SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SETNET CORPORATION

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ADDITIONAL PARTIES ATTACHMENT form is attached.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
2014 FEB 14 A 11:26
David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara
By: J. CAO-NGUYEN Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es): Santa Clara County Superior Court
191 N. First Street
San Jose, California 95113

CASE NUMBER:
(Número del caso): 14CV260608

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Francisco X. Marquez, Esq. /97 S. Second St. - Ste 100 / San Jose, CA 95113 (408) 634-6119

DATE: FEB 14 2014 *(Fecha)*
DAVID H. YAMASAKI
Chief Executive Officer, Clerk
Clerk, by *(Secretario)* J. CAO-NGUYEN, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify):*

4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

ATTACHMENT CV-5012

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: 114CV260608

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): **You must do each of the following to protect your rights:**

1. You must file a **written response** to the *Complaint, using the proper legal form or format,* in the Clerk's Office of the Court, within **30 days** of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.scselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: http://www.sccsuperiorcourt.org/civil/rule1toc.htm

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. *You may ask to appear by telephone – see Local Civil Rule 8.*

Your Case Management Judge is: Mary Arand *Department:* 9

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: JUN 17 2014 *Time:* 1:30pm in **Department:** 9

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ *Time:* _____ in **Department:** _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

FRANCISCO X. MARQUEZ (SBN 172631)
GENERAL COUNSEL
SETNET CORPORATION
97 S. SECOND STREET – SUITE 100
SAN JOSE, CALIFORNIA 95113
Ph: (408) 634-6119 / Fx: (408) 969-1639
fxm@setnetcorp.com

Counsel for Plaintiff
SETNET CORPORATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

(Unlimited Jurisdiction)

SETNET CORPORATION,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY, VIVENDI S.A., VODAFONE, SOCIETE FRANCAISE DE RADIOTELEPHONE (SFR), NICOLAS ROMANETTI, FLORENT RAMIERE, and DOES 1 – 50,

Defendants.

Case No. 114CV260608

VERIFIED COMPLAINT
DEMAND FOR JURY TRIAL

1. Intentional Interference with Contract
2. Negligent Interference with Contract
3. Interference with Prospective Economic Advantage
4. Statutory Misappropriation of Trade Secrets
5. Fraud in the Inducement
6. Violation of Penal Code § 502 (Computer Crime Statute)
7. Common Law Unfair Competition
8. Statutory Unfair Competition

SETNET CORPORATION
97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

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SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

PREFATORY STATEMENT

Startup technology companies that drive innovation are critical to California. Nowhere is this truism more self-evident than here in Santa Clara County—the heart of Silicon Valley.

This case is the poster child of how greed, corporate corruption and unfettered money power can cripple such companies. The culprits here are widely-known multinational companies that with callous indifference victimized plaintiff SetNet Corporation (***"SetNet"***) with their deception, self-dealing, wrongful usurpation of business opportunities, criminal theft of proprietary technology, and other related offenses.

SetNet is a software company that at one time had a decisive competitive advantage in the mobile phone e-mail market as one of the first high-tech pioneers to develop a comprehensive push-mail software solution that allowed customers to access and to respond to their e-mails using their mobile phone (***"SetNet's Software"***).

Tragically, SetNet fell prey to predatory fraud schemes masterminded by Hewlett-Packard Company (***"HP"***), Vivendi S.A. (***"Vivendi"***), and Vodafone Group PLC (***"Vodafone"***).

While plagued by one scandal after another over the last ten years, these three giant global conglomerates colluded with each other to carry out their tortious scheme through their separate, but related, entities:

- HP's wholly-owned French subsidiary (***"HP France"***); and
- Societe Francaise de Radiotelephone (***"SFR"***) owned by Vodafone and Vivendi.

By its undersigned counsel, SetNet alleges the following upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters. SetNet's information and belief is based on its investigation made by and through its attorneys in France and the United States, which included,

among other things, the review and analysis of:

a) Documentary evidence consisting of contracts, e-mail exchanges, and other communications between the parties;

b) Press releases issued by the various named Defendants;

c) Statements and findings made by a judicial expert appointed by one of the highest courts in France in a case involving SetNet, HP France and SFR;

d) Other public statements made by or on behalf of Defendants;

e) Other public information, including press and media reports, concerning the named Defendants; and

f) Pleadings in litigation in which Defendants are party defendants, including:

- *In Re Hewlett-Packard Company, a Derivative Litigation*, Santa Clara County Superior Court Consolidated Action [Including Case No.: 1-10-CV-179356 (Lead), Case No. 1-10-CV-180359, Case No. 1-10-CV-180874];
- *In Re HP Derivative Litigation*, Case No. 10-CV-3608 (EJD) (N.D. Cal. 2010);
- *People v. Patricia Dunn (HP Chairwoman) et al.*, Santa Clara County Superior Court Case No. 061027481, filed on October 4, 2006;
- *In re Vivendi Universal, S.A. Securities Litigation*, No. 02 Civ. 5571 (RJH) (S.D.N.Y. 2002);
- *SEC v. Vivendi Universal, S.A.*, No. 03 Civ. 10195 (PKC) (S.D.N.Y. 2003); and
- *In re Vodafone Group, PLC Securities Litigation*, No. 02 Civ. 07592 (AKH) (S.D.N.Y. 2002).

Many of the facts that support the allegations in this Complaint are known only to Defendants or are within their exclusive possession, custody or control.

SetNet expects to uncover further substantial evidence to support its allegations after a reasonable opportunity to conduct discovery.

SETNET CORPORATION
97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

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PARTIES

1. Plaintiff SetNet is, and at all times relevant to this Complaint has been, a Florida corporation doing business in Florida and California.

2. Defendant HP is, and at all times relevant to this Complaint has been, a Delaware corporation doing business in the County of Santa Clara, and has its principal executive offices located at 300 Hanover Street, Palo Alto, Santa Clara County, California 94304.

3. Defendant Vivendi is, and at all times relevant to this Complaint has been, a French multinational mass media and telecommunication company headquartered in Paris, France. The company has activities in music, television and film, publishing, telecommunications, and the Internet.

4. Defendant Vodafone is, and at all times relevant to this Complaint has been, a British multinational telecommunications company headquartered in London. Vodafone currently owns 45 percent of Verizon Wireless, the largest mobile carrier in the United States, but not for long. On January 28, 2014, Vodafone shareholders approved the sale of Vodafone's 45 percent stake to Verizon Communications for $130 billion, paving the way for one of the largest acquisitions in corporate history.

5. Defendant SFR is, and at all times relevant to this Complaint has been, a French telecommunications company. SFR provides services for mobile phone, landline, Internet, and IP television to consumers and businesses. SFR is fully owned by French conglomerate Vivendi. The SFR mobile phone network infrastructure was built by Vodafone, which previously had a 44 percent share in SFR until April 2011 when it sold the entire share back to Vivendi.

6. Defendants Nicolas Romanetti and Florent Ramiere, during times relevant to this Complaint, worked for SetNet as software engineers in California before SFR poached and hired them. They both currently reside and work in France.

DOES 1 - 50

7. SetNet is unaware of the true names and capacities of defendants sued as Does 1-50, and therefore sues these defendants by such fictitious names. SetNet will amend this Complaint to allege their true names and capacities when they have been ascertained.

8. Each Doe defendant contributed to or caused the damages to SetNet. Each Doe defendant acted as the principal, agent, employer, employee, alter ego, co-conspirator or aider and abettor of each named defendant or other Doe defendant.

9. Each defendant, including Does 1 through 50, will be collectively referred to as "Defendants."

JURISDICTION AND VENUE

10. The Court has jurisdiction in this case because the claims arise from the violation of California law, and the damages that SetNet suffered exceed the minimum jurisdictional requirements.

11. Venue is proper in Santa Clara County. A substantial part of the causes of action alleged accrued in California, and HP and SetNet are residents of this county. As for Vivendi and Vodafone, SetNet will serve the summons and Complaint on their respective domestic subsidiaries that operate in the United States. *See Yamaha Motor Co., LTD v. Superior Ct.,* 174 Cal. App. 4th 264 (2009).

12. This case is not removable to federal court. SetNet does not allege that any of the Defendants violated federal law. *See* 28 U.S.C. § 1441. Nor may the case be removed to federal court based on diversity jurisdiction.

13. Under 28 U.S.C. § 1332(a), a federal court may assume diversity jurisdiction only if none of defendants are from the same state as the plaintiff (i.e., complete diversity must exist). HP and SetNet are located in and do business out of California. *See Caterpillar, Inc. v. Lewis*, 519 U.S. 61 (1996).

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FACTUAL BACKGROUND

14. SetNet is one of the early pioneers of the mobile Internet because it was one of the first high-tech companies to develop software that allowed the synchronization of data, including e-mail, over remotely-located computers.

15. As early as 1996, SetNet's Software (at the time called VoxMail) allowed mobile subscribers to check and respond to their email without the need for mobile internet-enabled networks, using voice technologies over simple handsets.

16. By 2000, SetNet's Software leveraged state-of-the-art IP networking techniques and distributed software components to provide a powerful, flexible, and highly scalable architecture uniquely crafted to deliver advanced wireless messaging services. Because SetNet's revolutionary technology was one of the first of its kind to support any mail server (POP or IMAP), SetNet's Software allowed messaging services to be deployed without the costly need for in-house mail servers and storage. For wireless carriers, this allowed them to maximize their network utilization and to accelerate their revenue growth.

17. SetNet's Software allowed service providers to give highly customizable wireless services that brought new value to their subscribers.

18. Around 1999, SetNet entered into an agreement with SFR, a French mobile telecom carrier, to license SetNet's Software. With this licensed technology, SFR subscribers had wireless access to their e-mail at any time from anywhere they had cell phone reception.

