

**FILED**  
SAN MATEO COUNTY

OCT 24 2007

Clerk of the Superior Court  
G. ARSHAD  
DEPUTY CLERK

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF SAN MATEO

20 CHARLES WHITE,  
21 Plaintiff,

22 vs.

23 RADHA R. BASU, MANUEL DIAZ, KEVIN  
24 C. EICHLER, EDWARD S. RUSSELL, and  
25 JAMES THANOS,

26 Defendants,

27 --and--

28 SUPPORTSOFT, INC., a Delaware  
Corporation,

Nominal Defendant.

Case No. 451677

STIPULATION OF SETTLEMENT OF  
DERIVATIVE CLAIMS

29 This Stipulation of Settlement (the "Stipulation") is entered into this 23rd day of October,  
30 2007, by and among the following parties to the above entitled action (the "Action"): (i) derivative  
31 plaintiff Charles White ("Plaintiff"); (ii) individual defendants Radha R. Basu, Manuel Diaz, Kevin  
32 C. Eichler, Edward S. Russell and James Thanos ("the Individual Defendants"); (iii) and nominal  
33 defendant SupportSoft, Inc. ("SupportSoft" or the "Company"), each by and through their respective

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1 counsel of record in the Action. The Stipulation is intended by the parties hereto (the "Settling  
2 Parties") to fully, finally and forever resolve the Action upon and subject to the terms and conditions  
3 hereof.

4  
5 **THE ACTION**

6 This is a shareholder derivative action brought on behalf of SupportSoft, a Delaware  
7 corporation with its principal place of business in Redwood City, California. Plaintiff alleges that  
8 the Individual Defendants, who are or were officers and/or directors of the Company, caused  
9 SupportSoft to issue a series of false and misleading statements which concealed problems in the  
10 Company's business, artificially inflated SupportSoft's stock price between January 20, 2004 and  
11 October 1, 2004 (the "Relevant Period"), and sold \$3.5 million in Company stock at times when  
12 they were in possession of adverse material, non-public information regarding SupportSoft's  
13 financial condition. Plaintiff also alleges that the Individual Defendants breached their fiduciary  
14 duties to the Company, committed acts of gross negligence, breached their contracts as directors of  
15 the Company, breached their duties of loyalty to the Company and violated Cal. Corp. Code § 25402  
16 by engaging in this conduct and other conduct more fully described in plaintiff's Second Amended  
17 Complaint.

18  
19 **PROCEDURAL HISTORY**

20 Plaintiff filed his initial Complaint on December 19, 2005. On February 2, 2006, Defendants  
21 demurred to the Complaint and sought a stay of discovery. On March 29, 2006, Plaintiff filed a  
22 motion to compel certain discovery and, on April 5, 2006, Plaintiff filed his opposition to the  
23 demurrer. On May 10, 2006, the Court sustained the demurrer with leave to amend and granted  
24 Plaintiff 60 days to file an amended complaint, to permit Plaintiff to serve a request for books and  
25 records on the Company. On July 10, 2006, Plaintiff filed his First Amended Complaint, to which  
26 Defendants demurred on August 11, 2006. On August 31, 2006, Plaintiff filed his opposition to the  
27 demurrer. On October 4, 2006, the Court overruled the demurrer in part and sustained it in part with  
28 leave to amend. Plaintiff filed a Second Amended Complaint on October 27, 2006, which

1 Defendants answered on November 6, 2006. On January 5, 2006, Plaintiff served his first request  
2 for production of documents, pursuant to which defendants produced hundreds of thousands of  
3 pages, which were reviewed and analyzed by Plaintiff's Counsel. Plaintiff's Counsel also hired an  
4 investigative firm, which interviewed over a dozen former employees of the Company. Thereafter,  
5 the parties commenced settlement negotiations and engaged the services of Hon. Layn R. Phillips, a  
6 retired U.S. District Judge and well-respected mediator, to assist in those negotiations. To facilitate  
7 these negotiations, the parties agreed to several continuances of case management conferences. After  
8 a substantial period of negotiation, the parties reached agreement on the terms of the settlement  
9 contained herein, including the corporate governance changes set forth in Exhibit A hereto and  
10 described below.

