

## RELEASE AND SETTLEMENT AGREEMENT

Ladonna Weaver on behalf of herself and all others similarly situated (“collectively, Plaintiff”), by and through her counsel and class counsel Khorrami, Pollard & Abir, and Defendant New Motion, Inc. dba Atrinsic (“New Motion”), by and through its counsel Manatt, Phelps & Phillips, have entered into the following Settlement Agreement, compromising all claims in the case entitled *Allen et al. v. New Motion, Inc.*, Los Angeles County Superior Court Case No. BC386596 (the “Action”), subject to Court approval. The “Date of Settlement” shall be the date that all parties execute this Settlement Agreement.

### Recitals

1. Chris Allen commenced this action on March 3, 2008. Three others subsequently joined as plaintiffs – Weaver, George Hays, and Tina Norris. The original complaint alleged two claims under the California Unfair Competition Law (“UCL”) and a common law claim for unjust enrichment. The complaint sought to certify a nationwide class of subscribers to New Motion’s Bid4Prizes Premium Service.
2. The parties engaged in extensive discovery and law and motion practice. There were numerous depositions, exchange of written discovery and document production.
3. On February 23, 2009, the Court entered an order granting summary adjudication in New Motion’s favor as to the claims of plaintiffs Allen, Norris and Hays. The Court also granted summary adjudication as to the UCL claim based on the alleged violation of Business & Professions Code § 17539.5(d) and the claim for unjust enrichment. The Court denied the motion as to Weaver’s UCL claim based on her subscription to Bid4Prizes.
4. On May 28, 2009 the Court certified a class, which was defined as:

All persons throughout the United States who, from March 3, 2004 through the present, (1) subscribed to Bid4Prizes online; (2) were billed for a Bid4Prizes subscription by their cellular telephone carrier and paid for such service, and (3) who have not voluntarily submitted a bid with Bid4Prizes. Persons who received a full refund or who subscribed directly through the Bid4Prizes web-site are NOT included.

5. On July 16, 2009, after significant briefing and argument, the Court entered an order approving the form and manner of providing class notice (the "Notice Order").

6. The parties have engaged in extensive arm's length settlement negotiations, including holding two formal mediations – on March 6, 2009 before the Hon. William Cahill (Ret.) and August 11, 2009 before the Hon. Rebecca Westerfield (Ret.).

7. Subsequent to mediation, Class counsel engaged in investigation of the following additional New Motion entities: Bid4Prizes, Altnet, Atzmi, Gatorarcade, IMU (I Match Up), Zapsters, Ringtone Channel, Mobile Sidewalk, Ringtone.com, MMP3G.com (MxFocus and MM Trivia), Slimlizard, or Q121Mobile. As part of the investigation, Class counsel confirmed that such companies used a double opt-in subscription procedure that was substantially similar to the procedures used by Bid4Prizes.

8. Based upon Class Counsel's investigation, analysis, and discovery, Plaintiff and Class Counsel have agreed to settle the claims raised in the Action under the terms and conditions memorialized in this Agreement, believing the Settlement to be fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class Members. Although Plaintiff and Class Counsel believe that the claims asserted in the Action are meritorious, they have concluded that this Settlement is in the best interests of the class after considering the benefits that the Settlement Class will obtain in relation to the risks of pursuing further litigation.

9. New Motion believes that it has meritorious defenses to the claims asserted in the Action and denies that it engaged in any unlawful actions. New Motion has decided to settle the Action to avoid the risk and uncertainty of further litigation. This Agreement does not constitute and shall not be construed as an admission by New Motion of liability or wrongdoing.

NOW, THEREFORE, in consideration of the mutual promises and respective agreements and conditions contained in this Agreement, and intending to be mutually bound thereby, the Parties hereby agree, subject to the Court's approval, to settle the Action on the following terms and conditions.

### Settlement Terms

**1. Class Certification, Class Representative, and Class Counsel.**

(a) *Class Definition.* For purposes of this Settlement Agreement, the Parties hereby stipulate to the certification of the following Settlement Class:

All persons throughout the United States who, from March 3, 2004 through the date of Preliminary Approval, subscribed to one or more of the following services or campaigns operated by Atrinsic, Inc. d/b/a New Motion, Inc.: Bid4Prizes, Altnet, Atzmi, Gatorarcade, IMU (I Match Up), Zapsters, Ringtone Channel, Mobile Sidewalk, Ringtone.com, MMP3G.com (MxFocus and MM Trivia), Slimlizard, or Q121Mobile. Those who have received a full refund of subscription fees are NOT included in the Settlement Class.