19. SetNet entered into negotiations with HP regarding a joint business venture that would expand SetNet's capability. HP agreed to serve as SetNet's sole worldwide distributor and offered to provide marketing and sales support in every country where HP had a presence. At the time, Accenture, which led Vodafone's global "Personal Information Project," selected SetNet as the primary supplier among more than five major competitors 200 times the size of SetNet

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97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
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because of the competitive advantage that SetNet's Software provided.

20. Accenture (*www.eccenture.com*) is a multinational management consulting, technology services and outsourcing company.

21. As the negotiations progressed, HP decided to turn over the SFR account to its subsidiaries, HP France and HP Europe. At the time, HP Europe supported another SetNet client, Belgacom, a Belgian telecom company.

22. HP Europe also represented SetNet in its offering to Vodafone in a large, multi-country Vodafone project. Attached as Exhibit A is part of a presentation the parties used to explain their joint business venture.

23. In 2002, SetNet concluded a partnership contract with HP France (as HP directed) pursuant to which SetNet agreed to supply products and maintenance services to SFR, and whereby SetNet granted to HP France the right to sublicense SetNet's Software to SFR for a mutually-agreed specified number of concurrent users (***"SetNet Licenses"***).[1]

24. HP France integrated SetNet's Software into SFR's operating environment, and HP Europe provided Service Level 1, 2 and 3 support services pursuant to the terms of a standard Service Level Agreement (SLA).

25. The SLA specified the levels of availability, serviceability, performance, operation, and billing.

26. The partnership agreement between the parties further provided that SFR would purchase more SetNet Licenses than SFR actually deployed at any given time to ensure sufficient coverage. HP Europe similarly committed to provide SLA support for all the SetNet Licenses purchased.

27. The number of simultaneous sessions, and therefore licenses, was

[1] Concurrent licenses require the purchase of licenses for the maximum number of users who will run the software simultaneously. This requires the licensee/purchaser to estimate projected use, and to purchase sufficient licenses to ensure uninterrupted service for its users.

[2] The *Cour de cassation* is one of the courts of last resort in France, and has

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determined for each project according to SFR's needs. HP France agreed to obtain statements from SFR on the use of SetNet's Software. SetNet would then use this information to generate the invoices sent to HP France; HP France retained 20 percent of the fees under the partnership contract.

28. HP France agreed to declare the number of licenses purchased based on the number of concurrent users and then to submit payment for these licenses to SetNet. In exchange, SetNet would provide consulting services to HP France to assist in the deployment of SetNet's Software.

29. In 2003, SetNet realized that the number of SetNet Licenses reported and purchased by HP France were fewer than the number of SetNet Licenses that SFR actually used, based on usage volume and other metrics. When SetNet asked HP France about this discrepancy, HP France could not provide an answer. SetNet continued to press HP France to explain and to disclose the real number of concurrent users who had access to SetNet's Software.

30. On June 4, 2003, SetNet received an e-mail from Hugh Kuhn, HP Worldwide Alliance Manager, apologizing for HP France's attempt to strong-arm SetNet's board of directors to lower the price of the SetNet Licenses. Mr. Kuhn recognized that this wholly inappropriate and unethical behavior was unacceptable, yet regretted that he was unable to do anything about it. Attached as Exhibit B is a copy of the e-mail that Mr. Kuhn sent to SetNet's founder and President, Nicolas Fodor.

31. In 2004, SetNet obtained a copy of an internal HP France - SFR memorandum in which HP France essentially admitted that it had declared and paid for fewer SetNet Licenses for SFR users than was required under their agreement. Under the new license fee calculation method that SFR imposed in 2004, SFR had to declare the number of registered users every quarter. Only SFR had this information and never agreed to a joint count.

32. Despite HP France's failure to pay for the actual number of SetNet

SETNET CORPORATION
97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
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Licenses in accordance with their agreement, in good faith SetNet continued to provide technical support and consulting services to HP France to support SFR users. This resulted in SetNet's financial outlays exceeding SetNet's revenues, and in 2004 SetNet had to close its French subsidiaries.

33. In 2005, HP France abruptly ended its partnership with SetNet, abandoned the latest SFR project in progress even though the e-mail access services operated perfectly, and ceased to represent SetNet in France altogether.

34. At this time, HP also ceased to represent SetNet worldwide after SetNet had invested considerable time, energy and resources preparing for HP's global distribution of SetNet's Software.

35. SFR then began to declare a "negative" number of users—i.e., fewer than the number of SetNet Licenses purchased the previous quarter.

36. After discovering that SFR again had underreported the number of users of SetNet Licenses, SetNet retained French legal counsel. The attorney contacted SFR about the fraudulent reporting, but SFR denied any wrongdoing.

37. SFR represented that they had removed SetNet's software from its operating computer systems and migrated SFR's wireless subscribers to competitor technologies.

38. SFR then, through an unrelated third party, poached and hired two of SetNet's key software engineers to fill the void left by HP France in the area of system integration. Those two ex-SetNet employees are Defendants Nicolas Romanetti and Florent Ramiere. In the same year, SetNet discovered that SFR had underreported the number of users of SetNet Licenses to SetNet.

39. Defendant Romanetti was SetNet's project manager for the SFR account. Defendant Ramiere was in charge of maintaining SetNet's Software source code and implementing updates.

40. SetNet later learned that Defendants Romanetti and Ramiere assisted SFR in "reverse engineering" SetNet's software to enable the migration.

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41. Defendants Romanetti and Ramiere disclosed to SFR the Oracle database schema developed for SetNet's Software. A database schema is a database system's structure described in a formal language supported by the database management system (DBMS) and refers to the organization of data as a blueprint of how a database is constructed.

42. The manner in which SetNet developed the conceptual schema for its software constitutes proprietary, confidential and trade secret information.

43. In 2006, SFR informed SetNet for the first time that SFR destroyed all subscriber registration and cancellation files (***"User Logs"***) after thirty (30) days. The parties had never agreed that SFR could destroy the User Logs, certainly not without SetNet's consent. SetNet needed the User Logs primarily to monitor the performance and proper functioning of its software platform as well as to troubleshoot and repair any malfunctions or anomalies. It later became obvious that SFR destroyed the User Logs to hide the number of licenses effectively used.

44. Around this time, SFR then unilaterally imposed a new per-user licensing fee schedule that departed from the parties' original license agreement.

45. Attached as Exhibit C are two affidavits executed by Olivier Cadène, a software engineer who worked for SFR as a Technical Manger from 2000 through 2003.

(a) In the affidavit dated January 2, 2014 (Doc. No. 213), Mr. Cadène states that he personally developed software that tracked and recorded the number of concurrent users of SetNet's Software.

(b) In the affidavit dated January 6, 2014 (Doc. 216), Mr. Cadène states that SetNet's Software (which he refers to as "SetNet WapMail") was the only e-mail software available to **vodafone** ***live!*** users.

46. **vodafone** ***live!*** was the brand name for the multimedia portal service of mobile phone operator Vodafone, initially developed by Japan's J-Phone under the J-Sky brand. Vodafone acquired J-Phone, including J-Sky,

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in 2001–2002. In October 24, 2002, the service was officially launched as **vodafone *live!*** SetNet never authorized SFR to transfer or to sublicense any of SetNet's technology to its parent company or any other third party.

47. HP France misrepresented to SetNet that SFR had launched SFR Live, and purchased SetNet Licenses for that division. Attached as Exhibit D is a copy of a Purchase Order placed by HP France that requested SetNet Licenses for SFR Live. SFR has never launched or operated a service called "SFR Live."

48. Vodafone controlled all of SFR's marketing to French wireless subscribers because most 3G consumer handsets sold by SFR (more than 7 million out of 12 million SFR subscribers) were branded with **vodafone *live!*** Attached as Exhibit E are photographs of SFR handsets that display the **vodafone *live!*** logo.

49. SFR and Vivendi greatly increased their revenues from their misappropriation of SetNet's Software because the mobile application that allowed subscribers to access their e-mail was the only internet feature that **vodafone *live!*** offered with its new generation handsets. This novel feature was the basis for encouraging subscribers to upgrade their plan for one to two years while supporting the added costs related to increased 3G data use.

50. SetNet later learned that around the time that HP France and SFR severed ties with SetNet, Vodafone had entered into a worldwide agreement with Visto Corporation (another company that sold push e-mail products) for the sole purpose of eliminating all mobile e-mail players from the market.

51. Visto (now Good Technology) claimed it owned exclusive patent rights to the technology. The validity of these patents was hotly contested. SetNet had developed its technology before Visto. Attached as Exhibit F is an article published by the New York Times on April 16, 2007, that accurately describes the patent infringement controversy and the players involved.

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SAN JOSE, CA 95113
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SETNET'S LAWSUIT AGAINST SFR AND HP FRANCE PENDING IN THE FRENCH COURTS

52. In late 2005, SetNet sued SFR in the Paris Commercial Court (*Tribunal de commerce*) to recover technical support fees owed to SetNet and to obtain access to the User Logs that counted and recorded the number of SetNet Licenses actually used pursuant to the parties' original license agreement.

53. The French court ruled in SetNet's favor and ordered SFR to pay €265,000 ($395,000) in support fees and to produce the information regarding the SetNet Licenses that SetNet had requested.

54. SFR did not comply with the second part of the order, arguing that the User Logs had been deleted or were no longer available. The attached affidavits executed by SFR's software engineer directly contradict this misrepresentation. *See* Exhibit C.

55. In February 2006, SetNet sued both SFR and HP France in the *Tribunal de commerce* to recover damages for breach of contract. In its complaint, SetNet alleged that SFR used SetNet's Software on approximately 7.5 million phones without paying for the corresponding SetNet Licenses. This case is still ongoing. SetNet seeks to recover between €5.00 and €5,000.00 per user, depending on the usage of SetNet Licenses.