11  
12 **DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

13 Defendants deny the material allegations contained in each of the complaints and any other  
14 pleadings filed in the Action. Defendants expressly deny all charges of wrongdoing or liability  
15 arising out of any of the conduct, statements, acts or omissions alleged, or that could have been  
16 alleged, in the Action. Defendants further assert that they acted in good faith and in a manner they  
17 reasonably believed to be in the best interests of SupportSoft and its stockholders and in accordance  
18 with all applicable rules, regulations and laws.

19 Defendants have indicated their intent to contest vigorously each allegation and claim  
20 asserted against them by Plaintiff. Nonetheless, Defendants have concluded that the further conduct  
21 of the Action would be protracted and expensive, and that it is desirable that the Action be fully and  
22 finally settled in the manner and upon the terms and conditions set forth in this Stipulation in order  
23 to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted  
24 litigation, and to permit the operation of SupportSoft's business without further expensive litigation  
25 and the distraction of personnel with respect to the matters in issue in the Action.

26 Defendants enter into this Stipulation and settlement based upon, among other things, the  
27 Settling Parties' agreement herein that, to the fullest extent permitted by law, neither this Stipulation  
28 nor any of its terms or provisions, nor any of the negotiations or proceedings connected therewith,

1 shall be offered as evidence in the Action or in any pending or future civil, criminal, or  
2 administrative action or other proceeding to establish any liability or admission by any of the  
3 defendants or any other matter adverse to any of the defendants except as set forth herein.

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5 **CLAIMS OF DERIVATIVE PLAINTIFF AND BENEFITS OF SETTLEMENT**

6 Plaintiff, through his counsel, has made an extensive factual and legal investigation  
7 concerning the claims asserted in the Action. This has included review of public filings by  
8 SupportSoft with the U.S. Securities and Exchange Commission ("SEC"), press releases issued by  
9 the Company, documents produced by SupportSoft, and publicly available trading data for the  
10 Company's common stock. Plaintiff's counsel have also obtained and reviewed detailed interviews  
11 of former employees of the Company and thoroughly researched the legal issues relevant to the  
12 Action.

13 Plaintiff believes that the claims asserted in the Action have merit. Counsel for plaintiff,  
14 however, also recognize and acknowledge the expense and length of continued proceedings  
15 necessary to prosecute the Action against Defendants through trial and appeals. Counsel for  
16 Plaintiff have also ~~has~~ taken into account the uncertain outcome and the risk of any litigation,  
17 especially complex derivative actions such as the Action, as well as the difficulties and delays  
18 inherent in such litigation. Counsel for Plaintiff are also mindful of the inherent problems of proof  
19 and possible defenses to the causes of action asserted in the complaints, including the defenses  
20 asserted by Defendants during the Action and in settlement negotiations. Counsel for Plaintiff also  
21 recognize that the termination of the Action is in the Company and its stockholders' best interests.

22 In light of the foregoing, Plaintiff's Counsel believe that the settlement confers substantial  
23 benefits upon SupportSoft and its stockholders. Based on their evaluation, Plaintiff's Counsel have  
24 determined that the settlement is in the best interests of Plaintiff, SupportSoft and its stockholders.

25  
26 **TERMS OF SETTLEMENT**

27 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among  
28 Plaintiff (for himself, and derivatively on behalf of SupportSoft), SupportSoft, and each of the

1 Individual Defendants, by and through their respective counsel of record, that, subject to the  
2 approval of the Court, the Action and the Released Claims (as defined below) shall be finally and  
3 fully compromised, settled and released, and the Action shall be dismissed with prejudice, in its  
4 entirety and as to all Settling Parties, upon and subject to the following terms and conditions:

5 **I. Definitions.**

6 As used in the Stipulation, the following terms have the meanings specified below:

7 A. "Plaintiff" means derivative plaintiff Charles White.

8 B. "SupportSoft" or the "Company" means nominal defendant SupportSoft, Inc., a  
9 Delaware corporation, and each of its predecessors, successors, present and former parents,  
10 subsidiaries, divisions and related entities or affiliates as defined in SEC Rule 12b-2.

