

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)**

IN RE CBeyond, INC.)	Civil Action No. 1:08-cv-1666 (CC)	
SECURITIES LITIGATION)		
)		

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement (“Stipulation” or “Settlement”) is made and entered into by and between Genesee County Employees’ Retirement System and the Essex Regional Retirement Board (collectively, “Lead Plaintiffs”), on behalf of themselves and a putative class, and defendants Cbeyond, Inc. (“Cbeyond” or the “Company”), James F. Geiger, and J. Robert Fugate (collectively “Defendants” and, without Cbeyond, the “Individual Defendants”).

WHEREAS:

A. All words or terms used herein that are capitalized shall have the meaning ascribed to those words or terms as set forth below and in ¶ 1 hereof entitled “Certain Definitions.”

B. On May 6, 2008, a class action complaint alleging violations of the federal securities laws, *Weisberg v. Cbeyond, Inc., et al.*, No. 08-1666 was filed in the Court. On July 7, 2008, Lead Plaintiffs filed a motion for appointment as lead

plaintiffs and approval of their selection of counsel. By Order entered August 21, 2008, the Court appointed Genesee County Employees' Retirement System and the Essex Regional Retirement Board to serve as Lead Plaintiffs, and approved Lead Plaintiffs' selection of Labaton Sucharow LLP ("Labaton") to serve as Lead Counsel.

C. The initial complaint was later amended by the filing of the Consolidated Amended Complaint ("Amended Complaint") on October 24, 2008, which alleges securities fraud violations against Defendants based on allegations concerning, *inter alia*, the Company's customer retention rate ("churn rate") and financial results. The Amended Complaint alleges that Defendants' misrepresentations and omissions rendered the Company's public statements and periodic reports filed with the Securities and Exchange Commission materially false and misleading in violation of Sections 10(a)-(c) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. The Amended Complaint further alleges that, as a result of Defendants' misrepresentations and omissions, the price of Cbeyond's common stock was artificially inflated during the Class Period.

D. On December 23, 2008, Defendants moved to dismiss the Amended Complaint in its entirety. Lead Plaintiffs filed a memorandum in opposition to Defendants' motion to dismiss on February 20, 2009. The motion to dismiss was *sub judice* at the time this Settlement was reached.

E. Lead Plaintiffs, through Lead Counsel, have conducted arm's-length negotiations with counsel for the Defendants in an effort to settle the issues in dispute and to achieve the best relief possible consistent with the interests of the putative class, including participating in a mediation session with counsel for the Defendants and their insurers on March 27, 2009 before an independent and highly experienced mediator, Hon. Nicholas Politan (Ret.).

F. Through the mediated settlement negotiations, the Parties reached an agreement in principle that led to this Settlement.

G. Each of the Defendants has denied and continues to deny having committed or intended to commit any violations of law or breaches of any duty of any kind or any wrongdoing whatsoever. This Stipulation, whether or not consummated, any proceedings relating to any settlement, or any of the terms of any settlement, whether or not consummated, shall in no event be construed as, or deemed to be evidence of, an admission or concession on the part of any Defendant with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defense that the Defendants have or could have asserted. Defendants state that they are entering into this Settlement solely to eliminate the burden, expense, uncertainty and risk of further litigation.

H. The Lead Plaintiffs believe that the claims asserted in the Securities Litigation have merit and that the evidence developed to date supports the claims

asserted. However, Lead Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Securities Litigation against the Defendants through trial and appeals. Lead Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Securities Litigation, as well as the difficulties and delays inherent in such litigation. Lead Counsel also is mindful of the inherent problems of proof of and the possible defenses to the violations asserted in the Securities Litigation. Lead Plaintiffs and Lead Counsel believe that the settlement set forth in this Stipulation confers favorable monetary benefits upon the Settlement Class. Based on their evaluation, Lead Plaintiffs and Lead Counsel have determined that the settlement set forth in this Stipulation is in the best interests of the Lead Plaintiffs and the Settlement Class.

NOW THEREFORE, without any concession by Lead Plaintiffs that the Securities Litigation lacks merit, and without any concession by Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby **STIPULATED AND AGREED**, by and among the Parties to this Stipulation, through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties hereto, all Released Claims and all Released Defendants' Claims as against all Released

Parties shall be compromised, settled, released and dismissed with prejudice, and without costs, upon and subject to the following terms and conditions:

CERTAIN DEFINITIONS

1. As used in this Stipulation, the following terms shall have the meanings set forth below:

(a) “Authorized Claimant” means a Class Member who timely submits a valid Proof of Claim to the Claims Administrator.

