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Clerk of the Superior Court

By \_\_\_\_\_  
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*8/25/06*  
*[Signature]*

Attorneys for Plaintiff  
and Class

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN MATEO  
UNLIMITED JURISDICTION

HYPERTOUCHE, INC., a California  
corporation, individually, and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

PERRY JOHNSON, INC., a Michigan  
corporation, and DOES 1 through 100,

Defendants.

Case No. 418600

*8/25/06*  
~~PROPOSED~~ ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

DATE: August 25, 2006  
TIME: 10:00 a.m.  
DEPT: 10

Counsel for the Plaintiff Hypertouch, Inc. ("Plaintiff") and Defendant Perry Johnson, Inc. ("Defendant") being present before the Court, the parties to the above-entitled litigation (the "Litigation") having entered into a Settlement Agreement ("Settlement Agreement"), which is subject to Court approval, together with the Exhibits thereto, sets forth the conditions for the proposed settlement of the claims alleged in the Litigation; the Court having fully reviewed the parties' Joint Motion for Preliminary Approval of Settlement, supporting Points and Authorities, notices and Declarations, and having carefully reviewed the proposed Notice, and in recognition of the Court's duty to make a preliminary determination as to the reasonableness of any proposed class action settlement, and if preliminarily determined to be reasonable, to provide Notice to class members in accordance with due process requirements, and to

1 conduct a formal Fairness and Good Faith Determination Hearing as to the good faith, fairness, adequacy  
2 and reasonableness of any proposed settlement:

3 NOW, THEREFORE, IT IS HEREBY ORDERED that:

4 1. The Court finds on a preliminary basis that the proposed Settlement Agreement attached as  
5 Exhibit A and incorporated herein by this reference and made a part of this Order of Preliminary Approval,  
6 appears to be within the range of reasonableness of a settlement and reserves the right to finally approve  
7 the settlement and to make a determination as to the fees and costs to be awarded to Plaintiff's counsel. It  
8 further appears to the Court on a preliminary basis that the settlement is fair, reasonable and adequate to  
9 class members when balanced against the probable outcome of further litigation. It further appears that  
10 significant investigation, discovery and research has been conducted such that counsel for the parties at  
11 this time are reasonably able to evaluate their respective positions. It further appears that settlement at this  
12 time will avoid substantial litigation costs, delays and risks of further prosecution. It further appears that  
13 the proposed Settlement has been reach<sup>ed</sup> as the result of intensive, serious and non-collusive negotiations  
14 including a three (3) lengthy mediation sessions before a nationally recognized mediator and retired Justice  
15 with extensive experience negotiating complex class action disputes;

16 2. The Court further finds that the proposed Notice of Proposed Class Action Settlement,  
17 which advises of the pendency of the class action, and of preliminary Court approval of the proposed  
18 settlement, opt-out timing and procedures, and of the Fairness and Good Faith Determination Hearing, and  
19 made a part of this Order, fairly and adequately advises class members of the terms of the proposed  
20 settlement and the benefits available to class members thereunder, as well as their right to "opt-out" and  
21 procedures for doing so, and of the formal Fairness and Good Faith Determination, and the right of class  
22 members to file documentation in support or in opposition to appear in connection with said hearing; the  
23 Court further finds that said Notice clearly comports with all constitutional requirements including those  
24 of due process.

25 3. The Court finds the form and method set forth in the Settlement Agreement for notifying  
26 the Settlement Class of the settlement and its terms and conditions constitute the best notice practicable  
27 under the circumstances, and shall constitute due and sufficient notice to all persons and entities entitled to  
28 this notice and is clearly designed to advise class members of their rights.

1           4.       The court preliminarily finds that Plaintiff's counsel has provided adequate representation  
2 to the Settlement Class. Plaintiff's counsel conducted a factual investigation, conducted discovery,  
3 engaged in motion practice, and performed an analysis of the relevant facts and law, both with regard to  
4 class certification and the merits of the action.

5           5.       A Fairness and Good Faith Determination hearing is hereby scheduled to be held before  
6 this Court on Friday, Nov. 17, 2006, at 10<sup>00</sup> am for the following purposes;

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- a.     to finally determine whether this action satisfies the applicable prerequisites for class action treatment for settlement purposes pursuant to CRC 1856;
  - b.     to determine whether the proposed settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class and should be approved by the Court;
  - c.     to determine whether the Final Order and Judgment as provided under the Agreement should be entered, dismissing the Litigation with prejudice, and to determine whether the release by the Settlement Class of the Released Parties, as set forth in the Settlement Agreement, should be afforded to the Released Parties;
  - d.     to consider the application by Plaintiff's counsel for an award of attorney's fees and costs; and
  - e.     to rule upon such other matters as the Court may deem appropriate.

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6.       The Court will consider objections to the settlement only if such objections and any supporting papers are filed in writing on or before Wed. Nov. 1st, 2006 and the objecting class member both: (1) files with the Court at San Mateo Superior Court, 400 County Center, Redwood City, California 94063, and (2) serves upon both the Law Offices of John L. Fallat, 523 Fourth Street, Suite 210, San Rafael, California 94901 and Joseph D. Miller, Esq. and Leslie J. Mann, Esq., Epstein, Becker & Green, One California Street, 26<sup>th</sup> Floor, San Francisco, California 94111, a written notice of such class member's intention to appear, together with all supporting papers and a statement setting forth the class member's objection to the proposed settlement. Within the written objection, the class member must include their name, address, telephone number, and facsimile number where they received the alleged unsolicited facsimile advertisement made the basis of the Litigation so that their membership in the Settlement Class may be verified. Class members who do not timely make their objections in this manner

1 will be deemed to have waived all objections and shall not be heard or have the right to appear approval of  
2 the settlement.

3 7. Attendance at the hearing is not necessary; however, persons wishing to be heard are  
4 required to indicate in their written objection, whether or not they intend to appear at the hearing.  
5 Members of the Settlement Class need not appear at the hearing or take any other action to indicate their  
6 approval of the proposed class action settlement.

7 8. The Court retains exclusive jurisdiction over the action to consider all further matters  
8 arising out of or connected with the settlement, including enforcement of the Settlement Agreement.

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10 DATED: *25 August 2006*

*Murray J. Buschman*  
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JUDGE OF THE SUPERIOR COURT