



FILED  
ALAMEDA COUNTY

SEP - 6 2007

CLERK OF THE SUPERIOR COURT  
By \_\_\_\_\_ Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TERRY IM, on Behalf of Himself, and All  
Others Similarly Situated and on Behalf of the  
General Public,

Plaintiff,

vs.

PHOEBE MICRO, INC., and DOES 2-100,  
inclusive,

Defendants.

CASE NO.: RG04161924

~~AMENDED [PROPOSED]~~ ORDER  
(1) PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT,  
(2) CONDITIONALLY CERTIFYING A  
SETTLEMENT CLASS, (3) APPROVING  
FORM AND METHODS OF CLASS  
NOTICE, AND (4) SCHEDULING FINAL  
APPROVAL OF SETTLEMENT

Ro

1           WHEREAS, this Court has reviewed the Settlement Agreement and Release  
2 ("Agreement") made by and among Defendant Phoebe Micro, Inc., ("Phoebe Micro"), and  
3 Plaintiff Terry Im ("Im") in his individual capacity and as a representative (collectively "Class  
4 Representative") of the "Settlement Class," as defined below, in the action *Im v. Phoebe Micro*  
5 *Inc.*, Alameda Superior Court No. RG04161924 (the "Action"), together with all exhibits thereto,  
6 the record in the Action, and the arguments of counsel;

7           IT IS HEREBY ORDERED AS FOLLOWS:

8           1.       All terms and definitions used herein have the same meanings as set forth in the  
9 Agreement.

10          2.       The proposed settlement set forth in the Agreement is hereby preliminarily  
11 approved as being within the range of reasonableness such that notice thereof should be given to  
12 members of the Settlement Class (as defined in the following paragraph).

13          3.       Pursuant to California Code of Civil Procedure section 382, the following  
14 Settlement Class is provisionally certified for purposes of settlement only:

15                   All persons or entities in the United States who purchased a  
16 Covered Airlink Plus Wireless Product from January 1, 1999  
17 through June 30, 2004, who resided in the United States at the time  
18 of purchase, purchased the Covered Airlink Plus Wireless Product  
19 at a location within the United States, purchased the Wireless  
20 Product new or refurbished (*i.e.*, not second hand) from an entity  
21 that regularly sells/sold such devices or items, and did not purchase  
22 the Covered Airlink Plus Wireless Product for resale to others.

23           Inherent in the Court's provisional certification of the Settlement Class are findings that  
24 the Settlement Class is ascertainable; that its members are too numerous to practicably be  
25 joined; that the Action raises common legal and factual questions; that the plaintiff's claims are  
26 typical of the claims of the Settlement Class as a whole; that the Class Representative and  
27 Settlement Class members share a community of interest in the Action; that neither the plaintiff  
28 nor Class Counsel have interests adverse to the Settlement Class, and that Class Counsel are  
competent and experienced; that common questions predominate over questions affecting only  
individual Settlement Class members; and that this Action and this Settlement are the best, if not  
only, means for resolving the Settlement Class members' claims expeditiously and  
economically.

1           4.     Class Counsel and Class Representative are hereby appointed to represent the  
2 Settlement Class. The following attorneys are hereby appointed as Class Counsel: Jordan L.  
3 Lurie and Zev B. Zysman of the law firm, Weiss & Lurie. The following person is hereby  
4 appointed as Class Representative: Terry Im.

5           5.     This Court's certification of the Settlement Class and findings incident thereto  
6 shall be solely for settlement purposes. Certification of the Settlement Class shall be vacated  
7 and shall have no effect in the event that the Agreement is not finally approved by this Court  
8 or otherwise does not take effect. In the event the Court's approval of the Agreement or  
9 certification of the Settlement Class is disapproved, reversed, vacated or terminated, neither  
10 the Settlement Agreement nor the findings in this Order shall effect the rights of the parties to  
11 take action in support of or in opposition to class certification or to prosecute or defend this  
12 action, or this Court's ability to grant or deny certification for litigation purposes. If this  
13 provisional class certification order is vacated, the parties shall all be restored to the *status*  
14 *quo ante* as of the date preceding the date of this Order.

15           6.     The Notice of Pendency and Proposed Settlement of Class Action and Settlement  
16 Claim Information ("Class Notice"), the Summary Notice of Settlement ("Settlement Notice"),  
17 Authorized E-Mail Notice of Settlement ("E-Mail Notice"), and the Instructions and Claim  
18 Form ("Claim Form"), which are attached hereto as Exhibits 1-4, respectively, are hereby  
19 approved as to form. These documents constitute the best notice practicable under the  
20 circumstances and constitute valid, due, and sufficient notice to all members of the Settlement  
21 Class of their rights and obligations, complying fully with the requirements of California Code  
22 of Civil Procedure section 382, the California and United States Constitutions, and any other  
23 applicable law. The Court further finds that the method of Class Notice, E-Mail Notice and  
24 Summary Notice proposed in the Agreement constitutes the best notice practicable under the  
25 circumstances and constitutes valid, due, and sufficient notice to all members of the Settlement  
26 Class of their rights and obligations, complying fully with the requirements of California Code  
27 of Civil Procedure section 382, the California and United States Constitutions, and any other  
28 applicable law.

1           7.     Phoebe Micro shall post a copy of the Summary Notice on 8 ½ inch x 11 inch  
2 signs (or other size required by the Court) at all Fry's Electronics retail outlets nationwide (Fry's  
3 Electronics is the exclusive reseller of Phoebe Micro's wireless products). The 8 ½ inch x 11  
4 inch signs will be conspicuously posted at the Department Supervisor in Charge ("DSC")  
5 podium in the Components Department where the wireless products are sold which is a high-  
6 profile location within the store. The Summary Notice posting shall start ~~within thirty (30) days~~  
7 ~~after the Court issues a Preliminary Approval Order.~~ <sup>on or before</sup> ~~September 28, 2007.~~ The Class Notice will remain in place  
8 through the Effective Date.