(b) “Claims Administrator” means the firm of A.B. Data, Ltd., which has been retained by Lead Counsel, subject to Court approval, to process Proofs of Claim and administer the Settlement.

(c) “Class Distribution Order” means an order of the Court approving the Claims Administrator’s administrative determinations concerning the acceptance and rejection of the claims submitted and approving any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator and, if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants.

(d) “Class Member” means any person or entity that is a member of the Settlement Class and not excluded therefrom.

(e) “Class Period” means the period from November 1, 2007 through February 21, 2008, inclusive.

(f) “Company” means Cbeyond, Inc.

(g) “Court” means the United States District Court for the Northern District of Georgia.

(h) “Defendants’ Counsel” means the law firm of Latham & Watkins LLP.

(i) “Effective Date” means the date upon which the Settlement shall become effective, as set forth in ¶ 30 below.

(j) “Escrow Account” means the interest bearing account to be established by Lead Counsel at a federally-insured banking institution. With the sole exception of making payment into the Escrow Account as provided for in ¶ 6 below, Defendants shall have no responsibility or liability relating to the Escrow Account or the monies maintained in the Escrow Account, including, without limitation, any responsibility or liability related to any fees, taxes and tax expenses, investment decisions, maintenance, supervision and distributions of any portion of the Settlement Amount.

(k) “Escrow Agent” means Lead Counsel.

(l) “Final,” with respect to the Judgment, means the later of: (i) if there is an appeal from the Judgment, the date of final affirmance on appeal and the expiration of the time for any further judicial review whether by appeal, reconsideration or a petition for a writ of certiorari and, if certiorari is granted, the

date of final affirmance of the Judgment following review pursuant to the grant; or (ii) the expiration of the time for the filing or noticing of any appeal from the Court's Judgment, which is thirty (30) days after the Judgment is entered on the Court's docket. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to Court approval of the Plan of Allocation of the Net Settlement Fund, or to the Court's award of attorneys' fees or expenses, shall not affect the time set forth above for the Judgment to become Final.

(m) "Individual Defendants" means James F. Geiger, and J. Robert Fugate.

(n) "Judgment" means the proposed judgment to be entered approving the Settlement substantially in the form attached hereto as Exhibit B.

(o) "Lead Counsel" means the law firm of Labaton Sucharow LLP.

(p) "Lead Plaintiffs" means Genesee County Employees' Retirement System and the Essex Regional Retirement Board.

(q) "Net Settlement Fund" means the Settlement Fund less: (i) Court awarded attorneys' fees and expenses; (ii) Notice and Administration Expenses; (iii) any required Taxes; and (iv) any other fees or expenses approved by the Court, including any award to the Lead Plaintiffs of its reasonable costs and expenses (including lost wages).

(r) “Notice” means the Notice of Pendency of Class Action and Proposed Settlement, which is to be sent to members of the Settlement Class substantially in the form attached hereto as Exhibit 1 to Exhibit A hereto.

(s) “Notice and Administration Expenses” means all fees and expenses incurred in connection with: (i) the preparation and printing of the Notice; (ii) providing notice to the Settlement Class by mail, publication and other means; (iii) receiving and reviewing claims; (iv) applying the Plan of Allocation; (v) corresponding with Class Members; and (vi) fees related to the Escrow Account and investment of the Settlement Fund.

(t) “Party” or “Parties” means Defendants, the Settlement Class and Lead Plaintiffs.

(u) “Person” means an individual, corporation, general or limited partnership, association, joint stock company, joint venture, limited liability company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof and any other business or legal entity and its heirs, predecessors, successors, representatives or assigns.

(v) “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice to the Settlement Class of the pendency of the Securities Litigation and of the Settlement, which shall be substantially in the form attached hereto as Exhibit A.

(w) “Proof of Claim” means the Proof of Claim and Release form for submitting a claim, which shall be substantially in the form attached as Exhibit 2 to Exhibit A hereto.

(x) “Securities Litigation” means *In re Cbeyond, Inc. Securities Litigation*, Docket No. 08-cv-1666 (CC), pending in the United States District Court for the Northern District of Georgia, Atlanta Division, before the Honorable Clarence Cooper.