11 C. "Individual Defendants" means Radha R. Basu, Manuel Diaz, Kevin C. Eichler,  
12 Edward S. Russell, and James Thanos.

13 D. "Court" means the Superior Court of California in and for San Mateo County.

14 E. "Derivative Counsel" or "Plaintiff's Counsel" means Schubert & Reed LLP, Three  
15 Embarcadero Center, Suite 1650, San Francisco, California 94111 and Shepherd, Finkelman, Miller  
16 & Shah, LLC, 65 Main Street, Chester, Connecticut 06412.

17 F. "Defendants" means the Individual Defendants and SupportSoft.

18 G. "Settling Parties" means Plaintiff, the Individual Defendants and SupportSoft.

19 H. "Effective Date" means the first business day after the Judgment becomes final as a  
20 matter of law and is no longer subject to appellate review, either by the expiration of the time to  
21 appeal therefrom without any appeal having been taken pursuant to California Rule of Court 2(a),  
22 or, if an appeal is taken, by the final determination of the appeal by the highest court to which such  
23 an appeal may be taken.

24 I. "Judgment" means the judgment to be rendered by the Court dismissing the Action  
25 with prejudice, substantially in the form attached hereto as Exhibit B.

26 J. "Released Claims" means any and all claims, actions, causes of action, rights or  
27 liabilities, including but not limited to claims for negligence, gross negligence, breach of duty of  
28 care, breach of duty of loyalty, fraud, misrepresentation, breach of fiduciary duty, insider trading,

1 mismanagement, corporate waste, breach of contract, negligent misrepresentation, violations of any  
2 state or federal statutes, rules or regulations, and any Unknown Claims (with the exception of any  
3 claims related to stock options, since such claims have not been the subject of this case or the  
4 parties' settlement negotiations), that have been or that could have been asserted in this or any other  
5 forum or proceeding by SupportSoft, by Plaintiff derivatively on the Company's behalf, or by or on  
6 behalf of any of SupportSoft's stockholders derivatively on the Company's behalf, regardless of the  
7 nature of any such claim (except as noted above), against any of the Released Persons arising out of  
8 or factually related to (1) any facts, transactions, events, occurrences, acts, omissions or failures to  
9 act, of whatever kind or character whatsoever, irrespective of the state of mind of the actor  
10 performing or omitting to perform the same, alleged in the complaint or any pleading, amended  
11 pleading, argument, complaint, amended complaint, brief, motion, report or filing in the Action, or  
12 in this Stipulation; (2) any reports, disclosures or statements, or any failure to make a report,  
13 disclosure or statement, by SupportSoft or any Released Person relating to SupportSoft's financial  
14 results or the results of the Company's business operations during the Relevant Period; or (3) any  
15 trading in the Company's securities by any of the Released Persons during the Relevant Period.

16 K. "Released Persons" means the Defendants, the current and former officers and  
17 directors of SupportSoft, and their respective Related Persons for conduct during the Relevant  
18 Period.

19 L. "Related Persons" means the Defendants' past or present partners, joint ventures,  
20 joint venturers, agents, insurers, co-insurers, re-insurers, any entity in which the defendant has a  
21 majority or greater ownership interest, attorneys, accountants, banks or investment bankers,  
22 advisors, personal or legal representatives, predecessors, successors, assigns, spouses, heirs,  
23 associates, any members of his immediate family, or any trust of which that person is the settlor or  
24 which is for the benefit of that person and/or member(s) of that person's family or any affiliate of  
25 any such person.

