
17 by order of the Court without further notice to the Settlement Class Members.

18 7. Any Settlement Class Member who does not request exclusion, and who objects to
19 approval of the proposed settlement in compliance with the requirements of the Agreement, may
20 appear at the final approval hearing in person or through counsel to show cause why the proposed
21 settlement should not be approved as fair, reasonable, and adequate.

22 8. However, no person (other than representatives of the named parties) may be heard
23 at the final approval hearing, or file papers or briefs, unless, on or before the date set forth in the
24 class notice, such person files with the Clerk of the Court and serves on Lead Class Counsel and
25 Defendant's Counsel a timely written objection and notice of intent to appear, in accordance with
26 the procedures specified in the class notice and on the settlement website designated in the class
27 notice. Any Settlement Class Member who does not make his or her objection to the settlement in

1 the manner provided herein and in the Agreement and in compliance with applicable law, shall be
2 deemed to have waived such objection or right to intervene for purposes of appeal, collateral
3 attack or otherwise.

4 9. Any Settlement Class Member who desires exclusion from the settlement must
5 mail, by the date set forth in the class notice, a written request for exclusion to the addresses set
6 forth on the settlement website designated in the class notice. All persons who properly submit
7 requests for exclusion shall not be part of the settlement and shall have no rights with respect to
8 the settlement.

9 10. If the Agreement is finally approved, the Court shall enter a final order and
10 judgment approving the Agreement. Said final order and judgment shall be fully binding with
11 respect to all Settlement Class Members who did not request exclusion by the date set forth in the
12 class notice, in accordance with the terms of the class notice and the Agreement.

13 11. All discovery and other pretrial proceedings in this action and any other action
14 asserting like claims against Defendant are stayed and suspended until further order of this Court,
15 except as otherwise agreed to by the parties or as may be necessary to implement the Agreement or
16 this Order.

17 12. In the event that the proposed settlement as provided in the Agreement is not
18 approved by the Court, or entry of a final order and judgment does not occur for any reason, then
19 the Agreement, all drafts, negotiations, discussions and documentation relating thereto, and all
20 orders entered by the Court in connection therewith, shall become null and void. In such event,
21 the Agreement and all negotiations and proceedings relating thereto shall be withdrawn without
22 prejudice to the rights of any and all parties thereto, who shall be restored to their respective
23 positions as of the date of the execution of the Agreement.

24 13. The dates of performance of this Order are as follows:

25 a. The class notice shall be published and otherwise disseminated in
26 accordance with Section V of the Agreement. Defendant shall complete the dissemination of all
27 class notices by January 8, 2009.

1 b. Requests for exclusion must be postmarked by not later than February 16,
2 2009 and mailed to Lead Class Counsel and Defendant's Counsel.

3 c. Objections to the settlement, requests for intervention and notices of
4 intention to appear at the final approval hearing shall be deemed timely only if filed with the Court
5 and served (by mail or hand delivery) on Lead Class Counsel and Defendant's Counsel by
6 February 16, 2009.

7 d. Plaintiff's counsel shall prepare and file with the Court a list of Settlement
8 Class Members who have filed timely requests for exclusion by February 20, 2009.


9 e. Plaintiff's counsel shall file and serve papers in support of final approval of
10 the settlement, responding to any objections or motions to intervene, and requesting attorneys'
11 fees, costs and expenses by February 20, 2009.

12 f. Defendant shall file papers, if any, in support of final approval of the
13 settlement and responding to any objections or motions to intervene by February 27, 2009.

14 g. By January 15, 2009, Defendant shall certify to the Court that it has
15 complied with the notice requirements set forth in the Agreement and this Order.

16 h. The final approval hearing shall be held on March 16, 2009. at 1:30 pm
17 ENTERED this 10th day of December, 2008

18
19 BY THE COURT

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21 
22 The Honorable Stephen V. Wilson