(y) “Settlement Class” means all persons and entities that purchased or acquired the common stock of Cbeyond, Inc. during the period from November 1, 2007 through February 21, 2008, inclusive, and were damaged thereby. Excluded from the Settlement Class are: Defendants; the officers and directors of the Company or its subsidiaries or affiliates; the members of the immediate families of the Individual Defendants; the legal representatives, heirs, successors or assigns of any excluded person; any entity in which any excluded person has or had a controlling interest; and any person or entity that timely and validly seeks exclusion from the Settlement Class.

(z) “Summary Notice” means the Summary Notice of Pendency of Class Action and Hearing on Proposed Settlement for publication, which shall be substantially in the form attached as Exhibit 3 to Exhibit A hereto.

(aa) “Released Claims” means all claims, rights, and causes of action (including any claims for costs but excluding claims for enforcement of the Settlement), held by the Settlement Class, whether asserted directly, derivatively, or otherwise, against any and all of the Released Defendant Parties, whether known or unknown (defined below) and whether arising under federal, state, or any other law (including, without limitation, the federal securities laws or Georgia state law), which have been, could have been, or could be asserted in the future against any of the Released Defendant Parties that relate in any way to alleged misstatements, omissions or other matters raised in the Securities Litigation. However, the release of the Released Claims shall not release, bar waive, or otherwise affect claims that have been brought or could have been brought in the shareholder derivative action captioned *In re Cbeyond, Inc., Derivative Litigation*, Docket No. 08-157216, pending in the Superior Court of Fulton County, State of Georgia, with respect to which all parties reserve their rights.

(bb) “Released Defendants’ Claims” means all claims, rights and causes of action of every nature and description, whether known or unknown (as defined below), whether arising under federal, state, or any other law, that the Defendants, or any of them, asserted, or could have asserted, against any of the Released Plaintiff Parties that arise out of or relate in any way to the commencement, prosecution,

settlement or resolution of the Securities Litigation (other than claims to enforce the Settlement).

(cc) "Released Defendant Parties" means any and all of the Defendants, and the current or former officers, directors, employees, insurers, reinsurers, attorneys, affiliates, subsidiaries, committees, managers, or fiduciaries of any Defendant, including, without limitation, Cbeyond and current or former members of its board of directors.

(dd) "Released Parties" means the Released Defendant Parties and the Released Plaintiff Parties collectively.

(ee) "Released Plaintiff Parties" means Lead Plaintiffs, Lead Counsel and their respective partners, employees, heirs, executors, administrators, trustees, successors, predecessors and assigns.

(ff) "Settlement" means the resolution of the Securities Litigation as against the Defendants in accordance with the terms and provisions of this Stipulation.

(gg) "Settlement Amount" means the total principal amount of \$2,300,000.00 in cash.

(hh) "Settlement Fund" means (i) \$2,300,000.00 in cash to be paid by or on behalf of the Defendants into the Escrow Account (as set forth in ¶ 6 below) and (ii) any earnings on any monies held in the Escrow Account.

(ii) "Settlement Hearing" means the hearing to be held by the Court to determine whether the proposed Settlement is fair, reasonable and adequate and should be approved.

(jj) "Stipulation" means this Stipulation and Agreement of Settlement.

(kk) "Taxes" means all (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned on the funds deposited in the Escrow Account; and (ii) expenses and costs incurred in connection with the operation and implementation of ¶¶ 7-9 (including, without limitation, expenses of tax attorneys and/or accountants, mailing and distribution costs, and expenses relating to filing (or failing to file) the returns described herein).

(ll) "Unknown Claims" means any and all Released Claims, which the Lead Plaintiffs in the Securities Litigation or any Class Member do not know to exist in his, her or its favor at the time of the release of the Released Defendant Parties, and any Released Defendants' Claims that any Defendant does not know to exist in his, her or its favor at the time of the release of the Released Plaintiff Parties, which if known by them might have affected their decisions with respect to the Settlement. With respect to any and all Released Claims and Released Defendants' Claims, the Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiffs and the Defendants shall expressly, and each Class Member shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights

and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Lead Plaintiffs and Defendants acknowledge, and other Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims and Released Defendants’ Claims was separately bargained for and was a key element of the Settlement.

SCOPE AND EFFECT OF SETTLEMENT

2. The obligations incurred pursuant to this Stipulation are, subject to approval by the Court and such approval becoming Final, in full and final disposition of the Securities Litigation with respect to the Released Parties and any and all Released Claims and Released Defendants’ Claims.