9           8.     Commencing ~~within thirty (30) days after the Court issues the Preliminary~~  
10 ~~Approval Order~~ <sup>on September 28, 2007,</sup> and until forty-five days after the duration of the Redemption Period, Phoebe  
11 Micro shall maintain links from its website, www.airlinkplus.com, in the following places:  
12 "Home" page, "Products" page, "Downloads" page, "Support" page, and "Contact" page, from  
13 which Settlement Class Members can click to access the Class Notice. These links will state  
14 "Settlement Claim Information."

15           9.     In addition, Phoebe Micro will send the E-Mail Notice ~~within thirty (30) days~~  
16 ~~after the Court issues the Preliminary Approval Order~~ <sup>by September 28, 2007</sup> to all consumers of Phoebe Micro's  
17 wireless products whose e-mail addresses Phoebe Micro has in its database and who did not  
18 indicate that he or she did not wish to receive any communications from Phoebe Micro. This e-  
19 mail will provide a link to the website containing the Class Notice.

20           10.    ~~Within thirty (30) days after the Effective Date and no later than the~~  
21 ~~commencement of the Redemption Period,~~ <sup>Starting on September 28, 2007</sup> the Official Court Notice Regarding Obtaining  
22 Settlement Benefit (the "Settlement Benefit Notice"), substantially in the form attached hereto  
23 as Exhibit 3, will be available via the same links on Phoebe Micro's website as the Class Notice.  
24 In addition, the Settlement Benefit Notice will be posted at all Fry's Electronics retail outlets  
25 nationwide on 8 ½ inch x 11 inch signs at the DSC podium in the Components Department  
26 where the wireless products are sold. The signs will be continuously posted throughout the  
27 Redemption Period and forty-five (45) days thereafter at the DSC podium in the Components  
28 Department where the wireless products are sold.

On or before September 28, 2007

1 11. ~~In addition, within thirty (30) days after the Effective Date and no later than the~~  
2 ~~commencement of the Redemption Period~~, Phoebe Micro will send an e-mail to all consumers  
3 of Phoebe Micro's wireless products whose e-mail addresses Phoebe Micro has in its database  
4 and who did not indicate that he or she did not wish to receive any communications from  
5 Phoebe Micro. This e-mail will provide a link to the website containing the Settlement Benefit  
6 Notice.

7 12. Any member of the Settlement Class who does not, in connection with the Class  
8 Notice, file a valid and timely request for exclusion will be bound by the Judgment and Order of  
9 Dismissal dismissing the Action on the merits and with prejudice.

10 13. A hearing (the "Final Hearing") shall be held by the Court on December 3, 2007,  
11 at 3 p.m., to consider and determine whether the requirements for certification of the  
12 Settlement Class have been met and whether the proposed settlement of the Action on the terms  
13 set forth in the Agreement should be approved as fair, reasonable, adequate and in the best  
14 interests of the Settlement Class members; whether Class Counsel's fee and expense application  
15 should be approved; whether the payment of the incentive award should be approved; and  
16 whether the Final Judgment approving the settlement and dismissing the Action on the merits  
17 and with prejudice against the Class Representative and all Settlement Class members should be  
18 entered.

19 14. The Final Hearing may, from time to time and without further notice to the  
20 Settlement Class (except those who have filed timely and valid objections), be continued or  
21 adjourned by Order of the Court.

22 15. Any Settlement Class Member who seeks to be excluded from the Settlement  
23 Class must send a request by letter or postcard by U.S. mail, postmarked on or before

24 Nov 7, 2007, to:

25  
26 Weiss & Lurie  
27 Jordan L. Lurie  
28 Zev B. Zysman  
10940 Wilshire Blvd., 23<sup>rd</sup> Floor  
Los Angeles, CA 90024  
Attorneys for Settlement Class

~~Law Offices of Nena W. Wong  
Nena W. Wong  
6080 Center Drive, Suite 600  
Los Angeles, CA 90045  
Attorneys for Phoebe Micro, Inc.~~

1           16.     Objections by any Settlement Class member to: (A) the certification of the  
2 Settlement Class and the proposed settlement contained in the Agreement and described in the  
3 Class Notice, E-Mail Notice and Summary Notice; (B) the payment of fees and expenses to  
4 Class Counsel; (c) the payment of the incentive award; and/or (d) entry of the Final Judgment,  
5 shall be heard and any papers submitted in support of said objections shall be considered by the  
6 Court at the Final Hearing only if, on or before Nov 7, 2007, such objector files with  
7 the Court a notice of his, her or its objections, states the basis for such objections, indicates that  
8 he, she or it is a member of the Settlement Class, and serves copies of the foregoing and all  
9 other papers in support of such objections on counsel identified in paragraph 15 above on or  
10 before Nov 7, 2007.

11           17.     No later than Nov 16, 2007, the parties shall file all papers in support of  
12 the application for final approval of the settlement, ~~the application for payment of attorneys' fees~~  
13 ~~and expenses~~, and/or any papers in response to any valid and timely objections with the Court,  
14 and shall serve copies of such papers upon each other and upon any objectors who have  
15 complied with the provisions of paragraph 16 of this Order.

16           18.     Counsel for the parties are hereby authorized to utilize all reasonable procedures  
17 in connection with the administration of the settlement which are not materially inconsistent  
18 with either this Order or the terms of the Agreement.