(b) *Settlement Class Members.* All people who fit within the Class Definition are "Settlement Class Members."

(c) *Class Period.* The Class Period is from March 3, 2004 through the date of Preliminary Approval of the Settlement as defined below.

(d) *Class Representative.* Subject to Court approval, Plaintiff Ladonna Weaver shall be appointed by the Court as the Class Representative of this Settlement Class.

(e) *Class Counsel.* The law firm of Khorrami, Pollard & Abir shall be appointed as Class Counsel.

2. **Payment to Settlement Class Members.** New Motion agrees to pay any Settlement Class Member who submits a valid claim form a refund of all subscription fees (up to a total of three months) paid by Settlement Class Members during the Class Period to subscribe to any service or campaign operated by Bid4Prizes, Altnet, Atzmi, Gatorarcade, IMU (I Match Up), Zapsters, Ringtone Channel, Mobile Sidewalk, Ringtone.com, MMP3G.com (MxFocus and MM Trivia), Slimlizard, or Q121Mobile. Settlement Class Members who maintained subscriptions to multiple services during the Class Period shall be entitled to a separate refund for each distinct subscription. In order to receive a refund of subscription fees, Settlement Class Members must submit a valid claim form no later than fifteen days after the date of the Final Settlement Hearing. The claim form may be submitted through the Internet, by email or by regular mail.

3. **Preliminary Approval Order.** As soon as practicable, the Parties shall file a motion for preliminary approval of the Settlement seeking entry of the Order Preliminarily Approving Class Action Settlement, Notice to Class Members, and Scheduling a Final Settlement Hearing (“Preliminary Approval Order”) substantially in the form of Exhibit A to this Agreement.

4. **Form and Manner of Notice of Settlement.** The Parties agree to the content of the Notices of Settlement of Class Action (“Notices”) substantially in the form of Exhibits B (long form), C (email) and D (text) to this Agreement. The long form and email Notices will include dates for when potential class members must choose to be excluded or file objections, if any, to the Settlement, which will be 45 days from the date the Notices are transmitted. Notices will be provided in the manner described in the Notice Order, which is attached as Exhibit E to

this Agreement. However, the parties agree that the dedicated website for the class settlement shall remain operative through the claims submission deadline and the modes of Notice by Publication as detailed in paragraph 2d of Exhibit E shall run for a period of 45 days.

**5. Order for Final Judgment.** At the Final Settlement Hearing, the Parties shall petition the Court to enter an order for final judgment that finally approves this Agreement, dismisses the claims of the Class with prejudice (“Final Order and Judgment”), substantially in the form of Exhibit F to this Agreement. The Parties agree that Final Judgment shall be entered in accordance with the Final Order and Judgment.

**6. Release.** Upon final approval of this Settlement and entry of Judgment dismissing the Action, the Plaintiff and the Settlement Class (hereafter the “Plaintiff Releasing Parties”) fully, finally, and forever settle, release, relinquish and discharge any and all Released Claims against the Released Parties. The Plaintiff Releasing Parties include the Plaintiff and the Settlement Class Members, their spouses and former spouses, as well as present, former, and heirs, executors, administrators, representatives, agents, and assigns.

The “Released Parties” are Defendant Atrinsic, Inc. d/b/a New Motion, Inc., including its parents, subsidiaries, affiliates, related entities, agents, predecessors-in-interest, aggregators, and wireless carrier business partners, along with their present or former directors, officers, owners, managers, attorneys, and employees and vendors whether in their individual or official capacities. The definition of “Released Parties” is intended to include those entities or individuals who received any portion of the subscription fees paid by Class Members.

The “Released Claims” are all claims, causes of action, demands, judgments, damages, liabilities, whether known or unknown, contingent or non-contingent, including but not limited to, any and all attorneys’ fees, costs, expenses, disbursements and interest, which the Plaintiff Releasing Parties now own or hold or have at any time owned or held, against the Released

Parties and which arise out or are in any way connected with the Plaintiff Releasing Parties' subscription to any of the following services or campaigns during the Class Period: Bid4Prizes, Altnet, Atzmi, Gatorarcade, IMU (I Match Up), Zapsters, Ringtone Channel, Mobile Sidewalk, Ringtone.com, MMP3G.com (MxFocus and MM Trivia), Slimlizard, or Q121Mobile. Released Claims specifically include, but are not limited to, any claims that arise out or are in any way connected with the allegations presented in the Action and based upon or related to violations of any statute or regulation, any claim for emotional or mental distress, interest, penalties, attorney's fees, costs, or disbursements, or any other claim for damages not specifically described above.