3. For purposes of this Settlement only, Lead Plaintiffs and Defendants agree to certification of the Securities Litigation as a class action, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), as defined herein.

4. As of the Effective Date, Lead Plaintiffs and each and every Class Member on behalf of themselves, and each of their respective heirs, executors,

trustees, administrators, predecessors, successors and assigns by operation of the Judgment, will have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined, without the necessity of posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Claims against any of the Released Defendant Parties.

5. As of the Effective Date, each of the Defendants, on behalf of themselves, and each of their respective heirs, executors, trustees, administrators, predecessors, successors and assigns by operation of the Judgment, will have fully, finally and forever waived, released, discharged and dismissed each and every one of the Released Defendants' Claims, as against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined, without the necessity of posting a bond, from commencing, instituting, prosecuting or maintaining any of the Released Defendants' Claims against any of the Released Plaintiff Parties.

THE SETTLEMENT CONSIDERATION

6. In full settlement of the claims asserted in the Securities Litigation against the Defendants and in consideration of the releases specified in ¶¶ 4 and 5, above, Defendants, or Defendants' insurance carrier on their behalf, shall pay or cause to be paid the sum of \$2,300,000.00 million in cash (the "Settlement Amount"). The Settlement Amount shall be deposited into the Escrow Account no later than fifteen

(15) business days after the date on which the Court enters an order preliminarily approving the Settlement. If any portion of the Settlement Amount is not paid into the Escrow Account within fifteen (15) business days after an order preliminarily approving the Settlement is entered by the Court, any such portion of the Settlement Amount not paid shall bear interest at the rate funds in the Escrow Account would have earned, which interest shall be paid at the time the funds are subsequently paid into the Escrow Account. The Settlement Amount together with any interest shall constitute the Settlement Fund.

USE AND TAX TREATMENT OF SETTLEMENT FUND

7. The Settlement Fund shall be used: (i) to pay any Taxes; (ii) to pay Notice and Administration Expenses; (iii) to pay any attorneys' fees and expenses awarded by the Court; (iv) to pay any costs and expenses allowed by the Private Securities Litigation Reform Act, 15 U.S.C. §78u-4, and awarded to the Lead Plaintiffs by the Court; and (v) to pay claims to Authorized Claimants.

8. The Net Settlement Fund shall be distributed to Authorized Claimants as provided in ¶¶ 13-26 hereof. The Net Settlement Fund shall remain in escrow prior to the Effective Date. All funds held in the Escrow Account shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned, pursuant to ¶ 36 of this Stipulation, and/or further order of the Court. The Escrow Account shall be invested in

instruments backed by the full faith and credit of the United States Government, or fully insured by the United States Government or an agency thereof, and the proceeds of these instruments shall be reinvested as they mature in similar instruments at the then-current market rates, provided however, that any residual cash balances and cash pending investment in United States Treasury Bills, may be invested and reinvested in a money market mutual fund comprised exclusively of investments secured by the full faith and credit of the United States. Neither Defendants nor Defendants' Counsel shall have any responsibility or liability for investment decisions.

9. After the Settlement Amount has been paid by Defendants into the Escrow Account in accordance with ¶ 6 above, the Parties agree to treat the Settlement Amount, as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1. In addition, Lead Counsel shall timely make, or cause to be made, such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such election shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause the appropriate filing to occur.

(a) For the purposes of Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.468B promulgated thereunder, the “administrator” shall be Lead Counsel or its successor, which shall timely and properly file, or cause to be filed, all informational and other tax returns necessary or advisable with respect to the interest earned on the fund deposited in the Escrow Account (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described above) shall be consistent with this paragraph and in all events shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned on the funds deposited in the Escrow Account shall be paid out of such funds as provided in subparagraph (c) hereof.

(b) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned on the funds deposited in the Escrow Account; and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants, mailing and distribution costs, and expenses relating to filing (or failing to file) the returns described in this paragraph) (collectively “Taxes”), shall be paid solely out of the Escrow Account. In all events, the Defendants shall have no liability or responsibility for the Taxes or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing

authority. In the event any Taxes and Tax Expenses are owed by any Defendant on any interest earned on the funds on deposit in the Escrow Account, such amounts shall also be paid out of the Escrow Account. Any taxes or tax expenses owed on any interest earned on the Settlement Amount prior to its transfer to the Escrow Account shall be the sole responsibility of Defendants.