19           IT IS SO ORDERED.

20           Dated: Sept. 6, 2007

21 

22           Honorable Bonnie Sabraw  
23           Judge of the Superior Court of California,  
24           County of Alameda

24           16.5. No later than November 16, 2007, Plaintiffs  
25           must file their motion for costs and for attorneys'  
26           fees. Copies must be served on any objectors.  
27  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1

Alameda Superior Court -- Class Action Settlement Notice

**If you purchased a wireless product from Phoebe Micro, you could get a rebate from a class action settlement.**

A California Superior Court authorized this notice. This is not a solicitation from a lawyer.

**Settlement Terms**

- **15% Rebate:** Each member of the Settlement Class who timely submits a valid Proof of Purchase as discussed below, is eligible to receive a 15% rebate on the purchase of a new Airlink 101 Wireless Product.
- **Exclusions:** The 15% rebate does not apply toward the purchase of an Airlink Plus Wireless Camera.
- **Other Rebates:** The rebate will be applied in addition to and before any other valid rebates, discounts or other promotions that may otherwise be offered on the product to be purchased.

**Qualification**

To qualify, you

- Must have previously purchased an Airlink Plus Wireless Product between January 1, 1999 through June 30, 2004. See below for qualified list of Airlink Plus Wireless products.
- Purchase a new eligible Airlink 101 Wireless product from any of the Fry's Electronic retail stores nationwide or from Fry's Electronics' on-line store, [www.outpost.com](http://www.outpost.com).
- Complete a Rebate Claim Form under penalty of perjury.

**Legal Rights Affected**

Your legal rights are affected whether you act or don't act. Read this notice carefully.

<b>Your Legal Rights and Options in this Settlement</b>	
<b>Submit a Claim Form</b>	The only way to get a payment.
<b>Exclude Yourself</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Phoebe Micro, about the legal claims in this case.
<b>Object</b>	Write to the Court about why you don't like the settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the settlement.
<b>Do Nothing.</b>	Purchase a covered Airlink 101 Wireless product and get a rebate.

## Alameda Superior Court -- Class Action Settlement Notice

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Rebates will be allowed for covered products if the Court approves the settlement and after appeals are resolved. Please be patient.

### WHAT THIS NOTICE CONTAINS

#### BASIC INFORMATION

1. Why am I being informed about this lawsuit?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

#### WHO IS IN THE SETTLEMENT

5. How do I know if I am part of the settlement?
6. Which Phoebe Micro products are included?
7. Which Phoebe Micro products are excluded?

#### THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?
9. What can I get from the settlement?

#### HOW TO GET A REBATE – SUBMITTING A CLAIM FORM

10. How can I get a rebate?
11. When would I get a rebate?
12. What am I getting up to get a rebate or stay in the Class?

#### EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How do I get out of the settlement?
14. If I don't exclude myself, can I sue Phoebe Micro for the same thing later?
15. If I excluded myself, can I get money from this settlement?

#### THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?
17. How will the lawyers be paid?

#### OBJECTING TO THE SETTLEMENT

18. How do I tell the Court that I don't like the settlement?
19. What's the difference between objecting and excluding?

#### THE COURT'S FAIRNESS HEARING

20. When and where will the Court decide whether to approve the settlement?
21. Do I have to come to the hearing?
22. May I speak at the hearing?

Alameda Superior Court -- Class Action Settlement Notice

**IF YOU DO NOTHING**

23. What happens if I do nothing at all?

**GETTING MORE INFORMATION**

24. Are there more details about the settlement?

25. How do I get more information?

**BASIC INFORMATION**

**1. Why am I being informed about this lawsuit?**

The Court ordered this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves the settlement and after objections and appeals are resolved, you may be eligible to receive a rebate.

This notice explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the Alameda Superior Court, and the case is known as *Im v. Phoebe Micro*, Case No. RG0416192. The people who sued are called Plaintiffs, and the company they sued, Phoebe Micro, is called the Defendant.

**2. What is this lawsuit about?**

The lawsuit claimed that Phoebe Micro's advertising of certain Phoebe Micro Wireless Products is false and misleading. Phoebe Micro has denied and continues to deny these allegations.

**3. Why is this a class action?**

In a class action, one or more people, called Class Representatives (in this case Terry Im), sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Superior Court Judge Bonnie Sabraw is in charge of this case.

**4. Why is there a settlement?**

The Court did not decide in favor of Plaintiff or Defendant. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representative and the attorneys think the settlement is best for everyone who was injured.

## WHO IS IN THE SETTLEMENT

To see if you will get a rebate from this settlement, you first have to decide if you are a Class Member.

### 5. How do I know if I am part of the settlement?

You are a member of the Settlement Class if (1) you purchased a Covered Phoebe Micro Wireless Product at any time from January 1, 1999 through June 30, 2004 (see list below), (2) you resided in the United States at the time of the purchase, (3) you purchased the Covered Phoebe Micro Wireless Product new or refurbished (i.e., not second hand) from an entity that regularly sells/sold such devices or items, and (4) you did not purchase the Covered Phoebe Micro Wireless Product for resale to others.