56. The torts claims alleged in this Complaint are different from the contract claims in the lawsuit filed in the Paris Commercial Court, which alleges claims for: (a) repeated serious breaches of contract; (b) non-compliance with the initial license agreement; (c) unlawful and misleading renegotiation of a second license agreement; (d) unlawful and misleading performance of the second license agreement; (e) software rights infringement via unauthorized, non-contractual use; (f) exceeding the limited number of licenses granted by SetNet to SFR; and (g) concealment and unlawful destruction of data about the use of SetNet's Software.

57. Stéphane Lipski, a judicial expert appointed by the Court of Cassation (*Cour de cassation)*,[2] informed the parties that **vodafone *live!*** used an e-mail system nearly identical to the one that SetNet had developed. In fact, it had the same functionalities and interface as SetNet's Software. That's when SetNet discovered that Vodafone, via SFR, was still using a copy of SetNet's Software as late as May 2011. Attached as Exhibit G is a statement, dated May 11, 2011, by the judicial expert that states that he examined the technology used by **vodafone *live!*** and compared it to SetNet's technology.

58. SetNet did not know, and certainly had no evidence to prove, that SFR had given Vodafone access to SetNet's Software until SFR's Technical Manager, Olivier Cadène, submitted the attached affidavits to the *Cour d' appel de Paris* (Pôle 5 - Chambre 1, Case No. RG 13/03820). SFR ostensibly had completely uninstalled SetNet's Software by 2006. *See* Exhibit C.

59. SetNet's French lawsuit against SFR and HP France to recover contract damages is currently pending before the *Cour d' appel de Paris*.

60. SetNet has diligently prosecuted its contract claims, and will continue to litigate those claims in France. Only now has SetNet been able to bring the tort claims alleged in this Complaint, however, because of the evidence that recently came to light that SetNet had no way of knowing or obtaining.

61. Under French law, SetNet cannot recover tort damages in any court in France. Unlike in the United States, French law does not allow plaintiffs to conduct discovery, which would make it nearly impossible for SetNet to proceed with an action like this one even if SetNet could sue in France. Defendants hold most of the information that SetNet will need to prove its claims, which SetNet will obtain through discovery.

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[2] The *Cour de cassation* is one of the courts of last resort in France, and has jurisdiction over all matters triable in the French system. The Court is the court of final appeal for civil (and criminal) matters.

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97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
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HP, VIVENDI, AND VODAFONE
NO STRANGERS TO FRAUD CONTROVERSIES

62. Perhaps it should not be too surprising that whenever multinational companies wield power in the way that HP, Vodafone and Vivendi do worldwide, the day eventually comes that they will succumb to corporate corruption. Unable to resist the allure of more power and money, they engage in the kinds of predatory business practices and abuse seen here.

63. During the time period that SetNet launched its products and began to do business with HP, Vodafone and Vivendi, these three companies were engaging in conduct that eventually precipitated derivative shareholder lawsuits and, in at least one instance, even criminal proceedings.

64. The common trait that all three companies share is that they cultivated a culture of predatory, unethical business practices that harmed not only their shareholders, but also the companies that trusted them with their customers, proprietary technology and, in SetNet's case, their very survival.

HP

65. Consider, for example, the infamous HP spying scandal that turned criminal when the California Attorney General filed felony charges on Patricia Dunn and four others stemming from an illegal investigation into Hewlett-Packard's boardroom leaks.

66. HP traditionally led in the area of business ethics for its excellent ethical practices, and outstanding value and belief system called *The HP Way*. But that began to change when *The HP Way* began to diminish once Carly Fiorina was appointed as HP's CEO and chairwoman in 1999.

67. In fact, Ms. Fiorina's controversial initiatives in HP were not congruent with the spirit of *The HP Way*.

68. HP's excellent culture of "trust" and "respect" eroded and gave way to significant conflict and mistrust among the members of the Board of Directors.

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Eventually, ousted for her poor performance in 2005, Fiorina ceded her position as chairwoman to Patricia Dunn.

69. Following the ethical issues that Fiorina had already cultivated, insider information of the boardroom started leaking to the public in early 2005 in conjunction with Dunn's appointment, to which Dunn focused urgent attention to plug the leaks.

70. Ms. Dunn contracted a team of independent security experts to investigate board members and several journalists to identify the source of an information leak. In turn, those security experts recruited private investigators who used a spying technique known as pretexting. The pretexting involved investigators impersonating HP board members and journalists to obtain their phone records.

71. After a story was published in the news, the California Attorney General filed charges for (a) conspiracy to commit crime; (b) fraudulent use of wire, radio, or television transmissions; (c) taking, copying, and using computer data in violation of California Penal Code § 502; (d) using personal identifying information without authorization.

72. The criminal conduct alleged in the Attorney General's criminal charges is not far from the unethical misconduct alleged in this Complaint. As it has done at other times with other parties, HP colluded, conspired, encouraged or put economic pressure on the other Defendants to violate California Penal Code § 502.

73. SetNet relied heavily on HP because HP had promised to market, sell and distribute SetNet's Software globally. When HP pulled out of their agreement, it was too late for SetNet to cultivate partnerships and strategic business alliances with other companies that had HP's global reach and influence in the marketplace. Worse still, HP conspired, encouraged or put economic pressure on SFR and the other Defendants to misappropriate SetNet's Software.

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97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

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Vivendi

74. In the same vein, Vivendi too was mired in financial scandals and charges of fraud during the time that SFR licensed SetNet's Software.

75. Vivendi had to defend against a class-action lawsuit brought by international shareholders of Vivendi in July 2002. Vivendi was accused of violating federal securities laws in statements company officials made from October 2000 to August 2002, according to the plaintiffs' court filing. Apparently, the company made a series of acquisitions during the dot-com boom and was transformed from a French water utility into one of the world's largest media and entertainment companies. But Vivendi's share price collapsed in 2002 as market conditions turned against the company.

76. A lawyer for French shareholders in a parallel case in France, Frédérik-Karel Canoy, was quoted as saying that theoretical damages and interest could reach $50 billion.

77. The S.E.C. ordered the company to pay $48 million to 12,000 shareholders from 16 countries in mid 2008.

Vodafone

78. Like its SFR co-owner Vivendi, Vodafone also had to defend against a similar derivative shareholder class action brought in the United States District Court for the District of New York covering the period between June 10, 2004 and February 24, 2006. The complaint charged Vodafone and certain of its officers and directors with violations of the Securities Exchange Act of 1934.

79. The complaint alleged that Vodafone statements regarding its business and prospects were false and misleading because they did not disclose the following true facts:

(a) Vodafone's financial statements and reports were materially falsified and overstated its assets and operating earnings due to the over-

valuation of its German, Italian and Japanese operations;

(b) Vodafone's German operations had not successfully integrated into Vodafone's overall operations and were suffering from significant operational problems, inefficiencies and a lack of growth and adequate profitability to permit Vodafone to recover its investment in its German operations;

(c) Vodafone's Japanese operations were materially overvalued on Vodafone's financial statements due to the failure to hold or gain sufficient market share so as to permit Vodafone to recover its investment in its Japanese operations;

(d) Vodafone's "One Vodafone" cost savings and operational efficiency initiative was not succeeding or achieving any significant cost savings for the company; and

(e) due to these adverse factors that negatively impacted Vodafone's operations and financial performance, Vodafone knew that the levels of financial performance forecast for fiscal 2006 and 2007 would not and could not be achieved.

80. In a press release dated March 11, 2005, Vodafone announced that it had agreed to settle the securities class action lawsuit, which required a cash payment by Vodafone and its insurance carriers of $24.5 million to the shareholders and $5,295,45 in fees. *See* Order Awarding Fees and Allowances, dated June 19, 2006, issued by Alvin K. Hallerstein, United States District Judge, attached as Exhibit H.

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CIVIL CONSPIRACY TO DEFRAUD SETNET

81. Acting at the direction, or under the influence, of their respective parent companies, HP France and SFR engaged in a pattern and practice of fraud, trickery and deceit to implement a scheme to misappropriate SetNet's Software.

82. Defendants committed acts in furtherance of the conspiracy, or lent aid and encouragement to their co-conspirators, or ratified and adopted the acts of their co-conspirators.

83. Defendants agreed amongst themselves to take the illegal and improper actions described in this Complaint to maximize their financial benefit from the illegal use, sale and distribution of SetNet's technology.

84. Defendants undertook their actions with actual malice in that they were motivated by a desire to deceive SetNet and were aware of their misconduct.

85. Defendants, and each of them, committed the alleged acts pursuant to an agreement by and between them to engineer SetNet's ultimate financial ruin to cripple SetNet's ability to prosecute the claims currently pending in the French legal system and the claims alleged in this Complaint.

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PIERCING THE CORPORATE VEIL OF HP FRANCE AND SFR

86. During the relevant time period, HP owned and controlled HP France's equitable interests. A unity of interest and ownership between HP and HP France existed such that any individuality and separateness between them had ceased.

87. HP so dominated and controlled HP France that it would be unconscionable, unjust and inequitable to permit HP to avoid individual liability for SetNet's damages.

88. During the relevant time period, Vodafone and Vivendi jointly owned the controlling majority of SFR's equitable interests. A unity of interest and ownership between Vodafone/Vivendi and SFR existed such that any individuality and separateness between Vodafone/Vivendi and SFR had ceased.

89. Vodafone and Vivendi so dominated and controlled SFR that it would be unconscionable, unjust and inequitable to permit Vodafone and Vivendi to avoid individual liability for SetNet's damages.