(c) Taxes shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid, or caused to be paid, by Lead Counsel out of the Escrow Account without prior order from the Court, and Lead Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). The Parties agree to cooperate with Lead Counsel, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

10. This is not a claims-made settlement. As of the Effective Date, Defendants shall not have any right to the return of the Settlement Fund or any portion thereof for any reason.

ATTORNEYS' FEES AND EXPENSES

11. Lead Counsel, on behalf of all plaintiffs' counsel in the Securities Litigation, will apply to the Court for an award from the Settlement Fund of (i)

attorneys' fees and (ii) reimbursement of litigation expenses incurred in prosecuting the Securities Litigation, plus any interest on such amounts at the same rate and for the same periods as earned by the Settlement Fund ("Fee and Expense Application").

Defendants shall take no position with respect to the Fee and Expense Application unless requested to do so by the Court. Any attorneys' fees and expenses awarded by the Court shall be paid from the Settlement Fund to Lead Counsel immediately after entry of the Order awarding such attorneys' fees and expenses, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof. Lead Counsel and each such plaintiffs' counsel is obligated to refund to the Settlement Fund, within fourteen (14) business days, the amount received by each plus accrued interest at the rate earned by the Settlement Fund, if and when, as a result of any appeal and/or further proceeding on remand, or successful collateral attack, the attorneys' fees or expense award is reduced or reversed, if the award order does not become final, if the Settlement itself is voided by any Party as provided herein, or if the Settlement is later reversed or modified by any court. Lead Counsel shall determine and distribute the attorneys' fees among plaintiffs' counsel in a manner in which they believe reflects the contributions of such counsel to the prosecution and settlement of the Securities Litigation with Defendants and the benefits conferred on the Settlement Class.

12. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 31 or otherwise based on this Court's or any appellate court's ruling with respect to the Fee and Expense Application or other fee and expense award in the Securities Litigation. Defendants have no responsibility or liability for the allocation of attorneys' fees and expenses.

ADMINISTRATION EXPENSES

13. Except as otherwise provided herein, the Settlement Fund shall remain in escrow pending (i) final approval of the Settlement by the Court, (ii) the expiration of all rights of appeal of the Judgment, and (iii) the final denial of any and all appeals or objections or collateral attacks or challenges to the Settlement.

14. All reasonable Notice and Administration Expenses shall be paid from the Settlement Fund when incurred. Such fees and expenses shall include, without limitation, the actual costs of publication, printing and mailing the Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, corresponding with potential Class Members and processing the submitted claims, and the fees, if any, related to the Escrow Account and the investment of the Settlement Fund.

15. Lead Counsel will apply to the Court for a Class Distribution Order, on notice to Defendants' Counsel, approving the Claims Administrator's administrative

determinations concerning the acceptance and rejection of the claims submitted herein and approving any fees and expenses not previously paid, including the fees and expenses of the Claims Administrator, and, if the Effective Date has occurred, directing the payment of the Net Settlement Fund to Authorized Claimants.

16. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision and subject to the jurisdiction of the Court. Except as stated in ¶ 20 below, Defendants shall have no responsibility for the administration of the Settlement, and shall have no liability to the Settlement Class in connection with such administration.

DISTRIBUTION TO AUTHORIZED CLAIMANTS

17. The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss, as defined in the Plan of Allocation of Net Settlement Fund (the "Plan of Allocation") included in the Notice, or in such other plan of allocation as the Court may approve. Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Loss compared to the total Recognized Losses of all Authorized Claimants.

18. Defendants will take no position with respect to the Plan of Allocation. The Plan of Allocation is a matter separate and apart from the proposed Settlement between the Lead Plaintiffs and Defendants, and any decision by the Court concerning

the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Plan of Allocation is not a necessary term of this Stipulation and it is not a condition of this Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiffs and Lead Counsel may not cancel or terminate the Stipulation or the Settlement in accordance with ¶ 31 or otherwise based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any plan of allocation in the Securities Litigation. Defendants shall have no responsibility or liability for reviewing or challenging claims, the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

ADMINISTRATION OF THE SETTLEMENT

19. Any member of the Settlement Class who fails to timely submit a valid Proof of Claim will not be entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Securities Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

20. Lead Counsel shall be responsible for supervising the administration of the Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms, including causing

Cbeyond to provide to Lead Counsel, or the Claims Administrator, all information obtainable by reasonable efforts identifying by name and address the persons and entities who were shareholders during the Class Period, including banks, brokerage firms, institutions and other nominees and record owners, within twenty (20) days after the execution of the Stipulation. Except for any obligations arising under ¶ 36 below and the transfer records, Defendants shall have no liability, obligation or responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund or reviewing or challenging of claims of members of the Settlement Class. Lead Counsel shall be solely responsible for designating the Claims Administrator, subject to approval by the Court.