26 M. "Relevant Period" means January 20, 2004 through and including October 1, 2004.  
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1 N. "Unknown Claims" means any Released Claims that SupportSoft, Plaintiff, or any of  
2 the Company's stockholders does not know or suspect to exist in his, her or its favor that, if known  
3 by him, her or it, might have affected his, her or its settlement with and release of the Released  
4 Persons. With respect to any and all Released Claims, unless specifically excepted above,  
5 SupportSoft and Plaintiff shall be deemed to have, and by operation of the Judgment shall have,  
6 expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and  
7 benefits of Section 1542 of the California Civil Code, which provides:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT  
10 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
11 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
12 DEBTOR.

13 Each of the Settling Parties, upon the Effective Date, shall be deemed to have and by  
14 operation of the Judgment shall have waived any and all provisions, rights and benefits conferred by  
15 any law of any state or territory of the United States, or principle of common law that is similar,  
16 comparable or equivalent to Section 1542 of the California Civil Code. The Settling Parties may  
17 hereafter discover facts in addition to or different from those which they now know or believe to be  
18 true with respect to the subject matter of the Released Claims, but the Settling Parties, upon the  
19 Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally  
20 and forever settled and released any and all Released Claims (unless expressly excepted above),  
21 known or unknown, suspected or unsuspected, contingent or fixed, whether or not concealed or  
22 hidden, that now exist or heretofore have existed upon any theory of law or equity now existing or  
23 coming into existence in the future, including, but not limited to, conduct that is negligent,  
24 intentional, with or without malice, or a breach of any duty, law or rule, without regard to the  
25 subsequent discovery or existence of such different or additional facts.

26 **II. Terms of Settlement.**

27 **Adoption Of Corporate Governance Changes.**

28 SupportSoft shall institute the corporate governance changes set forth in Exhibit A hereto, to  
the extent not already done, within 12 months of the Effective Date, and shall keep them in force, in

1 substantially similar form, except when otherwise required by law, for a period of five (5) years  
2 thereafter.

3 **Attorneys' Fees and Expenses.**

4 (1) In recognition of the benefits conferred on SupportSoft by the Action, the Company  
5 shall pay or cause its insurance carrier to pay Derivative Counsel's attorneys' fees and expenses in  
6 the sum of Seven Hundred and Forty-Five Thousand Dollars (\$745,000), subject to Court approval.  
7 In addition, the Company shall pay or cause its insurance carrier to pay Fifteen Thousand Dollars  
8 (\$15,000) to the Plaintiff as an incentive award, subject to Court approval. These payments shall be  
9 made within five (5) business days of Court approval.

10 (2) In the event that the Effective Date does not occur, or the Judgment is reversed or  
11 modified on appeal, Derivative Counsel respectively shall within ten (10) business days from  
12 receiving notice from Defendants' counsel or from a court of appropriate jurisdiction, return the  
13 attorneys' fees and incentive award, in an amount consistent with such reversal or modification.

14 (3) Except as expressly provided for herein, the Settling Parties shall bear their own  
15 attorneys' fees and expenses incurred in connection with the Action, except that in the event of any  
16 legal proceeding to enforce this Stipulation or any of its terms or obligations, the prevailing party or  
17 parties shall be entitled to recover their reasonable attorneys' fees and expenses from the non-  
18 prevailing parties.

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20 **SETTLEMENT HEARING**

21 Promptly after execution of the Stipulation, the Settling Parties shall submit the Stipulation  
22 to the Court and shall apply for entry of the Judgment in the form attached as Exhibit B hereto.  
23 Among other things, the Judgment shall dismiss the Action with prejudice and on the merits as to  
24 the Individual Defendants and nominal defendant SupportSoft. Notice to SupportSoft stockholders  
25 of this application shall not be required, pursuant to Corporations Code Section 800.  
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**RELEASES**

A. Upon the Effective Date, SupportSoft and Plaintiff shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged all Released Claims against the Released Persons and their Related Persons.

B. Upon the Effective Date, each of the Defendants, Released Persons and their Related Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally and forever released, relinquished and discharged Plaintiff and Derivative Counsel from all claims arising out of, relating to or in connection with their institution, prosecution, assertion or resolution of the Action or the Released Claims.

**EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

In the event the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or for any reason fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Action as if the Stipulation had not been entered into. In such event, the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or other order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated.

