

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

LARRY MOISAN, on Behalf of Himself, and All  
Others Similarly Situated,

Plaintiff,

v.

FUJITSU COMPUTER PRODUCTS OF  
AMERICA, INC., and DOES 1-100, inclusive,

Defendants.

Case No. 1-06-CV-077316

**NOTICE OF PENDENCY AND  
PROPOSED SETTLEMENT OF  
CLASS ACTION**

Dept: 17

Judge: Hon. Jack Komar

Complaint Filed: December 28, 2006

Trial Date: None Set

**OFFICIAL COURT NOTICE OF PENDENCY AND PROPOSED SETTLEMENT  
OF CLASS ACTION AND SETTLEMENT CLAIM INFORMATION**

*Moisan v. Fujitsu Computer Products of America, Inc.*, 1-06-CV-077316 (Santa Clara County Superior Court)

**To: All persons or entities in the United States who purchased an aftermarket Fujitsu-branded Mobile hard disk drive (“HDD”) during the period beginning December 28, 2002 and continuing through April 11, 2008, who resided in the United States at the time of purchase, purchased the Mobile HDD at a location within the United States, new (*i.e.*, not second-hand) from an entity that regularly sells or sold such devices or items, and who purchased the Mobile HDD for their own use and not for resale to others.**

**This Notice contains important information that may affect your legal rights.**

1. The following case is now pending against Fujitsu Computer Products of America, Inc. (“FCPA” or “Defendant”): *Moisan v. Fujitsu Computer Products of America, Inc.* (the “Action”), 1-06-CV-077316 (Santa Clara County Superior Court).
2. The purpose of this Notice is to provide a summary of the claims asserted in the Action and the terms of the proposed settlement, including the benefits to which you may be entitled. This Notice also describes what to do if you wish to be excluded from the proposed settlement, or if you want to object to the proposed settlement. **If you wish to be included in the proposed settlement, you do not have to do anything to indicate your consent. If you wish to receive the benefits available to you under the settlement, you must return a Claim Form, a copy of which is available at [www.MobileHDDSettlement.com](http://www.MobileHDDSettlement.com) (the “Settlement Website”) or by clicking this [link](#).**
3. The Action was filed by an individual who alleges that FCPA made misrepresentations and/or omissions in the packaging, advertising, and/or sale of Fujitsu-branded and Fujitsu-packaged HDDs with respect to the HDDs’ capacity for data storage. FCPA denies that it has committed any violations of law or engaged in any of the wrongful acts alleged in the complaint filed in the Action, or otherwise. In order to resolve the Action, and forever resolve these claims, however, FCPA has agreed to the settlement described below.
4. For purposes of settlement only, the Court has certified a nationwide class consisting of “all persons or entities in the United States who purchased an aftermarket Fujitsu-branded Mobile hard disk drive (“HDD”) during the period beginning December 28, 2002 and continuing through April 11, 2008, who resided in the United States at the time of purchase, purchased the Mobile HDD at a location within the United States, new (*i.e.*, not second-hand) from an entity that regularly sells or sold such devices or items, and who purchased the Mobile HDD for their own use and not for resale to others” (the “Settlement Class”).

5. The Court has appointed the following attorneys as Class Counsel representing Plaintiff and the Settlement Class: Jordan L. Lurie and Zev B. Zysman of the law firm Weiss & Lurie, 10940 Wilshire Boulevard, Suite 2300, Los Angeles, CA 90024.