STATUTE OF LIMITATIONS

90. As explained above, SetNet, SFR and HP France are parties in a case pending in the *Cour d' appel de Paris*.

91. The attached affidavits by an ex-SFR software engineer filed in that case in January 2014 disclose material facts relevant to the claims alleged below that Defendants withheld from SetNet. *See* Exhibit C.

92. Any applicable statutes of limitation are tolled by delayed discovery or Defendants' knowing and active concealment of facts alleged in this Complaint.

93. Despite exercising reasonable diligence, SetNet did not discover, could not discover, and Defendants prevented SetNet from discovering, the tortious, unlawful conduct alleged in this Complaint.

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SAN JOSE, CA 95113
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FIRST CLAIM FOR RELIEF

Intentional Interference with Contract

(All Defendants)

94. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

95. In their greed to have unauthorized use, distribution and sale of SetNet's technology, Defendants (a) conspired, encouraged or put economic pressure on each other to make false representations, concealments and non-disclosures; and (b) engaged in a pattern and practice of fraud, to induce a breach of the SetNet Licenses and the other contracts alleged in this Complaint or otherwise to disrupt or damage SetNet's proprietary rights to and licensing of, its technology.

96. Defendants undertook their acts, including misappropriating SetNet's Software, to obtain financial gain, all for the purpose of benefiting from SetNet's goodwill and reputation and the demand for its technology.

97. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount.

98. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

99. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

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SECOND CLAIM FOR RELIEF

Negligent Interference with Contract

(All Defendants)

100. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

101. Defendants were on notice of the agreements by and between SetNet and HP France and SFR. Being on such notice, Defendants owed a duty of care to SetNet not to engage in conduct that would induce a breach of any of those contracts or otherwise disrupt or damage SetNet's proprietary rights to, and distribution and licensing of its technology.

102. Defendants breached the duty of care they owed to SetNet when they conspired, encouraged or put economic pressure on each other to engage in conduct that would induce a breach of the SetNet Licenses and the other contracts alleged in this Complaint or otherwise disrupt or damage SetNet's proprietary rights to and licensing of its technology, including misappropriating SetNet's Software.

103. Defendants undertook their acts to obtain financial gain, all for the purpose of benefiting from SetNet's goodwill and reputation and the demand for its technology.

104. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount.

105. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

106. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

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THIRD CLAIM FOR RELIEF

Interference with Prospective Economic Advantage

(All Defendants)

107. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

108. Defendants were on notice of the economic relationships SetNet had with HP France and SFR, which provided a likelihood of future economic benefit to SetNet.

109. SetNet had valuable prospective economic relationships and business opportunities with customers and strategic business alliances, from which SetNet derived economic gain, and from which SetNet had a reasonable expectancy of deriving future economic gain.

110. SetNet invested a great amount of time, effort and money on developing relationships with these customers and prospective customers. SetNet generated most of its revenue through the sale of licenses of its technology, and actively cultivated relationships with strategic partners that would have expanded SetNet's reach and influence in the mobile market.

111. SetNet expected to gain future economic advantage from existing customers and prospective customers whom SetNet expected to purchase licenses to SetNet's technology and therefore continue to patronize SetNet in a manner that would likely generate ongoing revenues for SetNet.

112. Defendants were aware of SetNet's prospective economic relationships and business opportunities.

113. Defendants knew of the existence of, and intentionally interfered with, the relationships with these SetNet customers and prospective customers and prospective partnerships and alliances that SetNet was cultivating.

114. Through their actions described above, Defendants wrongfully, knowingly, and intentionally interfered with and destroyed or harmed SetNet's

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prospective business relationships.

115. SetNet has been harmed by Defendants' intentional interference with SetNet's prospective business relationships.

116. Defendants' intentional wrongful acts further interfered with SetNet's marketing channels, current and prospective authorized accounts and distributors, and otherwise injured SetNet's goodwill and reputation.

117. Defendants accomplished their interference through wrongful means, including:

(a) the unauthorized use of SetNet's proprietary, confidential and trade secret information;

(b) Defendants' fraudulent inducement of the SetNet Licenses and other agreements alleged in this Complaint that they never intended for SFR to honor; and

(c) SFR's poaching SetNet employees to misappropriate SetNet's technology.

118. Defendants' acts interfered with, made more burdensome or disrupted, SetNet's prospective economic relationships with its existing and prospective customers and other business relationships in a manner that ultimately led the company to lose all revenue from the sale of licenses to its technology and brought SetNet to the brink of financial ruin.

119. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

120. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

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FOURTH CLAIM FOR RELIEF

California Statutory Misappropriation of

Trade Secrets (Cal. Civ. Code § 3426 *et seq.*)

(All Defendants)

121. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

122. In the course of its business, SetNet has developed or acquired proprietary, confidential and trade secret information essential to maintaining SetNet's competitive position. During the relevant time period, SetNet had established extensive procedures and policies to protect its proprietary, confidential and trade secret information. SetNet's employees signed employment agreements containing confidentiality provisions that are standard and commonly used by Silicon Valley technology companies. SetNet's employees all understand the importance of keeping company information confidential.

123. SetNet also has procedures to ensure that proprietary, confidential and trade secret information is disseminated to its employees only on a "need-to-know" basis. The most sensitive SetNet proprietary, confidential and trade secret information was physically maintained at its California headquarters. SetNet at all times had security measures in place to safeguard this information.

124. SetNet's proprietary, confidential and trade secret information includes, but is not limited to:

(a) technical information relating to the technology that SFR licensed from SetNet, including, but not limited to, technical information and data in and related to SetNet's software and hardware, computer programs, architecture information, application programming interfaces, software developer's kits, and installation and support requirements;

(b) sales and marketing information, including, but not limited to, pricing, marketing strategies, future product releases, sales strategies, sales

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projections, market studies, analyses, and competitor information;

(c) customer information;

(d) service provider information; and

(e) reseller information.

125. Before any third party may obtain any of SetNet's technology, that party first must manifest its assent to and enter into an agreement with SetNet governing the use of SetNet's technology. SetNet places contractual restrictions on the use of its technology and prohibits licensees from, among other things:

(a) modifying, in whole or in part, SetNet's Software;

(b) decompiling, disassembling or otherwise reverse engineering, in whole or in part, SetNet's Software;

(c) obtaining or using the source code for SetNet's Software;

(d) printing, copying, reproducing, duplicating, or distributing, in whole or in part, SetNet's Software, except as expressly agreed to in writing; and

(e) using SetNet's technology to develop an alternative to, or a replacement of, SetNet's Software.

126. Certain components of SetNet's Software can only be obtained under a written license agreement, and are not available in any other manner.

127. During the relevant time period, SetNet's Software embodied numerous components of SetNet's proprietary, confidential and trade secret information. One purpose of the SetNet Licenses was to maintain the proprietary, confidential and trade secret aspects of SetNet's Software by limiting the uses of SetNet's Software to only those authorized by the license.

128. During the course of their relationship, SetNet provided proprietary, confidential and trade secret information to HP France, SFR, Romanetti and Ramiere. Consistent with its policies regarding protecting its proprietary, confidential and trade secret information, SetNet entered into confidentiality and non-disclosure agreements with HP France, SFR, Romanetti and Ramiere.

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129. During the time that they worked for SetNet, Defendants Romanetti and Ramiere knew that under these agreements they were obligated to keep confidential and to refrain from using SetNet's proprietary, confidential and trade secret information for their own benefit or to SetNet's detriment. After they were poached by SFR, Defendants Romanetti and Ramiere disclosed to SFR the proprietary Oracle database schema of SetNet's Software. Romanetti kept his SetNet laptop with all source code and access to the code repository.

130. Defendants conspired with, authorized or put pressure on each other and on SFR to misappropriate SetNet's proprietary, confidential and trade secret information in violation of California Civil Code section 3426 *et seq.* in that SFR and Defendants Romanetti and Ramiere:

(a) acquired information that Defendants knew, or had reason to know, was acquired by improper means; or

(b) wrongfully used or disclosed SetNet's proprietary, confidential and trade secret information knowing or having reason to know that the information had been: (i) acquired through improper means; (ii) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or, (iii) derived from or through a person who owed a duty to SetNet to maintain its secrecy or limit its use.

131. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount.

132. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

133. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

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FIFTH CLAIM FOR RELIEF

Fraud in the Inducement

(All Defendants)

134. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

135. Tortious fraud occurs when a party "willfully deceives another with the intent to induce him to alter his position to his injury of risk." Cal. Civ. Code § 1709.

136. The elements for fraud and intentional misrepresentation are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity; (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. *Lazar v. Superior Court,* 12 Cal. 4th 631,635 (1996). Intent may be established by inference from the acts of the parties because direct proof of intent for fraud is often impossible. *Continental Airlines, Inc. v. McDonnell Douglas Corp.,* 216 Cal. App. 3d 388, 402 (1989).

137. Defendants conspired with, authorized or put pressure on each other and on SFR and HP France to commit actual fraud when they fraudulently induced SetNet to continue to deploy SetNet's Software in SFR's operating environment.

138. Defendants knew at the time they induced SetNet to license its software to SFR that SFR would not honor the contract with SetNet, but rather intended to exceed the number of authorized concurrent users, and, eventually, to misappropriate SetNet's technology.

139. After HP France unilaterally terminated its relationship with SetNet, Defendants conspired with, authorized or put pressure on SFR to falsely represent, imply, and knew (or should have known) that SetNet would believe SFR's continued interest in SetNet's Software so that SFR could misappropriate it and then allow Vodafone unauthorized access and use of SetNet's technology.

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140. SFR knew that it lacked the intent and authority to continue to purchase SetNet Licenses because Vodafone and/or Vivendi had directed SFR to terminate the relationship with SetNet after SFR poached Romanetti and Ramiere and had misappropriated SetNet's technology.

141. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount.

142. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

143. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

SIXTH CLAIM FOR RELIEF

Violation of California Computer Crime Statute

Cal. Penal Code § 502

(All Defendants)

144. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

145. California Penal Code § 502(e)(1) provides a civil cause of action against a person who "[k]nowingly accesses and without permission alters, damages, deletes, destroys, or otherwise uses any data, computer, computer system, or computer network to (A) devise or execute any scheme or artifice to defraud, deceive, or extort, or (B) wrongfully control or obtain money, property, or data"; or "[k]nowingly accesses and without permission takes, copies, or makes use of any data from a computer, computer system, or computer network, or takes or copies any supporting documentation, whether existing or residing internal or external to a computer, computer system, or computer network."

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Penal Code § 502(c).

146. Without SetNet's authorization, Defendants conspired, encouraged or put economic pressure on each other to copy, and to use the data from SetNet's computers, computer services, computer system, and computer network to enable SFR and Vodafone to misappropriate SetNet's Software.

147. As to Defendants Romanetti and Ramiere, their misconduct was outside the scope of their employment for SetNet.

148. Defendants violated California Penal Code § 502(c)(2) by conspiring, encouraging or putting economic pressure on each other to knowingly and fraudulently access and without permission, take, copy, and make use of data from a computer, computer system, or computer network.

149. Defendants violated California Penal Code § 502(c)(3) by conspiring, encouraging or putting economic pressure on each other to knowingly and fraudulently access and use computer services without permission.

150. Defendants violated California Penal Code § 502(c)(6) by conspiring, encouraging or putting economic pressure on each other to knowingly, fraudulently, and without permission provide or assist in providing a means to access a computer, computer system, or computer network.

151. Defendants violated California Penal Code § 502(c)(7) by conspiring, encouraging or putting economic pressure on each other to knowingly, fraudulently, and without permission to access or cause to be accessed any computer, compute system, or computer network.

152. SetNet has been injured by these violations and is entitled to damages and attorney's fees under California Penal Code §§ 502(e) *et seq.*

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SEVENTH CLAIM FOR RELIEF

Common Law Unfair Competition

(All Defendants)

153. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

154. The various Defendants acted in collusion with each other, and with the common purpose to engage in the unfair, unlawful and fraudulent business practices alleged in this Complaint and profiting from them at SetNet's expense. Defendants are jointly and severally liable for their misconduct.

155. Defendants conspired with, authorized or put pressure on SFR to misappropriate SetNet's proprietary, confidential and trade secret information. Such conduct enabled SFR to access and use SetNet's valuable proprietary and confidential information embodied in SetNet's Software. SFR then used SetNet's valuable proprietary and confidential information to create its own alternative solution. SFR did so knowing that:

(a) SetNet's Software contained SetNet's valuable proprietary and confidential information;

(b) the information was conveyed to SFR confidentially or for a limited purpose;

(c) the Oracle database schema of SetNet's Software had been unlawfully obtained and disclosed to SFR by Defendants Romanetti and Ramiere; and

(d) SFR used SetNet's technology, and therefore SetNet's valuable proprietary and confidential information, for purposes beyond those for which SFR was permitted.

156. SFR knew that SetNet's Software contained SetNet's valuable proprietary and confidential information, and SFR understood that SetNet's Software embodied SetNet's valuable proprietary and confidential information,

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and was not to be disclosed to others nor to be used beyond the specific purpose for which it was conveyed to SFR under the parties' written agreements.

157. As alleged above, Defendants Romanetti and Ramiere voluntarily received SetNet's valuable proprietary and confidential information conveyed to them with the understanding that it was confidential, it was not to be disclosed to others nor was not to be used for purposes beyond the specific purpose for which it was conveyed to them. In working for SFR, Defendants Romanetti and Ramiere used or disclosed SetNet's valuable proprietary and confidential information without SetNet's consent and in breach of confidence.

158. Defendants conspired with, authorized or put pressure on each other and on SFR to use SetNet's valuable proprietary and confidential information. Defendants did so with actual knowledge of their respective duties not to disclose it or had reason to know of their respective duties not to disclose it, or under circumstances giving rise to a duty to inquire further regarding their respective obligations to SetNet.

159. Defendants Romanetti and Ramiere misappropriated and then disclosed SetNet's valuable proprietary and confidential information without authorization. Defendants received, misappropriated and used SetNet's valuable proprietary and confidential information at minimal or no cost to them.

160. As a proximate result of Defendants' acts, SetNet suffered, and continues to suffer, general and special damages, including lost profits and sales, among other things, in an amount currently unascertained but that exceeds this Court's jurisdictional amount.

161. As a further proximate result of their tortious acts, Defendants have been unjustly enriched.

162. Defendants' unlawful actions were willful, wanton, malicious, and oppressive, and in conscious disregard of SetNet's rights, justifying the award of punitive damages and exemplary damages under California Civil Code § 3294.

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EIGHTH CLAIM FOR RELIEF

Statutory Unfair Competition

Under Cal. Bus. & Prof. Code § 17200 *et seq.*

(All Defendants)

163. SetNet realleges and incorporates by reference the allegations of each of the other paragraphs set forth in this Complaint.

164. Defendants' actions alleged in this Complaint constitute unfair competition and unlawful, unfair or fraudulent business practices in violation of California Business and Professions Code § 17200 *et seq.*

165. As a proximate result of their misconduct, Defendants have been unjustly enriched justifying disgorgement of the profits generated by their tortious acts.

166. By this action, SetNet seeks to enjoin Defendants from engaging in, and benefiting from, the unlawful, unfair and deceptive acts and practices described in this Complaint, including without limitation:

(a) misappropriation of trade secrets;

(b) violation of Penal Code § 502;

(c) breach of confidence;

(d) breach of the duty of loyalty owed by Defendants Romanetti and Ramiere;

(e) conversion of property; and

(f) fraud and deception, including the taking of property, the failure to return the property taken, the copying of the property and attempt to use it as if it were Defendants', and the subsequent alleged loss of property, such as the User Logs, which would accurately account for the information taken from SetNet's Oracle databases.

167. Defendants' wrongful conduct, including their unauthorized use of SetNet's Software to compete with SetNet, constitutes unfair, deceptive or

SETNET CORPORATION
97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

unlawful acts or practices under California's Unfair Competition Law.

168. SetNet has suffered an injury in fact by virtue of Defendants' violation of SetNet's legally protected interests, including Defendants' misappropriation of trade secrets, violation of Penal Code §502, breach of confidence, breach of the duty of loyalty, conversion of property, and fraud and deception on behalf of the other Defendants.

169. SetNet lost money and/or property as a result of Defendants' unfair, deceptive or unlawful acts or practices. Among other things, SetNet has had to divert staff time and resources investigating Defendants' wrongful conduct. SetNet has also lost control over its stolen property.

170. Defendants' unfair competition may be enjoined, irrespective of whether each Defendant can be held financially liable for such conduct. SetNet seeks all appropriate forms of relief against Defendants' unfair competition, including injunctive relief, restitution, and an accounting for and a constructive trust over the property taken and any and all benefits derived therefrom.

171. Injunctive relief is necessary to prevent Defendants from continuing to unfairly and unlawfully compete with SetNet.

172. Restitution, an accounting and a constructive trust over SetNet's property and any and all benefits conferred on Defendants should be awarded to SetNet.

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DEMAND FOR JURY TRIAL

Plaintiff SetNet Corporation hereby demands trial of this matter by jury.

PRAYER FOR RELIEF

Plaintiff SetNet prays for judgment against Defendants, jointly and severally, as follows:

1. Compensatory damages, according to proof;
2. For punitive damages in an amount sufficient to punish Defendants and for the sake of example;
3. Prejudgment and post-judgment interest on all damages awarded;
4. Statutory attorneys' fees;
5. Costs of suit incurred; and
6. For such other and further relief as the Court deems just and proper.

Dated: February 14, 2014

SETNET CORPORATION

Francisco ~~X.~~ Márquez
General Counsel

SETNET CORPORATION
97 S. SECOND ST. – Suite 100
SAN JOSE, CA 95113
PH: 408.634.6119 FX: 408.969.1639

VERIFICATION

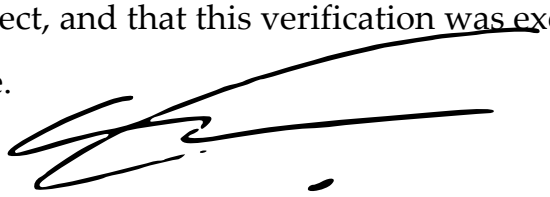
I, Nicolas Fodor, am the President and Founder of Plaintiff SetNet Corporation in this matter. I have read and know the contents of the foregoing:

VERIFIED COMPLAINT

1. Intentional Interference with Contract
2. Negligent Interference with Contract
3. Interference with Prospective Economic Advantage
4. Statutory Misappropriation of Trade Secrets
5. Fraud in the Inducement
6. Violation of Penal Code § 502 (Computer Crime Statute)
7. Common Law Unfair Competition
8. Statutory Unfair Competition

The facts alleged in the answer are within my own knowledge and I know those facts to be true, except as to those matters stated upon my information and belief, and as to those matters I also believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this verification was executed on February 14, 2014, at Paris, France.