The list of covered Phoebe Micro products are:

<u>Model</u>	<u>Description</u>
AWLH1201	Wireless 802.11b PCI Adapter
WLH3010	Wireless 802.11g PCI Adapter
AWLC3025	802.11g Cardbus Adapter
AWLH3025	802.11g PCI Adapter
WLC010	802.11b PCMCIA Adapter
AWLC011	802.11b Cardbus Adapter
WLC3010	802.11g Cardbus Adapter
RT210W	802.11g Wireless Router
WLL013	802.11b USB Adapter
RTW026	802.11b Wireless Router
AWLL017	802.11b Mini USB Adapter
AR315W	802.11g Wireless Router
ARW027	802.11b Wireless Router
APSUSB201W	802.11g Wireless Printer Server
RT211W	802.11g Access Point

### 6. Which Phoebe Micro products are included?

Products subject to the rebate are any Airlink 101 wireless product, except wireless internet cameras.

### 7. Which Phoebe Micro products are excluded?

All Phoebe Micro Internet Wireless Cameras are excluded from the rebate program.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 8. What does the settlement provide?

If the Court approves the settlement, each member of the Settlement Class who submits a valid proof of purchase by \_\_\_\_\_, 2007 for a Covered Phoebe Micro Wireless Product is eligible to purchase a new Phoebe Micro Airlink 101 wireless product from Fry's Electronics nationwide retail stores, or from Fry's Electronics online store at [www.outpost.com](http://www.outpost.com) for a 15% rebate. To be eligible, you must visit the [www.airlinkplus.com](http://www.airlinkplus.com) Website, and follow the instructions for making a claim. If the claim is timely and valid, includes a copy of the dated purchase receipt or invoice for the new Airlink 101 Wireless product, a bar code cut out from the box for the new product, and if the claim is sent within 45 days of the date of purchase, you will receive a rebate check within 10 weeks after receipt of a qualifying submission. See the Notice on the [www.airlinkplus.com](http://www.airlinkplus.com) Website via links which state "Settlement Claim Information" for information about other terms of the Settlement (also on file with the Court for your review), such as the Claim and Redemption Periods, changes to product packaging and advertising, and attorneys' fees and costs.

### 9. What can I get from the settlement?

If you previously purchased a covered wireless product as identified in Section 5 above, and are willing to claim so under penalty of perjury, you can get a 15% rebate for the purchase of any Phoebe Micro Airlink 101 brand wireless product. Again, wireless internet cameras are excluded from the settlement and rebate.

## HOW TO GET A REBATE – SUBMITTING A CLAIM FORM

### 10. How can I get a rebate?

To be eligible, you must visit the [www.airplus.com](http://www.airplus.com) Website, and follow the instructions for making a claim. If the claim is timely and valid, includes a copy of the dated purchase receipt or invoice for the new Airlink 101 Wireless product, a bar code cut out from the box for the new product, and if the claim is sent within 45 days of the date of purchase, you will receive a rebate check within 10 weeks after receipt of a qualifying submission.

### 11. When would I get a rebate?

The Court will hold a hearing on \_\_\_\_\_ to decide whether to approve the settlement. If the Court approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. If the settlement is approved and all appeals resolved, you can then submit a claim form. You will get a rebate within 10 weeks from the date you submitted a qualifying claim.

**12. What am I giving up to get a rebate or stay in the Class?**

Unless you exclude yourself, you are staying in the Class, and that means that you can't sue, continue to sue, or be part of any other lawsuit against Phoebe Micro about the legal issues *in this* case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the claim form, you will agree to a "Release of Claims," attached to the claim form, which describes exactly the legal claims that you give up if you get settlement benefits.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you don't want a rebate from this settlement, but you want to keep the right to sue or continue to sue Phoebe Micro, on your own, about the legal issues in this case, then you must take steps to get out. This is called excluding yourself – or is sometimes referred to as opting out of the Settlement Class.

**13. How do I get out of the settlement?**

If you fit within the definition of the Settlement Class and you agree with the Settlement, you need do nothing at all to indicate your consent. **You will be a member of the Settlement Class and will be deemed to have agreed to the terms of the Settlement, including the terms of the waiver and release of claims.** See the detailed Notice on the [www.airlinkplus.com](http://www.airlinkplus.com) Website for further information. Any requests for exclusion from the settlement must be sent by mail to Weiss & Lurie, Jordan L. Lurie, 10940 Wilshire Blvd., 23<sup>rd</sup> Floor, Los Angeles, CA 90024, and **postmarked no later than \_\_\_\_\_, 2007**. The procedures, rights, and effects of requesting an exclusion are explained in the detailed Notice on the [www.airlinkplus.com](http://www.airlinkplus.com) Website. Any objections to the settlement must be in writing and mailed or hand-delivered to the Clerk of the Court, California Superior Court for Alameda County, Rene C. Davidson, Alameda County Courthouse, Room 100, 1225 Fallon Street, Oakland, CA 94612, must identify the case of *Im v. Phoebe Micro*, Case No. RG0416192, and **must be received by the Court no later than \_\_\_\_\_, 2007**.

You can't exclude yourself on the phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Phoebe Micro in the future.

**14. If I don't exclude myself, can I sue Phoebe Micro for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue Phoebe Micro for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately.

## Alameda Superior Court – Class Action Settlement Notice

You must exclude yourself from *this* Class to continue your own lawsuit. Remember, the exclusion deadline is \_\_\_\_\_, 2007.

### 15. If I excluded myself, can I get money from this settlement?

No. If you exclude yourself, do not send in a claim form to ask for any rebate. But, you may sue, continue to sue, or be part of a different lawsuit against Phoebe Micro.

## THE LAWYERS REPRESENTING YOU

### 16. Do I have a lawyer in this case?

The Court asked the law firm of Weiss & Lurie, Jordan L. Lurie and Zev Zysman, 10940 Wilshire Blvd., 23<sup>rd</sup> Floor, Los Angeles, CA 90024, to represent you and other Class members. This law firm is known as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 17. How will the lawyers be paid?