**MISCELLANEOUS PROVISIONS**

A. The Settling Parties: (1) acknowledge that it is their intent to consummate this agreement and (2) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the terms and conditions of the Stipulation.

B. Neither the Stipulation nor the settlement memorialized therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (1) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any

1 Released Claim or of any wrongdoing or liability of the Defendants; or (2) is or may be deemed to  
2 be or may be used as an admission of, or evidence of, any fault or omission of any of the Defendants  
3 in any civil, criminal or administrative proceeding in any court, administrative agency or other  
4 tribunal, other than in such proceedings as may be necessary to consummate or enforce the  
5 Stipulation, the settlement or the Judgment, except that Defendants may file the Stipulation and/or  
6 the Judgment in any action that may be brought against them in order to support a defense or  
7 counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement,  
8 judgment reduction or any other theory of claim preclusion or issue preclusion or similar defense or  
9 counterclaim.

10 C. The Settling Parties and their counsel, and each of them, agree, to the extent  
11 permitted by law, that all agreements made and orders entered during the course of the Action  
12 relating to the confidentiality of information shall survive the dismissal of the Action.

13 D. The exhibits to the Stipulation are material and integral parts hereof and are fully  
14 incorporated herein by this reference.

15 E. The Stipulation may be amended or modified only by a written instrument signed by  
16 or on behalf of all Settling Parties or their respective successors in interest.

17 F. The Stipulation and the exhibits attached hereto constitute the entire agreement  
18 among the parties hereto, and no representations, warranties or inducements have been made to any  
19 party concerning the Stipulation or its exhibits other than the representations, warranties and  
20 covenants contained and memorialized in such documents.

21 G. Each counsel or other person executing the Stipulation or any of its exhibits on behalf  
22 of any party hereto hereby warrants that such person has the full authority to do so.

23 H. The Stipulation may be executed in one or more counterparts. All executed  
24 counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the  
25 parties to the Stipulation shall exchange among themselves original signed counterparts and a  
26 complete set of original executed counterparts shall be filed with the Court.  
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I. The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

J. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

K. The Stipulation and exhibits thereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal substantive laws of contract of the State of California without giving effect to that State's choice of law principles.

L. The Settling Parties agree that the Stipulation was drafted jointly by their counsel.

M. The Settling Parties agree that the settlement provided for herein reflects a good faith settlement of Plaintiff's claims, reached voluntarily after consultation with experienced legal counsel.

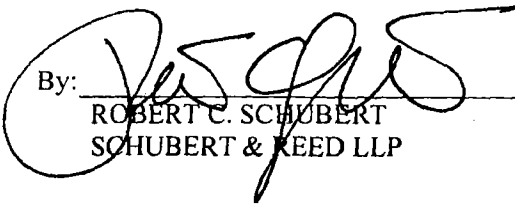
N. The Settling Parties may discuss the Settlement with third parties, including media representatives (whether or not for attribution); *provided, however*, that any statements made by any of the Settling Parties do not: (1) disparage any of the Settling Parties, their counsel, or the prosecution or defense of the claims alleged; (2) deny that, based upon the information available at the time, this Action was filed in compliance with California Code of Civil Procedure §128.7; or (3) contradict any of the statements made in this Stipulation, or in Exhibit B thereto. Notwithstanding the foregoing, any party may repeat or affirm the allegations in its pleadings and express an opinion as to the merits of those allegations.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, as of the dates set forth below.

SCHUBERT & REED LLP  
Three Embarcadero Center, Suite 1650  
San Francisco, CA 94111  
(415) 788-4220

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Dated: October 23, 2007

By:   
ROBERT C. SCHUBERT  
SCHUBERT & REED LLP

JAMES E. MILLER  
SHEPHERD, FINKELMAN, MILLER &  
SHAH, LLC

Derivative Counsel

Dated: October \_\_, 2007

By: \_\_\_\_\_  
PERI NIELSEN  
WILSON SONSINI GOODRICH &  
ROSATI

*Counsel for Defendants*