21. For purposes of determining the extent, if any, to which a Class Member shall be entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

(a) Each Class Member shall be required to submit a Proof of Claim (substantially in the form of Exhibit 2 to Exhibit A hereto), signed under penalty of perjury, and supported by such documents as are designated therein, including proof of the claimant's loss, or such other documents or proof as Lead Counsel, in its discretion, may deem acceptable;

(b) All Proofs of Claim must be submitted by the date specified unless such period is extended by order of the Court. Any Class Member who fails to submit

a Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by order of the Court, a later submitted Proof of Claim by such Class Member is approved), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Securities Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims. A Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark indicated on the envelope, provided that it is received before the motion for the Class Distribution Order is filed. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator;

(c) Each Proof of Claim shall be submitted to and reviewed by the Claims Administrator, under the supervision of Lead Counsel, who shall determine in accordance with this Stipulation the extent, if any, to which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (f) below;

(d) Proofs of Claim that do not meet the submission requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the claimant in order to afford the claimant the opportunity to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under supervision of Lead Counsel, shall notify, in a timely fashion

and in writing, all claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefore, and shall indicate in such notice that the claimant whose claim is to be rejected in whole or in part has the right to a review by the Court if such claimant so desires and if such claimant complies with the requirements of subparagraph (e) below;

(e) If any claimant who is notified by the Claims Administrator that the Claims Administrator intends to propose that his, her or its claim be rejected in whole or in part desires to contest such rejection, such claimant must, within the deadline established by the Claims Administrator, serve upon the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court; and

(f) The administrative determinations of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to Defendants' Counsel, for approval by the Court in the Class Distribution Order.

22. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that

such investigation and discovery shall be limited to the validity and amount of the claimant's claim, and any such discovery shall not be sought from the Individual Defendants. In connection with processing of the Proofs of Claim, no discovery shall be allowed on the merits of the Securities Litigation or of the Settlement.

23. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Securities Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Defendant Parties concerning the Released Claims.

24. All proceedings with respect to the administration, processing and determination of claims described by ¶¶17 through 26 of this Stipulation and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

25. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator only after the Effective Date and after: (i) all timely claims have been processed, and all claimants whose timely claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be

heard concerning such rejection or disallowance; (ii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefore has expired, unless otherwise ordered by the Court; (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by the Court, all appeals therefrom have been resolved or the time therefore has expired, unless otherwise ordered by the Court; and (iv) all Notice and Administrative Expenses and Taxes have been paid.

26. If the funds remaining in the Net Settlement Fund following *pro rata* distribution(s) to all Authorized Claimants are of an amount that is not cost effective or efficient to redistribute to the Settlement Class, then such remaining funds, after payment of any further Notice and Administration Expenses and Taxes, shall, without the need for a further court order, be contributed to an appropriate not-for-profit organization(s) designated by the Lead Plaintiffs and Lead Counsel.

TERMS OF THE PRELIMINARY APPROVAL ORDER

27. Concurrently with their application for preliminary Court approval of the Settlement contemplated by this Stipulation and promptly after execution of this Stipulation, Lead Counsel and Defendants' Counsel shall jointly apply to the Court for entry of the Preliminary Approval Order, which shall be substantially in the form annexed hereto as Exhibit A. The Preliminary Approval Order will, *inter alia*, set the

date for the Settlement Hearing and prescribe the method for giving notice of the Settlement to the Settlement Class.

28. As ordered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Proof of Claim to members of the Settlement Class at the address of each such Person as set forth in the records of Cbeyond or its transfer agent(s), or who otherwise may be identified through further reasonable effort. Lead Counsel shall cause the Claims Administrator to publish the Summary Notice of the proposed Settlement in *Investor's Business Daily* and transmit it over Business Wire, or other wire service, within fourteen (14) calendar days of the mailing of the Notice, or according to whatever other form or manner might be ordered by the Court.