### **PROPOSED SETTLEMENT AGREEMENT AND CLASS BENEFIT**

6. The terms of the proposed settlement of the Action are set forth in detail in the Settlement Agreement and Release (“Agreement”), on file and available for public review at the office of the Clerk of the Court, Superior Court of California, County of Santa Clara, Old Courthouse, 191 N. First Street, San Jose, CA 95113 or from the Court’s website [www.sccsuperiorcourt.org](http://www.sccsuperiorcourt.org). In summary, the Agreement, if approved, requires the following:
- **Discount on Future Purchase:** Eligible Class Members who submit a timely and valid Claim Form may elect one of two options for a discount on a future purchase of a new Fujitsu-branded Mobile HDD.
  - **20% Discount from FCPA On-Line Store:** Class Members who choose Option 1 are eligible to receive a 20% discount on any new Fujitsu-branded Mobile HDD purchased from [www.buyFCPA.com](http://www.buyFCPA.com) (the “buyFCPA Website”). FCPA will pay shipping at the standard cost offered on the buyFCPA Website (UPS or Federal Express ground). Class Members who submit a timely and valid Claim Form electing the Option 1 discount will receive via e-mail, or U.S. Mail if e-mail is unavailable, a Promotional Code allowing them to take a 20% discount on the purchase of a new Fujitsu-branded Mobile HDD, purchased on the buyFCPA Website.
  - **15% Discount from Any Online Retailer or Store:** Class Members who choose Option 2 are eligible to receive a 15% discount on any new Fujitsu-branded Mobile HDD purchased from any online website or retail store of their choice, other than the buyFCPA Website. Class Members who submit a timely and valid Claim Form electing the Option 2 will receive via e-mail, or U.S. Mail if e-mail is unavailable, a Valid Claim Card, entitling them to a 15% discount, in the form of a rebate, on the purchase of a new Fujitsu-branded Mobile HDD, purchased from any online retailer or retail store in the United States.
  - **Redemption Period:** The Promotional Code or Valid Claim Card will be valid for the later of one year from the Effective Date (the date the settlement becomes final) or the date of issuance. A Class Member may transfer his or her Promotional Code or Valid Claim Card to another person only once prior to being used. The discount for either Option 1 or Option 2 shall be stackable, meaning that it may be used with other discounts, and it shall be the first discount applied.
  - **Valid Claim Form:** To be valid, the submitted Claim Form must include: (i) the Class Member’s name, mailing address, and e-mail address (if available); (ii) the serial number of the previously purchased Fujitsu-branded Mobile HDD; (iii) the capacity of the previously purchased Fujitsu-branded Mobile HDD; (iv) the name and location of the online seller or retail store from which the Class Member previously purchased the Fujitsu-branded Mobile HDD; and (v) proof of purchase of the previously purchased Fujitsu-branded Mobile HDD, which may take the form of a receipt or invoice showing the purchase. Class Members who do not have proof of purchase may still make a claim by submitting all other requested information and by declaring under penalty of perjury that they are the original purchaser of, and the amount paid for, the previously purchased Fujitsu-branded Mobile HDD.
  - **Claims Period:** Class Members must submit a Claim Form by September 2, 2008.
  - **Limit on Number of Claims:** There is a limit of one claim per qualifying Fujitsu-branded Mobile HDD purchased. Settlement Class Members who previously purchased more than one qualifying Fujitsu-branded Mobile HDD will be required to submit a separate Claim Form for each one. Each Class Member is limited to three valid claims.
  - **Attorneys’ Fees & Costs:** Subject to Court approval, Defendant will also pay Class Counsel \$293,000 for attorneys’ fees and costs to Class Counsel; and will pay \$2,000 to the Class Representative. Defendant will pay for the costs of notice and settlement administration. Details of the Agreement are on file with the Court for your review.

## **YOUR OPTIONS WITH RESPECT TO THE PROPOSED SETTLEMENT**

7. 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. If you do not request exclusion from the settlement as described in paragraph 8 below, you will be bound by the Final Judgment in the Action.** This also means that you shall have fully, finally, and forever irrevocably released, relinquished and discharged with prejudice FCPA and each of its predecessors, successors, parents, subsidiaries and affiliates and each of their past and present officers, directors, employees, agents, attorneys, accountants, advisors, wholesalers, retailers, distributors, shareholders, representatives, partners, insurers, heirs and assigns, and any other entity within FCPA's downstream chain of distribution, including, without limitation, resellers, distributors, wholesalers and retailers of any of the Fujitsu-branded Mobile HDDs, from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorney 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, which were alleged, are alleged, or could have been alleged in the Action, including, without limitation, all claims relating to storage capacity of Fujitsu-branded Mobile Hard Disk Drives. Released claims shall not include claims for personal injury and claims involving product defects unrelated to data storage capacity. **By operation of the Final Judgment and Order of Dismissal, all members of the Settlement Class shall be deemed to have waived any and all provisions, rights, and benefits conferred by section 1542 of the California Civil Code or any comparable statutory or common law provisions of any other jurisdiction with respect to Released Claims. Section 1542 reads as follows:**

**Certain Claims Not Affected By General Release: 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.**

8. If you fit within the definition of the Settlement Class, you may decide, for whatever reason, that you do not want to participate in the settlement. If you wish to be excluded from the settlement, you must send a letter or postcard, postmarked no later than July 7, 2008, and include your name, address, telephone number, the name of the case (*Moisan v. Fujitsu Computer Products of America, Inc.*, 1-06-CV-077316 (Santa Clara County Superior Court)), and a statement that you do not wish to participate in the settlement. All requests for exclusion must be signed by or on behalf of the person requesting exclusion and be sent to the following counsel:

Class Counsel

Weiss & Lurie  
Jordan L. Lurie  
Zev B. Zysman  
10940 Wilshire Boulevard, Suite 2300  
Los Angeles, CA 90024

Defendant's Counsel

Morrison & Foerster LLP  
Penelope A. Preovolos  
425 Market Street  
San Francisco, CA 94105

9. If you validly and timely request exclusion from the settlement: (i) you will be excluded from the Settlement Class and you will not be permitted to object to the settlement; (ii) you may not file a Claim Form to participate in the benefits of the settlement; (iii) you will not be bound by the Final Judgment entered in this Action; and (iv) you will not be precluded from otherwise prosecuting, at your expense, any individual claim, if timely, you may have related to the matters referred to in the Action.
10. If you fit within the definition of the Settlement Class and you would like to participate in the settlement, you still have the option of objecting to or commenting on the settlement under the procedures set forth below in paragraph 13. You may (but need not) choose to hire, at your expense, an attorney to represent