Without limiting the foregoing, the Released Claims specifically extend to claims that the Plaintiff Releasing Parties do not know or suspect to exist in their favor as of the date of Preliminary Approval of this Settlement. In connection with such waiver and relinquishment, Plaintiff, on behalf of herself individually and in her representative capacities, and all Class Members are deemed to acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Agreement, but that it is their intention to release fully, finally and forever all Released Claims, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts. **In addition, Plaintiff, individually and on behalf of the Plaintiff Releasing Parties specifically understand that they may later discover additional injuries or damages that are not known to them at this time. This Agreement specifically applies to such later discovered injuries or damages, and Plaintiff, individually and on behalf of the Plaintiff Release Parties specifically accept the risk that they may later discover such injuries or damages.**

The Releasing Parties hereby expressly waive and release, upon this Agreement becoming final or effective, any and all provisions, rights and benefits conferred by section 1542 of the California Civil Code which provides:

Section 1542. Certain Claims Not Affected by General Release. A general release does not extend to claims which the creditor does not now 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.

Releasing Parties also expressly waive and release any and all provisions, rights and benefits conferred on them by a statute, regular or ordinances of any other jurisdiction which is similar to Section 1542.

7. **Dismissal With Prejudice.** Upon approval of the entry of the Order of Final Judgment, Plaintiff shall dismiss the Action with prejudice, and the Parties specifically authorize their attorneys to prepare and execute any and all documents reasonably necessary to effectuate the dismissal with prejudice.

8. **Award of Attorneys' Fees and Costs.** At the Final Settlement Hearing, Class Counsel shall petition the Court in the Lawsuit to enter an order for an award of attorneys' fees and costs not to exceed \$1 million. New Motion agrees to support Class Counsel's request for fees and costs. The payment shall be made within 7 days of the Effective Date of this Agreement, as defined below.

Defendant shall not object to Class Counsel's petition for attorneys' fees and the class representative incentive award, provided the requests do not exceed the amounts set forth in this Agreement, and if the requests are consistent with this Agreement, New Motion will support the applications for Court approval.

9. **Class Representative Incentive Payment.** Subject to Court approval, New Motion will pay Weaver \$10,000 for her role as Class Representative in the Action.

**10. Administration.** New Motion shall bear the cost of administration and approval of this Settlement. Subject to approval by Class Counsel, New Motion may administer the Settlement internally or retain a third party settlement administrator to do so, however, the manner of Notice must be consistent with the Notice Order, which is attached as Exhibit E to this Agreement.

**11. Defendant's Disclosures.** New Motion agrees that the disclosures on its advertisements, including pop-ups, will comply with the Guidelines of Assurance of Voluntary Compliance with the Florida Attorney General.

**12. Effect of Court Disapproval.** In the event the Court in this Lawsuit or any other court (a) disapproves, sets aside, or modifies this Agreement, (b) declines for any reason to enter or give effect to a Preliminary Approval Order, (c) declines for any reason to enter or give effect to an Order for Final Judgment, or (d) holds that the Order for Final Judgment, or any judgment entered pursuant thereto, should in any material part be overturned or modified in any material way, then this Agreement shall become null and void, the Action shall be deemed to revert to its status as of the date and time immediately prior to the execution of this Agreement, and the Parties shall jointly move that any and all orders entered pursuant to this Agreement be vacated and shall proceed with the Lawsuit as if this Agreement had never been executed; provided, however, that in the event that the parties, within fifteen (15) days of any such action of any court, jointly elect to appeal from or otherwise seek review or reconsideration of such court action, this Agreement shall not be deemed null and void until such time as such court action becomes final after any proceedings arising directly or indirectly from the parties' appeal(s) or other attempt(s) to have such court action reversed, withdrawn, or overturned, and any and all funds paid shall be returned forthwith. In the event the Agreement is determined null and void,



the Parties shall not refer to the fact and terms of this Agreement to establish liability or otherwise support the Parties' substantive positions in the Lawsuit.