Class Counsel will ask the Court for attorneys' fees and expenses up to \$200,000, and a payment of \$1,500 to the Class Representative, Terry Im. The Court may award less than these amounts. Phoebe Micro will separately pay the fees and expenses that the Court awards. Phoebe Micro has agreed not to oppose these fees and expenses, as approved by the Court. Phoebe Micro will also separately pay the costs to administer the settlement.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

### 18. How do I tell the Court that I don't like the settlement?

If you're a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Im v. Phoebe Micro*, Case No. RG0416192. Be sure to include our name, address, telephone number, your signature, and the reasons you object to the settlement. Mail the objections to the following two different places postmarked no later than \_\_\_\_\_, 2007.

Weiss & Lurie, Zev Zysman, 10940 Wilshire Blvd., 23<sup>rd</sup> Floor, Los Angeles, CA 90024, and postmarked no later than \_\_\_\_\_, 2007.

## Alameda Superior Court -- Class Action Settlement Notice

Clerk of the Court, Superior Court, County of Alameda, Rene C. Davidson, Alameda County Courthouse, Room 100, 1225 Fallon Street, Oakland, CA 94612, and must be received by the Court no later than \_\_\_\_\_, 2007.

### 19. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you excluded yourself, you have no basis to object because the case no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may speak, but you don't have to.

### 20. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at \_\_\_\_\_, at \_\_\_\_\_. At this hearing the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Sabraw will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

### 21. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Sabraw may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

### 22. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Im v. Phoebe Micro*". Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than \_\_\_\_\_, and be sent to the Clerk of the Court and Class Counsel, at the two addresses on page 7, in question 18. You cannot speak at the hearing if you excluded yourself.

## IF YOU DO NOTHING

### 23. What happens if I do nothing at all?

If you do nothing, you'll get no rebates from this settlement. But, unless you exclude yourself, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Phoebe Micro about the legal issues in this case, ever again.

## GETTING MORE INFORMATION

### 24. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. The Settlement Agreement can be reviewed by visiting [www.airlinkplus.com](http://www.airlinkplus.com) and clicking on links that state "Settlement Claim Information".

### 25. How do I get more information?

You can get more information by contacting Weiss & Lurie, Attn: Jordan L. Lurie, 10940 Wilshire Blvd., 23<sup>rd</sup> Floor, Los Angeles, CA 90024, (310) 208-2800 or (800) 437-7918, or by visiting [www.airlinkplus.com](http://www.airlinkplus.com), where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for a payment.

2

**Im v. Phoebe Micro, Alameda Superior Court Case No. RG0416192  
Summary Notice of Class Action Settlement**

**If you purchased a wireless product from Phoebe Micro,  
you could get a rebate from a class action settlement.**

A California Superior Court authorized this notice. This is not a solicitation from a lawyer.

**Settlement Terms**

- **15% Rebate:** Each member of the Settlement Class who timely submits a valid Proof of Purchase as discussed below, is eligible to receive a 15% rebate on the purchase of a new Airlink 101 Wireless Product.
- **Exclusions:** The 15% rebate does not apply toward the purchase of an Airlink Plus Wireless Internet Camera.
- **Other Rebates:** The rebate will be applied in addition to and before any other valid rebates, discounts or other promotions that may otherwise be offered on the product to be purchased.

**Qualification**

To qualify, you

- Must have previously purchased an Airlink Plus Wireless Product between January 1, 1999 through June 30, 2004. See footnote below for qualified list of Airlink Plus Wireless products.<sup>1</sup>
- Purchase a new eligible Airlink 101 Wireless product from any of the Fry's Electronic retail stores nationwide or from Fry's Electronics' on-line store, [www.outpost.com](http://www.outpost.com), during the Redemption Period which will commence 30 days after the Settlement becomes final in the Courts and terminates 12 months thereafter.
- Complete a Rebate Claim Form under penalty of perjury and provide a copy of the dated purchase receipt or invoice for the new product along with a bar code cut-out from the box for the new product within forty-five days of the date of purchase.

**Legal Rights Affected**

Your legal rights are affected whether you act or don't act. Read this notice carefully.

<b>Your Legal Rights and Options in this Settlement</b>	
<b>Submit a Claim Form</b>	The only way to get a payment.
<b>Exclude Yourself</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Phoebe Micro, about the legal claims in this case.
<b>Object</b>	Write to the Court about why you don't like the settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the settlement.
<b>Do Nothing</b>	Purchase a covered Airlink 101 Wireless product and get a rebate. Give up rights.

- The Court in charge of this case still has to decide whether to approve the settlement. Rebates will be allowed for covered products if the Court approves the settlement and after appeals are resolved. Please be patient.
- Any requests for exclusion from the Settlement must be sent by mail to Class Counsel, Weiss & Lurie, Jordan L. Lurie, 10940 Wilshire Blvd., Los Angeles, CA 90024, (T) (800) 437-7918 or (310) 208-2800, and postmarked no later than \_\_\_\_\_, 2007.
- Any objections to the Settlement must be in writing and mailed or hand-delivered to the Clerk of the Court, California Superior Court for Alameda County, Rene C. Davison, Alameda County Courthouse, Room 100, 1225 Fallon Street, Oakland, CA 94612, must identify the case as *Im v. Phoebe Micro, Inc.*, Case No. RG0416192, and must be received by the Court no later than \_\_\_\_\_, 2007. You must also mail copies of your objections to the class counsel listed above, postmarked no later than \_\_\_\_\_, 2007.