Nicolas Fodor

Exhibit A

Vodafone

Setnet Global PIM Software and Integration Solutions for Vodafone

vodafone

Vodafone PIM DRFI
Presentation June 10th 2002

hp invent

SetNet

SetNet Management Team

Name	Title	Experience
Nicolas Fodor	Founder and CTO	Co-Founder of Liason, 15 years in Software Design for high-end systems, University of Paris II Law School
Arif Baigmohamed	EVP & COO	Enron Broadband/Energy, Coca-Cola, Harvard MBA
Jean-Claude LeFranc	VP Product Development	Head of Enhanced Services at SFR/Cegetel, Ecole National des Engenieurs MS Com. Sci.
Vadim Zaliva	Chief Architect	Developing internet email and messaging application for over 10 years.
Frederic Hayat	Co-Founder, GM Europe	Co-Founder of CEDEF, Tradition SA, Univ. Chicago MBA, Ecole Centrale MS
Thierry Ferey	Director European Customer Solutions	Co-Founder & CTO of Selfswitch, CIO of GlobeCast, the France Telecom Satellite Broadcasting subsidiary, MS in Physics from the University of Grenoble (France)
Bryon Driscoll	Director of Sales	Director of Sales, Tornado Development, Inc., NEC America, MobileMedia and SBC

vodafone

Vodafone PIM DRFI
Presentation June 10th 2002

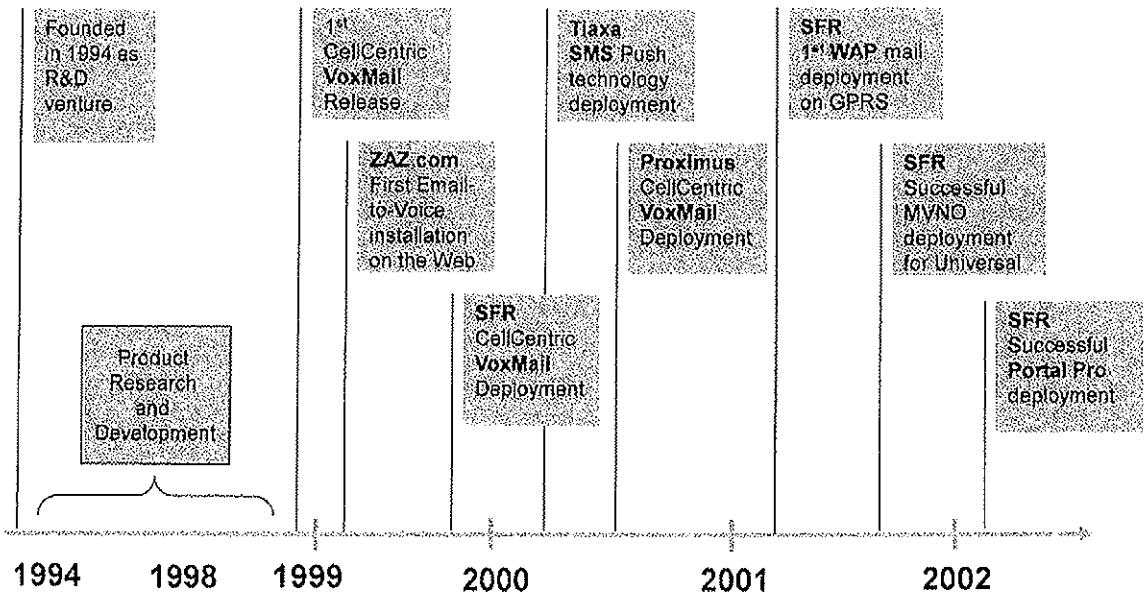
hp invent

SetNet

SetNet Advisory Board

Name	Title	Experience
Maarten Boasson	Venture Partner Favonius Ventures, Professor of Computer Science University of Amsterdam Boasson	Worldwide authority on large, reactive, distributive systems. Over 30 years of software design experience.
Scott Fox	Chairman GSM Assn.Group President WFI. Cingular's nominee to GSM Assn	Past CTO at Bell South, Founder of CTO Forum for the GSM Alliance
Marc Goyette	President-ROI International, a top recruiting firm in the telecom space	COO/President of Phoenix Networks, Founder/Vice-Chairman of Avirnex Inc.
Thomas Lidforss	Product Manager, Mobile Wireless Group-Cisco Systems	Vast telecom experience at Cisco and Ericsson
William C. Race	Worldwide Manager, Wireless Data Communications -Hewlett Packard	Leads HP's worldwide wireless data communications effort. 20+ years with HP
John Trbovich	Investment Banker	Co-Founded E*Offering, Robertson Stephens, Salomon Smith Barney, Harvard MBA

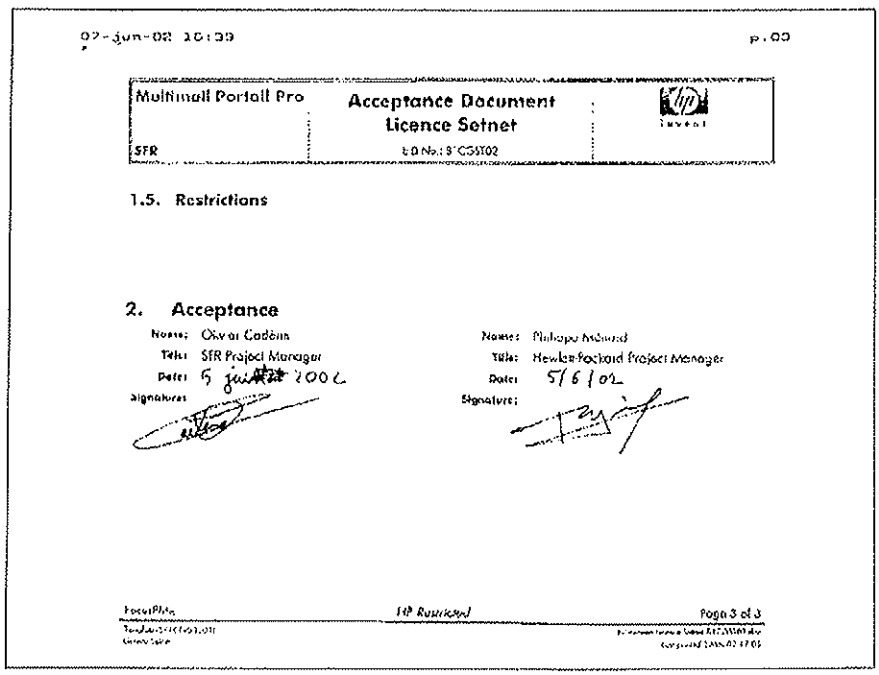
Company History (we might want to delete covered in next slide)



Quality At SetNet

- Track record on quality
  - 2 years of un-interrupted service at SFR and Proximus with several consecutive deployments
  - Working at SFR with HP since January 2002
  - Successful deployment of the Portal Pro project:
    - Ability to respect strictly the project plan and the milestone
    - Acceptance delivered last week by SFR

HP / SRF Project Acceptance



02-jun-02 10:39 p.03

Multimail Portail Pro	Acceptance Document Licence Setnet	hp invent
SFR	E.D No.: 9°CDST02	

1.5. Restrictions

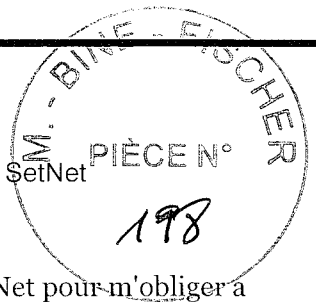
2. Acceptance

Name: Olivier Cadiou
Title: SFR Project Manager
Date: 5 juin 2002
Signature:

Name: Philippe Richard
Title: Hewlett-Packard Project Manager
Date: 5/6/02
Signature:

Exhibit B

Maryanne Bine-Fischer



De: nfodor [nick@fodor.net]
Envoyé: mardi 17 mai 2011 10:57
À: mbf.avocats@orange.fr
Objet: Message from HP Corp regarding HP France attitude towards SetNet

reconnaissance par hp corp de la tentative par hp france de passer par le board de SetNet pour m'obliger à baisser les prix.

From Evernote:

Message from HP Corp regarding HP France attitude towards SetNet

Ceci prouve que HP France a refuse de communique avec SetNet des 2003 sauf en passant directement par le board de SetNet.

From: "KUHN,HUGH (HP-Cupertino,ex1)" <**hugh.kuhn@hp.com**>
Date: Wed Jun 4, 2003 9:25:01 AM US/Pacific
To: Nick Fodor <**nfodor@setnet.com**>, "KUHN,HUGH (HP-Cupertino,ex1)" <**hugh.kuhn@hp.com**>
Cc: "AUGIS,ERIC (HP-Issy Les Moulineaux)" <IMCEAEX-_O=HP_OU=AMERICAS_CN=+2EE2K-EMP_CN=**ERIC+2EAUGIS@am.exch.hp.com**>, "BROSSARD,CEDRIC (HP-France,ex2)" <**cedric.brossard@hp.com**>, "DCOSTA,CARL (HP-Cupertino,ex1)" <**carl.dcosta@hp.com**>, Janine Haines <**Janine@hitech-law.com**>, **jackie@hitech-law.com**, "MARINI,MICHELE (HP-Roma)" <IMCEAEX-_O=HP_OU=AMERICAS_CN=+2EE2K-EMP_CN=**MICHELE+2EMARINI@am.exch.hp.com**>
Subject: RE: HPS C&I - SetNet Conf Call

Nick,

I am sorry that this has happened, and cannot understand the actions of the HP team in France - especially since we had arranged to have a civil, executive-level conversation this morning to strive to resolve these issues once and for all. I understand completely your frustration, and at this point can only suggest that you need to do what you need to do based on Setnet's business needs. Sad as that may be.

I know that we have sales activities started together in other accounts - which are proceeding well - so from my viewpoint these issues between HP and Setnet are local in nature and confined to the problems with this customer and HP Services team in France. As you know I have been trying to get the management team of HP's C&I NSP practices in France to engage directly with you to resolve the problems. Your feeling that you cannot now trust them, based on their contact with other Setnet Board members just prior to our planned call, is regretably understandable.