TERMS OF THE JUDGMENT

29. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall jointly request that the Court enter a Judgment substantially in the form annexed hereto as Exhibit B.

EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION

30. The Effective Date of this Settlement shall be the date when all of the following shall have occurred:

(a) entry of the Preliminary Approval Order, which shall be in all material respects substantially in the form set forth in Exhibit A annexed hereto;

(b) approval by the Court of the Settlement, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and

(c) a Judgment, which shall be in all material respects substantially in the form set forth in Exhibit B annexed hereto, has been entered by the Court and has become Final or, in the event that the Court enters a judgment in form materially different than that provided above (“Alternative Judgment”) and neither of the Parties elects to terminate this Settlement, the date that such Alternative Judgment becomes Final.

31. Defendants and Lead Plaintiffs shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”), through counsel, to all other Parties hereto within thirty (30) calendar days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve this Stipulation or any material part of it; (c) the Court’s declining to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals or the Supreme Court of the United States; or (e) in the event that the Court enters an Alternative Judgment and none of the Parties hereto elects to terminate this Settlement, the date upon which such Alternative

Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court of the United States.

32. Simultaneously herewith, Defendants' Counsel and Lead Counsel are executing a Supplemental Agreement Regarding Settlement ("Supplemental Agreement"). The Supplemental Agreement sets forth certain conditions under which the Settlement may be terminated by Cbeyond if members of the Settlement Class, who would otherwise be entitled to participate as members of the Settlement Class, holding an aggregate number of shares of Cbeyond common stock exceeding a specified number of shares of Cbeyond common stock purchased during the Class Period (the "Opt-Out Threshold") timely and validly request exclusion from the Settlement. Unless otherwise directed by the Court, the Supplemental Agreement will not be filed with the Court. The Opt-Out Threshold may be disclosed to the Court for purposes of the approval of the Settlement, as may be required by the Court, but such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to maintain the Opt-Out Threshold as confidential. In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this Stipulation shall become null and void and of no further force and effect, with the exception of the provisions of ¶35 which shall continue to apply.

33. In addition to all of the rights and remedies that the Lead Plaintiffs and Lead Counsel have under the terms of this Stipulation, they shall also have the right to

terminate the Settlement in the event that Defendants do not pay, or cause to be paid, the Settlement Amount as provided in ¶ 6 above, by providing written notice of their election to terminate to all other Parties to this Stipulation and, thereafter, Defendants fail to pay the Settlement Amount within fourteen (14) calendar days of the written notice.

34. If an option to withdraw from and terminate this Stipulation and Settlement arises under ¶¶ 31-33 above, (i) neither Defendants nor the Lead Plaintiffs will be required for any reason or under any circumstance to exercise that option; and (ii) any exercise of that option shall be made in good faith, but in the sole and unfettered discretion of Defendants or the Lead Plaintiffs, as applicable.

35. Except as otherwise provided herein, in the event the Settlement is terminated or fails to become effective for any reason, then: the Settlement shall be without prejudice, and none of its terms shall be effective or enforceable except as specifically provided herein; the Parties to this Stipulation shall be deemed to have reverted to their respective litigation positions in the Securities Litigation immediately prior to the execution of the Memorandum of Understanding on June 26, 2009; and, except as otherwise expressly provided, the Parties in the Securities Litigation shall proceed in all respects as if this Stipulation and any related orders had not been entered. In such event, the fact and terms of the Memorandum of Understanding or

this Stipulation, or any aspect of the negotiations leading to this Stipulation, shall not be admissible in any trial of this Securities Litigation.

36. If the Settlement fails to become effective as defined herein or is terminated pursuant to the provisions of ¶¶ 31-33, any portion of the Settlement Amount previously paid by or on behalf of Defendants, together with any interest earned thereon, less any Taxes paid or due, less Notice and Administration Expenses actually incurred and paid or payable from the Settlement Amount shall be returned to the entity that made the payment or caused the payment to be made within fifteen (15) business days after written notification of such event.