Additional details about this Class Action Settlement including your rights, options and applicable deadlines may be found by visiting [www.airlinkplus.com](http://www.airlinkplus.com) via links which state "Settlement Claim Information". Also, you may obtain more information by contacting Class Counsel at (800) 437-7918 or (310) 208-2800.

<sup>1</sup> The list of covered Phoebe Micro products are: Wireless 802.11b PCI Adapter (AWLH1201); Wireless 802.11g PCI Adapter (WLH3010); 802.11g Cardbus Adapter (AWLC3025); 802.11g PCI Adapter (AWLH3025); 802.11b PCMCIA Adapter (WLC010); 802.11b Cardbus Adapter (AWLC011); 802.11g Cardbus Adapter (WLC3010); 802.11g Wireless Router (RT210W); 802.11b USB Adapter (WLL013); 802.11b Wireless Router (RTW026); 802.11b Mini USB Adapter (AWLL017); 802.11g Wireless Router (AR315W); 802.11b Wireless Router (ARW027); 802.11g Wireless Printer Server (APSUSB201W); 802.11g Access Point (RT211W).

**QUESTIONS? PLEASE VISIT [WWW.AIRLINKPLUS.COM](http://WWW.AIRLINKPLUS.COM)**

RT210W	802.11g Wireless Router
WLL013	802.11b USB Adapter
RTW026	802.11b Wireless Router
AWLL017	802.11b Mini USB Adapter
AR315W	802.11g Wireless Router
ARW027	802.11b Wireless Router
APSUSB201W	802.11g Wireless Printer Server
RT211W	802.11g Access Point

- Purchase a new eligible Airlink 101 Wireless product from any of the Fry's Electronic retail stores nationwide or from Fry's Electronics' on-line store, [www.outpost.com](http://www.outpost.com).
- Complete a Rebate Claim Form under penalty of perjury and provide supporting documentation.

#### Legal Rights Affected

Your legal rights are affected whether you act or don't act. Read this notice carefully.

<b>Your Legal Rights and Options in this Settlement</b>	
<b>Submit a Claim Form</b>	The only way to get a payment.
<b>Exclude Yourself</b>	Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Phoebe Micro, about the legal claims in this case.
<b>Object</b>	Write to the Court about why you don't like the settlement.
<b>Go to a Hearing</b>	Ask to speak in Court about the fairness of the settlement.
<b>Do Nothing.</b>	Purchase a covered Airlink 101 Wireless product and get a rebate.

- These rights and options – and the deadlines to exercise them – are explained in this notice and in greater detail at [www.airlinkplus.com](http://www.airlinkplus.com).
- The Court in charge of this case still has to decide whether to approve the settlement. Rebates will be allowed for covered products if the Court approves the settlement and after appeals are resolved. Please be patient.

Additional details about this Class Action Settlement may be found by visiting [www.airlinkplus.com](http://www.airlinkplus.com).

Again, thank you for being a loyal customer. If you have any questions, please do not hesitate to contact us at 408-849-2852. You can also write to us at:

Attn: Rebate Department  
 Phoebe Micro  
 47606 Kato Road  
 Fremont, CA 94538

Best,

Phoebe Micro Customer Service Department

3

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

TERRY IM, on Behalf of Himself, and All  
Others Similarly Situated and on Behalf of the  
General Public,

Plaintiff,

vs.

PHOEBE MICRO, INC., and DOES 2-100,  
inclusive,

Defendants.

---

CASE NO.: RG04161924

CLASS ACTION

**PROOF OF CLAIM FORM**

**INSTRUCTIONS AND CLAIM FORM**  
**INSTRUCTIONS FOR MAKING A CLAIM**

**YOU MUST READ THESE INSTRUCTIONS CAREFULLY. IF YOU  
DO NOT FOLLOW THESE INSTRUCTIONS, YOU MAY LOSE CERTAIN  
BENEFITS TO WHICH YOU MIGHT OTHERWISE BE ENTITLED.**

To receive any settlement benefits, you must fill out and mail the attached Claim Form and Release ("Claim Form") directly to Phoebe Micro, Inc. ("Phoebe Micro"). You will need to provide a copy of the dated purchase receipt or invoice for the new Phoebe Micro Wireless Product (hereinafter referred to as "Airlink 101 Wireless Product") and original bar code cut out from the box for the new product purchased. You must also declare under penalty of perjury that you have purchased a Covered Airlink Plus Wireless Product (as defined herein) between January 1, 1999 through June 30, 2004. The mailed Claim Form must be postmarked within 45 days from the date of the new Airlink 101 Wireless Product purchase. If you fail to return a valid Claim Form and supporting materials within 45 days from the date of the new purchase, your claim will be rejected and you will lose all rights to the settlement benefits. Unless you request exclusion from the class as explained in the Class Notice, a copy of which is located on this Website, you will be bound by the Settlement Agreement and Release and the Final Judgment even if you do not return the Claim Form. If you have any questions while completing the Claim Form, please contact Phoebe Micro Customer Service at 408-849-2852.

**I. INSTRUCTIONS FOR MAKING CLAIM**

**Who Is Eligible:** You may be eligible to receive a 15% rebate on the purchase of a new Airlink 101 Wireless Product if: (1) you purchased a Covered Airlink Plus Wireless Product at any time from January 1, 1999 through June 30, 2004, (2) you resided in the United States at the time of the purchase, (3) you purchased the Covered Airlink Plus Wireless Product at a location within the United States, (4) you purchased the Covered Airlink Plus Wireless Product new or refurbished (*i.e.*, not second hand) from an entity that regularly sells/sold such devices or items, and (5) you did not purchase the Covered Airlink Plus Wireless Product for resale to others.