Regards,

Hugh

Exhibit C

MINISTERE DE LA JUSTICE

LmtAvocats
Palais R 169
N° 213

cerfa

N° 11527*02

ATTESTATION

(articles 200 à 203 du nouveau code de procédure civile, article 441-7 du nouveau code pénal)

Je soussigné,

NOM : CADEME ☐Melle ☐Mme ☒M.

PRENOMS : OLIVIER FRANCOIS CHRISTIAN

Date de naissance : jour 12 3 | mois 10 9 | année 19 67 19

Lieu de naissance : Perpignan, Roussillon
(*ville, département*)

Profession : Ingenieur Télécom

Demeurant à : 27 rue du marché

Code postal : 95160 Commune : Montmorency

Lien de parenté, d'alliance, de subordination, de collaboration ou de communauté d'intérêts avec les parties :

☐ OUI ☒ NON *(Cocher la case utile)*

Si oui, précisez lequel : _____

Sachant que l'attestation sera utilisée en justice, et connaissance prise des dispositions de l'article 441-7 du code pénal, réprimant l'établissement d'attestation faisant état de faits matériellement inexacts, ci-après rappelées :

"Est puni d'un an d'emprisonnement et de 15 000 euros d'amende le fait d'établir une attestation ou un certificat faisant état de faits matériellement inexacts".
(cette phrase doit être écrite, ci-dessous, entièrement de votre main)

Est puni d'un an d'emprisonnement et de 15 000 euros d'amende le fait d'établir une attestation ou un certificat faisant état de faits matériellement inexacts.

Indiquez ci-dessous les faits auxquels vous avez assisté ou que vous avez constatés personnellement :

Je confirme que le dimensionnement effectué pour le projet M3S était destiné à la seule plateforme destinée aux usagers professionnels de CELLCENTRIC, et dans le cadre de l'ajout du logiciel MAO/POP PROXY qui ne concernait pas les abonnés grand public utilisant CELLCENTRIC. J'étais de 2000 à 2003 responsable technique de la plateforme EMAIL chez SFR.
Olivier Codène.

Par ailleurs, j'ajoute que j'avais personnellement développé un logiciel permettant le calcul des licences simultannées des logiciels WAP MAIL et WEB MAIL. Les calculs et estimation de croissance ayant été transmis à ma hiérarchie.

Votre signature :

Fait à : Paris

Le : jour 10|2| mois 10|1| année 12|01|14

PIECE A JOINDRE :

- un original ou une photocopie d'un document officiel justifiant de votre identité et comportant votre signature.

La loi n°78-17 du 6 janvier 1978 relative aux fichiers nominatifs garantit un droit d'accès et de rectification des données auprès des organismes destinataires du formulaire.

Attention, les enfants ayant atteint l'âge de 12 ans doivent être munis de leur propre passeport.

Page réservée aux autorités compétentes pour utiliser le passeport.

Signature du titulaire

RÉPUBLIQUE FRANÇAISE

PASSEPORT

PASSPORT

RF

Type / Type
P

Code du pays / Country code
FRA

Passeport n° / Passport No.
04XH36394

Nom / Surname (1)
CADENE

Prénoms (dans l'ordre de l'état civil) / Given names (in order of birth certificate) (2)
Olivier,François,Christian

Nationalité / Nationality (3)
Française

Sexe / Sex (4) Taille / Height (5) Couleur des yeux / Eye colour (6)
M **1,76 m** **Marron**

Date de naissance / Date of birth (7)
23-09-1970

Lieu de naissance / Place of birth (8)
PERPIGNAN (66)

Date de délivrance / Date of issue (9)
22-12-2004

Autorité / Authority
Pour le Préfet,
le Directeur de la Réglementation

Date d'expiration / Date of expiry (10)
21-12-2014

M.L. DELUCQ

P<FRACADENE<<OLIVIER<<<<<<<<<<<<<<<<<<<<<<<<

04XH363948FRA7009231M1412211<<<<<<<<<<<<<<00

MINISTERE DE LA JUSTICE

LmtAvocats
Palais R 169
N° 216

N° 11527*02

ATTESTATION

(articles 200 à 203 du nouveau code de procédure civile, article 441-7 du nouveau code pénal)

Je soussigné,

NOM : CABENE ☐ Melle ☐ Mme ☒ M.

PRENOMS : OLIVIER FRANCOIS CHRISTIAN

Date de naissance : jour 12/2 mois 10/5 année 1979

Lieu de naissance : Perpignan, Roussillon
(*ville, département*)

Profession : Ingenieur Telecom

Demeurant à : 27 rue du marché

Code postal : 95160 Commune : Montmorency

Lien de parenté, d'alliance, de subordination, de collaboration ou de communauté d'intérêts avec les parties :

☐ OUI ☒ NON *(Cocher la case utile)*

Si oui, précisez lequel :

Sachant que l'attestation sera utilisée en justice, et connaissance prise des dispositions de l'article 441-7 du code pénal, réprimant l'établissement d'attestation faisant état de faits matériellement inexacts, ci-après rappelées :

"Est puni d'un an d'emprisonnement et de 15 000 euros d'amende le fait d'établir une attestation ou un certificat faisant état de faits matériellement inexacts".
(cette phrase doit être écrite, ci-dessous, entièrement de votre main)

Est puni d'un an d'emprisonnement et de 15 000 euros d'amende le fait d'établir une attestation ou un certificat faisant état de fait matériellement inexacts

Indiquez ci-dessous les faits auxquels vous avez assisté ou que vous avez constatés personnellement :

Le logiciel WAPMAIL de Setnet était le seul logiciel d'accès aux emails disponible sur tous les mobiles Vodafone live SFR via WAP.

Il permettait l'accès aux boites aux lettres SFR.FR Virgin-FR, Vodafone.fr et la plupart des comptes emails utilisateurs y compris hotmail, Yahoo etc..

Le système de comptage de sessions que j'avais développé a permis d'avoir une première idée du nombre de sessions simultanées. Les premiers résultats ont été communiqué aux département achat de SFR, afin d'estimer les futurs besoin en licences.

Par la suite Setnet a fourni le logiciel "mcadmin" à ma demande pour connaitre le nombre de sessions simultanées à tout moment.

Votre signature :

Fait à : Paris

Le : jour 10 6 | mois 10 1 | année 12 01 14

PIECE A JOINDRE :

- un original ou une photocopie d'un document officiel justifiant de votre identité et comportant votre signature.

La loi n°78-17 du 6 janvier 1978 relative aux fichiers nominatifs garantit un droit d'accès et de rectification des données auprès des organismes destinataires du formulaire.

Exhibit D

groupe cegetel

COMMANDE

N° commande / date d'émission / Page d'exemplaire
12RE4147795 //09.01.2003

Contact
TZE

Contact Achats / Téléphone
V.RACINE / 01 7107 6977

HEWLETT PACKARD FRANCE
1 AVENUE DU CANADA
91940 LES ULIS CEDEX

Monsieur Eitussi

Code fournisseur : 1017984

Adresse de facturation
SFR
Comptubilité fournisseurs
Tour Séquois - La Défense 8
1, Place Carpeaux
92915 Paris La Défense Cedex

Adresse de livraison
Champlan
ZA des POARDS, rue Taillefer

Contrat référence :

Conditions de règlement
60 Jours fin de mois le 10

Devise
EUR

Conditions de livraison
FH Franco domicile

N°	Désignation	Quantité	PU HT	Total HT
	ATTENTION VEUILLEZ BIEN ENVOYER VOTRE FACTURE A L'ADRESSE DE FACTURATION MENTIONNEE CI-DESSUS DANS LE CADRE "ADRESSE DE FACTURATION", A L'ATTENTION DE LA COMPTABILITE FOURNISSEURS. MERCI Colorwap - SFR Live Commande à exécuter selon votre offre commerciale et devis n° EID n°B1CGST07. Affaire suivie par N. Leroy.			
1	INEGRATION UM/MULTIMEDIA ET AUTRES INTEGRATION UM / MULTIMEDIA ET AUTRES lot 1.1 : colorwap -pré-intégration Setnet : 10hj setnet.hp 20hj chef de projet, 2hj architecture, 15hj consultant, contigence engagement forfaitaire 10% frais (2175E) Date d'exécution : 31.03.2003	1 PCE	49.985,00	49.985,00
2	ASSISTANCE TECHNIQUE POUR LE WAP lot 1.1 colorwap intégration/VABF HP 16hj consultant Date d'exécution : 31.03.2003	1 PCE	11.200,00	11.200,00