**13. Effective Date of Settlement.** The settlement contemplated by this Agreement shall be deemed effective, and the parties and members of the Settlement Class shall be definitively bound thereto, on the date (the "Effective Date") that is three (3) days after each and all of the following conditions have occurred: (a) this Agreement has been signed by Plaintiff, Defendant, Class Counsel, and Defense Counsel; (b) orders have been entered by the Court granting preliminary approval of this Agreement, and approving a form of notice, as provided in paragraphs 3 and 4, above; (c) the Court has entered an order for judgment, finally approving this Agreement, as provided in paragraph 5, above; (d) the Court has entered an order as provided in paragraph 7, above; and (e) the judgment has become final. In the event that no Settlement Class Member files a timely objection as set forth in paragraph 4, the judgment becomes "final" on the date the Court had entered an order as provided in paragraph 7 above. If at least one Settlement Class Member files a timely objection as set forth in paragraph 4, the date the judgment becomes "final" is 30 days after entry of judgment if no appeal is filed by an objector. If an appeal is taken or review is sought of the judgment, the judgment becomes "final" the day after the mandate is issued or the appeal or other petition for review is dismissed or subsequent appellate or review proceedings concluded.

**14. California Law.** This Agreement shall be interpreted in accordance with the laws of the State of California.

**15. Execution in Counterparts.** This Agreement may be executed in one or more counterparts and delivered by facsimile to counsel. All executed counterparts, including those delivered to counsel by facsimile, and each of them shall be deemed to be one and the same instrument. A facsimile copy shall be considered an original for all purposes.

**16. No Admission.** The Parties specifically understand that the promises made in accordance with this Agreement are not to be construed as an admission by any of the parties or Released Parties for any purpose and understands that the parties and the Released Parties all deny liability for the allegations made in the Lawsuit. Plaintiff further understands that this settlement has been made for business reasons. Nothing in this agreement is to be construed as New Motion agreeing that this case was appropriate for class action status or certification.

**17. Modifications Only in Writing and Authorization of Class Counsel.** This Agreement may be amended or modified only by a written instrument signed by all of the undersigned parties or their successors-in-interest; except that Plaintiff, individually and as Class Representative, expressly authorize Class Counsel to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Agreement to effectuate its terms, and also expressly authorize Class Counsel to enter into such modifications or amendments to this Agreement on behalf of the Settlement Class as Class Counsel deem appropriate. This Settlement Agreement reflects the entire agreement of Plaintiff, Settlement Class, Defendants, their Insurers, relative to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements, representations, or promises.

**18. Exhibits Incorporated by Reference.** Each and every exhibit to this Agreement is incorporated herein by this reference as though fully set forth herein.

**19. Legal Representation.** The parties to this Agreement acknowledge that they have been represented by qualified legal counsel both in connection with the Action and in connection with the negotiation, drafting, and execution of this Agreement. Accordingly, the language used in this Agreement will be deemed to be language chosen by all parties hereto to express their mutual intent, and no rule of strict construction against any party hereto will apply to any term or condition of this Agreement.

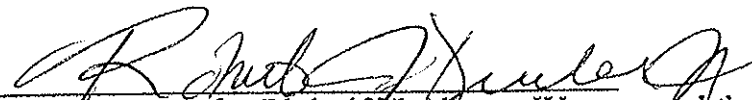
20. **Commercially Reasonable Efforts.** The parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of this Agreement, and to use commercially reasonable efforts to perform all terms of this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement this 2 day of November, 2009.

LADONNA WEAVER



KHORRAMI, POLLARD & ABIR

By   
Attorneys for Plaintiff Ladonna Weaver and the Settlement Class

ATRINSIC, INC. dba NEW MOTION, INC.

By \_\_\_\_\_

MANATT, PHELPS & PHILLIPS LLP

By \_\_\_\_\_  
Brad W. Seiling  
Attorneys for New Motion

20. **Commercially Reasonable Efforts.** The parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of this Agreement, and to use commercially reasonable efforts to perform all terms of this Agreement.

IN WITNESS WHEREOF, the parties enter into this Agreement this \_\_\_\_ day of November, 2009.

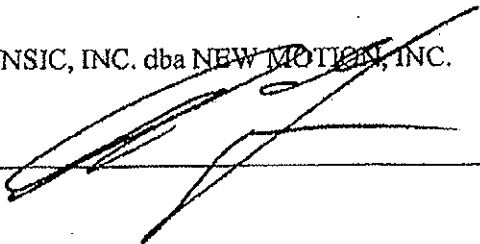
LADONNA WEAVER

\_\_\_\_\_


KHORRAMI, POLLARD & ABIR

By \_\_\_\_\_  
Attorneys for Plaintiff Ladonna Weaver and the Settlement Class

ATRINSIC, INC. dba NEW MOTION, INC.

By \_\_\_\_\_  


MANATT, PHELPS & PHILLIPS LLP

By   
Brad W. Seiling  
Attorneys for New Motion