You may only be eligible for a 15% rebate on the purchase of a new Airlink 101 Wireless Product from any of the Fry's Electronics retail stores nationwide or from Fry's Electronics' on-line store, <[www.outpost.com](http://www.outpost.com)>, if you have (1) a copy of the dated purchase receipt or invoice for the new Airlink 101 Wireless Product and (2) the Original Bar Code cut out

from the box for the new Airlink 101 Wireless Product. Please note that the 15% rebate does not apply toward the purchase of a new Airlink 101 Wireless Camera.

**What Is A Covered Airlink Plus Wireless Product:** A Covered Airlink Plus Wireless Product is any one of the Phoebe Micro wireless products listed in Attachment A located on this Website.

**What You Need To Do To Receive A Rebate Certificate:** You must download, print out and complete the Claim Form, a copy of which is located on this Website, and mail it, along with a copy of the dated purchase receipt or invoice for the new Airlink 101 Wireless Product and Original Bar Code cut out from the box for the new product purchased directly to Phoebe Micro. The mailed Claim Form and supporting materials must be postmarked within 45 days from the date of the new Airlink 101 Wireless Product purchase. (The address to which the Claim Form and supporting materials must be sent is **Attn: Rebate Department, Phoebe Micro, 47606 Kato Road, Fremont, CA 94538.**) This Website contains instructions for locating the Original Bar Code cut out for the new Airlink 101 Wireless Product; please see the subheading "Locating an Original Bar Code.")

**IF YOU PURCHASED MORE THAN ONE COVERED AIRLINK PLUS WIRELESS PRODUCT, YOU MUST COMPLETE AND SUBMIT A SEPARATE CLAIM FORM FOR EACH COVERED AIRLINK PLUS WIRELESS PRODUCT PURCHASED**

## **II. INCOMPLETE, FRAUDULENT OR DEFECTIVE CLAIM FORMS**

Remember, to be valid, a Claim Form must be completely and accurately filled out and must include ALL requested information and supporting materials. **You may not submit a Claim Form for the same product more than once.** Incomplete, fraudulent or otherwise defective Claim Forms will be rejected.

## **III. DISPUTED CLAIMS**

In the event that Phoebe Micro rejects any claim for a rebate based upon the timing of the submission of the Claim Form, or the insufficiency of the information in the Claim Form, Phoebe Micro will notify you of the rejection, and advise you that you may challenge the rejection by contacting Phoebe Micro within 21 days of the rejection, and informing

Phoebe Micro of the basis for the challenge. Phoebe Micro will attempt to resolve the dispute in good faith with you within 30 days of receipt of the challenge. If the dispute remains, you will be notified that you have 14 days to contact Class Counsel to appeal Phoebe Micro's rejection of the claim. If Class Counsel believes the rejection of the claim was appropriate, Class Counsel will so notify you and Phoebe Micro's counsel within 14 days of being contacted by you, and the appeal will be rejected and concluded. If Class Counsel disputes the rejection, Class Counsel will so notify Phoebe Micro's counsel within 14 days of receipt of the appeal, and the Parties will attempt to resolve any and all disputes in good faith. If the claim is accepted as a result of the appeal process, you will be provided with a rebate check within 14 days of notification that the claim was accepted.

#### **IV. STACKABILITY**

The 15% rebate will apply in addition to and before any other valid, non-settlement rebate, discount, or other promotion (e.g., retail store rebate) that may otherwise be offered by Phoebe Micro or Fry's Electronics on the new Airlink 101 Wireless Product to be purchased. There shall be no cap on the total number of rebates that a given Settlement Class Member may receive (one Rebate Certificate per qualifying product). However, multiple rebates may not be aggregated for use on a single purchase. Please note that the 15% rebate does not apply toward the purchase of a new Airlink 101 Wireless Camera.

## CLAIM FORM

You must fill out and submit this Claim Form and mail to the address below, postmarked no later than 45 days from the date of the purchase of your new Airlink 101 Wireless Product

### A. PERSONAL INFORMATION

Name \_\_\_\_\_  
Company \_\_\_\_\_  
Mailing Address \_\_\_\_\_  
City, State Zip Code \_\_\_\_\_  
Daytime Phone: (\_\_\_\_\_) \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

**FAILURE TO SUBMIT A VALID MAILING ADDRESS WILL RESULT IN A LOSS OF BENEFITS. THE REBATE CHECK AND ALL FURTHER COMMUNICATIONS ABOUT THE SETTLEMENT WILL BE SENT TO THE MAILING ADDRESS PROVIDED. KEEP A COPY OF THE COMPLETED CLAIM FORM AND SUPPORTING MATERIALS FOR YOUR RECORDS. NO ACKNOWLEDGMENT WILL MADE AS TO THE RECEIPT OF THE CLAIM FORM.**

**PLEASE NOTIFY PHOEBE MICRO CUSTOMER SERVICE AT (408) 849-2852 OF ANY CHANGE IN YOUR MAILING ADDRESS.**

### B. DESCRIPTION OF THE COVERED AIRLINK PLUS WIRELESS PRODUCT:

1. You are eligible to submit this Claim Form only if you purchased any of the Airlink Plus Products which are listed in Attachment A located on this Website.

2. **Please review the following statements and check the appropriate box below.**

- I purchased the Covered Airlink Plus Wireless Product between January 1, 1999 and June 30, 2004.
- My purchase of the Covered Airlink Plus Wireless Product was not for resale;
- I purchased the Covered Airlink Wireless Product new or refurbished (*i.e.*, not second hand);

- All of the above statements are accurate.  
 Not all of the above statements are accurate.