NO ADMISSION OF WRONGDOING

37. Except as set forth in ¶ 38 below, this Stipulation, whether or not consummated, and any negotiations, proceedings or agreements relating to the Stipulation, the Settlement, and any matters arising in connection with settlement negotiations, proceedings, or agreements, shall not be offered or received against the Defendants for any purpose, and in particular:

(a) do not constitute, and shall not be offered or received against the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Defendants with respect to the truth of any fact alleged by the Lead Plaintiffs and the Settlement Class or the validity of any claim that had been or could have been asserted in the Securities Litigation or

in any litigation, including but not limited to the Released Claims, or of any liability, negligence, fault or wrongdoing of the Defendants;

(b) do not constitute, and shall not be offered or received against the Defendants as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant, or against the Lead Plaintiffs or any other members of the Settlement Class as evidence of any infirmity in the claims of the Lead Plaintiffs or the other members of the Settlement Class;

(c) do not constitute, and shall not be offered or received against the Defendants or against the Lead Plaintiffs or any other members of the Settlement Class, as evidence of a presumption, concession or admission with respect to any liability, negligence, fault, infirmity or wrongdoing, or in any way referred to for any other reason as against any of the Parties to this Stipulation, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) do not constitute, and shall not be construed against Defendants, the Lead Plaintiffs or any other members of the Settlement Class, as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and

(e) do not constitute, and shall not be construed as or received in evidence as, an admission, concession or presumption against the Lead Plaintiffs or any other members of the Settlement Class or any of them that any of their claims are without merit or infirm or that damages recoverable under the Amended Complaint, would not have exceeded the Settlement Amount.

38. Defendants may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good-faith settlement, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate the liability protection granted them under any applicable insurance policies. Any Party may file this Stipulation and/or the Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the Judgment. All Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement.

MISCELLANEOUS PROVISIONS

39. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.

40. The Parties to this Stipulation intend the Settlement of the Securities Litigation to be a final and complete resolution of all disputes asserted or which could have been asserted by the Parties with respect to the Released Claims and Released

Defendants' Claims. Accordingly, the Lead Plaintiffs and Defendants agree not to assert in any forum that the Securities Litigation was brought, prosecuted or defended in bad faith or without a reasonable basis. The Parties agree that each has complied fully with Rule 11 of the Federal Rules of Civil Procedure in connection with the maintenance, prosecution, defense and settlement of the Securities Litigation. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-length in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

41. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties hereto or their successors.

42. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

43. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and any expenses and enforcing the terms of this Stipulation.

44. The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

45. This Stipulation and its exhibits constitute the entire agreement among the Parties hereto concerning the Settlement of the Securities Litigation as against Defendants, and no representations, warranties, or inducements have been made by any party hereto concerning this Stipulation and its exhibits other than those contained and memorialized in such documents.

46. This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Stipulation shall exchange among themselves original signed counterparts. Signatures sent by facsimile or pdf shall be deemed originals for the purposes of satisfying New York or any other rules of evidence.

47. This Stipulation shall be binding when signed, but the Settlement shall be effective only on the condition that the Effective Date occurs.

48. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

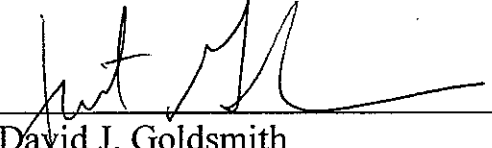
49. The construction, interpretation, operation, effect and validity of this Stipulation, and all documents necessary to effectuate it, shall be governed by the internal laws of the State of New York without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

50. This Stipulation shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that it is the result of arm's-length negotiations among the Parties, and all Parties have contributed substantially and materially to the preparation of this Stipulation.


51. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related settlement documents, warrant and represent that they have the full authority to do so, and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

52. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to promptly agree upon and execute all such other documentation as reasonably may be required to obtain final approval by the Court of the Settlement.

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, as of August 28, 2009.

LATHAM & WATKINS LLP	LABATON SUCHAROW LLP
<p>Laurie B. Smilan J. Christian Word 555 Eleventh St., NW, Suite 1000 Washington, DC 20004 Tel: (202) 637-2200 Fax: (202) 637-2201</p> <p>Michael J. Faris 233 South Wacker Drive Suite 5800 Chicago, IL 60606 - Tel: (312) 876-7700 Fax: (312) 993-9767</p> <p><i>Counsel for Defendants</i></p>	 <hr/> <p>David J. Goldsmith Jonathan Gardner 140 Broadway New York, NY 10005 Tel: (212) 907-0700 Fax: (212) 818-0477</p> <p><i>Counsel for Lead Plaintiffs and the Class</i></p>

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