**If you checked the box indicating that not all of the above statements are accurate, you are not eligible to make a claim and you should not submit this Claim Form.**

C. **SUBMITTING PROOF OF PURCHASE**

1. **Provide a copy of the dated purchase receipt or invoice for the new Airlink 101 Wireless Product which was purchased** from any of the Fry's Electronics retail stores nationwide or from Fry's Electronics' on-line store, <[www.outpost.com](http://www.outpost.com)>. Please note that the 15% rebate does not apply toward the purchase of a new Airlink 101 Wireless Camera.
2. **Provide the Original Bar Code cut out from the box for your new Airlink 101 Wireless Product.** Please see "Locating an Original Bar Code" on this Website for a description of where the Original Bar Code is located on the box of your new Airlink 101 Wireless Product.

The completed Claim Form and supporting materials must be mailed to:  
**Attn: Rebate Department, Phoebe Micro, 47606 Kato Road, Fremont, CA 94538.** The Claim Form and supporting materials must be postmarked within forty-five (45) days from the date of the new purchase.

D. **RELEASE**

By signing and dating this form below, I confirm that, if the settlement is approved, I, on my own behalf and on behalf of my heirs, executors, administrators, representatives, agents, partners, successors and assigns, hereby fully and irrevocably release and forever discharge Phoebe Micro, Inc. and, whether or not specifically named herein, each of its past or present directors, officers, employees, agents, insurers, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, consultants, independent contractors, and entities at all levels of distribution, including retailers, on-line retailers, and resellers, that currently sell, or have ever sold in the past, a Covered Airlink Plus Wireless Product ("Released Persons") from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations or demands, of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or the statutory or common laws or regulations of any and all states or subdivisions, that were or could have been alleged or asserted against any of the Released Persons in the *Im Action* that arise out of or relate to the claims set forth in the Complaint filed in the *Im Action*, including claims relating to the advertising of, and the signal and data transfer rates performed by, the Covered Airlink Plus Wireless Products ("Released Claims"). Notwithstanding the foregoing, Released Claims shall not include claims for personal injury and claims involving product defects unrelated to the Mbps signal and data transmission rates.

\*\*\*\*\*

I have not requested exclusion from the Settlement Class and I have not previously filed a Claim Form with respect to the Covered Airlink Plus Wireless Product which I purchased between January 1, 1999 and June 30, 2004 as stated in Part B.2. of this Claim Form; I attest under penalty of perjury that all information provided

by me in this Claim Form is true and accurate; I have read and understand the contents of the Notice of Pendency and Proposed Settlement of Class Action, and the Instructions and Claim Form; I agree to be bound by the terms of the Release set forth in Section D above; and I am voluntarily submitting to the jurisdiction of the California Superior Court for the County of Alameda for purposes of the settlement of this Action.

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Dated

**IF YOU PURCHASED MORE THAN ONE COVERED AIRLINK PLUS WIRELESS PRODUCT, YOU MUST COMPLETE AND SUBMIT A SEPARATE CLAIM FORM FOR EACH COVERED AIRLINK PLUS WIRELESS PRODUCT PURCHASED.**

If your Claim Form and supporting materials is valid and has been timely submitted, you will receive a rebate check from Phoebe Micro at the mailing address you provided above after your Claim Form has been processed. If your Claim Form is valid and timely, you will receive a rebate check from Phoebe Micro within 10 weeks of receipt of the Claim Form and supporting materials by Phoebe Micro. Rebate checks not cashed within 90 days of issuance will be void and cannot be reissued.

**If you have any questions about completing the Claim Form, please contact Phoebe Micro Customer Service at (408) 849-2852.**

4

## Draft Email Notice

**Subject:** Authorized Notice from Court Regarding Class Action Settlement for Purchase of Wireless Product

Dear Airlink Plus Wireless Product Purchaser:

Thank you for being a customer of Phoebe Micro. We write to inform you that if you purchased a wireless product from Phoebe Micro, you may be eligible to receive a rebate on the purchase of a new wireless product (excluding wireless cameras) pursuant to the terms of a class action settlement of a lawsuit -- *Im v. Phoebe Micro*, Alameda Superior Court Case No. RG0416192.

The lawsuit claimed that Phoebe Micro's advertising of certain Phoebe Micro Wireless Products is false and misleading. Phoebe Micro has denied and continues to deny these allegations.

A California Superior Court authorized this notice to inform you of the terms of this Class Action Settlement Agreement.

Please read on for a summary of the settlement terms and how it affects you. You can also go to [www.airlinkplus.com](http://www.airlinkplus.com) for more details.

### Summary of Settlement Terms

- **15% Rebate:** Each member of the Settlement Class who timely submits a valid Proof of Purchase as discussed below, is eligible to receive a 15% rebate on the purchase of a new Airlink 101 Wireless Product.
- **Exclusions:** The 15% rebate does not apply toward the purchase of an Airlink Plus Wireless Camera.
- **Other Rebates:** The rebate will be applied in addition to and before any other valid rebates, discounts or other promotions that may otherwise be offered on the product to be purchased.

### Qualification

To qualify, you

- Must have previously purchased an Airlink Plus Wireless Product between January 1, 1999 through June 30, 2004. See below for qualified list of Airlink Plus Wireless products.

<u>Model</u>	<u>Description</u>
AWLH1201	Wireless 802.11b PCI Adapter
WLH3010	Wireless 802.11g PCI Adapter
AWLC3025	802.11g Cardbus Adapter
AWLH3025	802.11g PCI Adapter
WLC010	802.11b PCMCIA Adapter
AWLC011	802.11b Cardbus Adapter
WLC3010	802.11g Cardbus Adapter