groupe cegetel SFR

COMMANDE

N° COMMANDE / N° suivant / Date commande
12RE4147795 //09.01.2003

Demandeur
ZEMMOUR

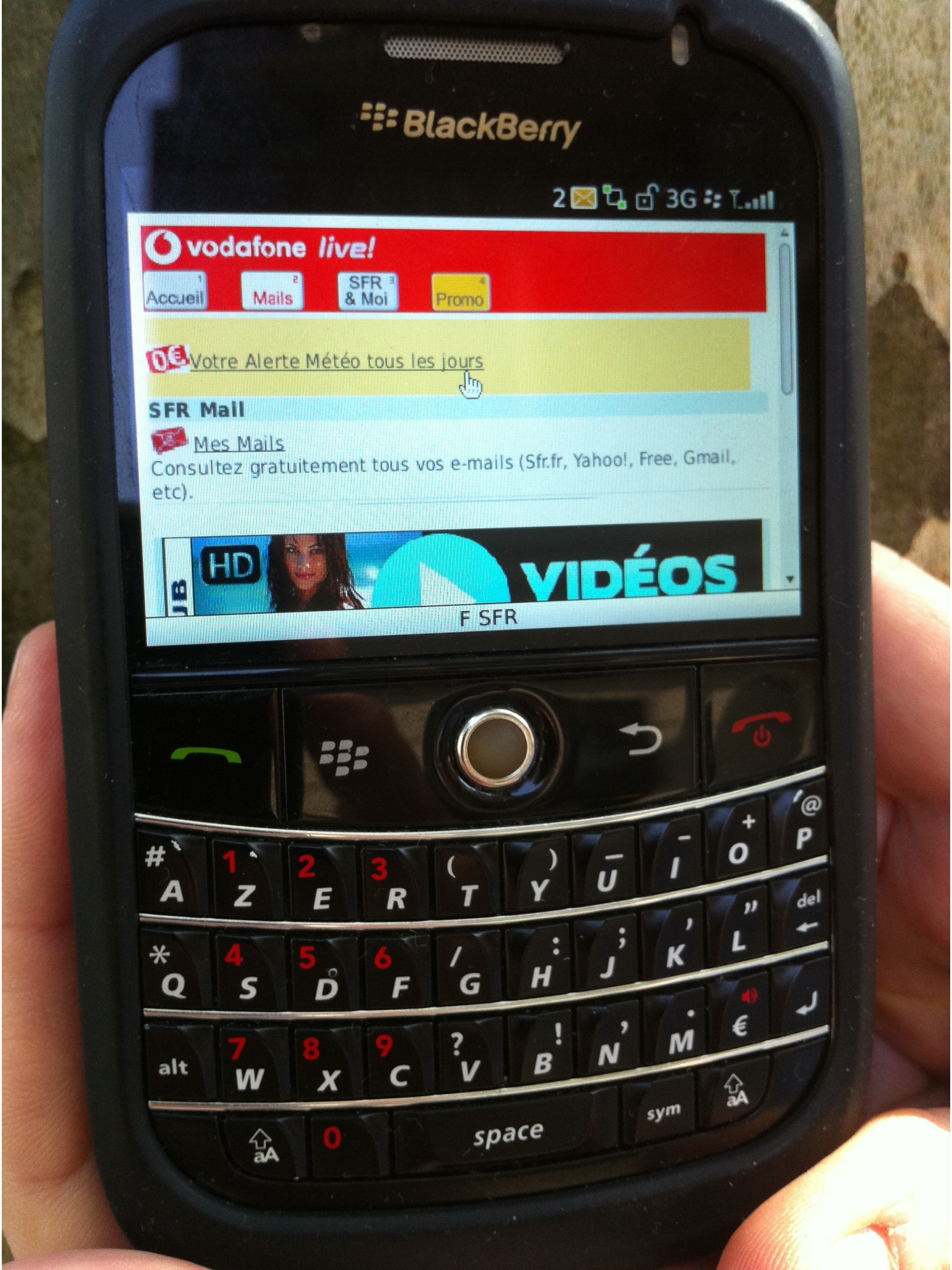
N°	Désignation	Quantité	PU HT	Total HT
3	INEGRATION UM/MULTIMEDIA ET AUTRES INTEGRATION UM / MULTIMEDIA ET AUTRES lot 1.1 colorwap - déploiement HP 1hj consultant Date d'exécution : 31.03.2003	1 PCE	700,00	700,00
4	ASSISTANCE TECHNIQUE POUR LE WAP lot 1.1 colorwap -VSR HP 17hj consultant Date d'exécution : 31.03.2003	1 PCE	11.900,00	11.900,00
5	LOGICIEL SUPERVISION DATA UM/MULTIMEDIA lot 1.2 colorwap -licenses setnet Date d'exécution : 31.03.2003	1 PCE	58.500,00	58.500,00
6	INEGRATION UM/MULTIMEDIA ET AUTRES INTEGRATION UM / MULTIMEDIA ET AUTRES lot 2.1 pièces jointes couleur-pré intégration setnet, 2hj chef de projet, 13hj setnet, HP 3hj chef de projet, 1hj architecture, 4hj consultant, contingence engagement forfaitaire 10% Date d'exécution : 31.03.2003	1 PCE	22.650,00	22.650,00
7	ASSISTANCE TECHNIQUE POUR LE WAP INTEGRATION UM / MULTIMEDIA ET AUTRES lot 2.1 pièces jointes couleur intégration /VABF HP 2hj consultant Date d'exécution : 31.03.2003	1 PCE	1.400,00	1.400,00
8	INEGRATION UM/MULTIMEDIA ET AUTRES INTEGRATION UM / MULTIMEDIA ET AUTRES lot 2.1 pièces jointes couleur déploiement HP 1hj consultant Date d'exécution : 31.03.2003	1 PCE	700,00	700,00
	TOTAL HT EN EUR			157.035,00
	TOTAL HT EN FRF			1.030.082,07

Le n° de la commande doit figurer impérativement sur votre facture. A défaut, celle-ci vous sera retournée.

La présente commande est soumise par ordre décroissant d'importance :
1. Aux conditions du contrat référencé lorsque celui-ci est indiqué
2. Aux éventuels éléments cités aux conditions particulières
3. Aux conditions générales d'achat, non contraires à de tels éléments, décrites au verso.

Date 9/01/03 Nom Mendibourou Signature

Exhibit E


BlackBerry
2 3G
vodafone live!
Accueil
Mails
SFR & Moi
Promo
Votre Alerte Météo tous les jours
SFR Mail
Mes Mails
Consultez gratuitement tous vos e-mails (Sfr.fr, Yahoo!, Free, Gmail, etc).
HD
VIDÉOS
F SFR
alt
space
sym


BlackBerry
2 3G
vodafone live!
Accueil
Mails
SFR & Moi
Promo
Mes Offres
575 jeux & apps!
JEUX
MUSIQUE
TV VOD
A la Une
Les Navy Seals, forces très spéciales
Cahors : un enfant retrouvé avec un pédophile
F SFR
space
sym
del
alt

Exhibit F

E-Mail Innovator Plans to Enlist in the Wireless Campaign of the Patent Wars

Peter DaSilva for The New York Times

Nicholas Fodor, SetNet's founder, is an underdog in wireless e-mail, where Google, Yahoo and Microsoft are vying for market share.

By JOHN MARKOFF
Published: April 16, 2007

PALO ALTO, Calif., April 15 — Nicholas Fodor is about to dive into the patent wars that have tangled up the business of wireless e-mail. But his weapon of choice is not a lawsuit. It is a new e-mail service he is developing using the knowledge gained from years of experience with e-mail software.

Mr. Fodor, 43, a French computer programmer, said that in the early 1990s he worked on "push" e-mail services that predated the filing of important patents in this area.

He intends to test his claims as soon as next month by introducing Freedom Mail, a simple free service that he says will make it possible to view and respond to messages sent to almost any e-mail account on a cellphone or other mobile device.

"Freedom Mail will liberate wireless e-mail from expensive and spurious litigation driven by very few patent owners for the sole purpose of dominating global wireless e-mail communications," Mr. Fodor said in an e-mail message.

The service, which he said would work with almost all cellphones that can connect to the Internet, will be supported by small advertisements appended to messages. Mr. Fodor said that in advanced phones, the service would match the capabilities of push e-mail services like that available on the BlackBerry from Research in Motion, where messages on the phone and on a personal computer are automatically synchronized.

He acknowledged that he is an underdog in the wireless e-mail world, where heavyweights like Google, Yahoo and Microsoft are battling for market share. But he said that he would soon announce partnerships and was hoping to take advantage of grass-roots marketing online.

And though he is not well known in the industry, an earlier version of his software has been used by SFR in France, owned by Vodafone and Vivendi, through a partnership of

Mr. Fodor's company, SetNet, with Hewlett-Packard.

If it works as promised, Freedom Mail will compete with highly profitable services like those provided by Research in Motion, and could also undermine the lucrative patent portfolios of NTP and Visto, two firms that have won hundreds of millions of dollars in court with claims that they invented the idea of wireless electronic mail and mail synchronization.

"Visto could have some real problems," said Gregory Aharonian, publisher of Internet Patent News Service, an industry newsletter, and an intellectual property consultant who has worked with Visto in the past. He said that once the service became widely available, "everyone they are suing is going to slap them with discovery requests to find out how much they knew about Mr. Fodor's software."

Mr. Fodor, who founded SetNet in Florida in 1993, said he was the first to offer a commercial product that could synchronize e-mail between machines.

He demonstrated e-mail synchronization in 1996 at an industry conference, three years before Visto received its first patent for the idea of synchronizing "work spaces" over a network in 1999.

SetNet's software, which was sold in partnership with Hewlett-Packard beginning in 2002, could be viewed as important "prior art" in the intellectual-property wars that have pitted Visto and its investment partner, NTP, against Seven Networks and Motorola's Good Technology Group, as well as Microsoft and Research in Motion.

The protracted patent battles are cited by many legal scholars and industry executives as a principal example of the failings of the United States patent system, which they say has limited technology innovation more than fostering it.

"The fact is that ideas spring up simultaneously all the time," said Mark A. Lemley, a Stanford University professor who specializes in patent law. He said there was a growing movement among legal scholars and economists to back changes in patent law to protect the concept of independent invention.

NTP won a $612.5 million judgment against Research in Motion last year, even though the patent office had largely invalidated its claim that its founder, Thomas J. Campana Jr., who died in 2004, was the inventor of wireless e-mail.

Before that judgment, NTP invested in Visto, which has successfully sued Seven Networks and in the last decade has raised more than $300 million from about a dozen investors.

But further legal claims by Visto could be undermined by SetNet — a risk that Brian Bogosian, Visto's chief executive, appeared to acknowledge in 2003.

Mr. Fodor has a short e-mail message that he says Mr. Bogosian sent him on Aug. 14, 2003, saying only: "O.K., I need you but, you really need us. Next step?"

A venture capitalist had told Mr. Bogosian that SetNet needed funds, Mr. Fodor said, which was not the case. He spurned Mr. Bogosian's overtures.

Through a spokesman, Visto executives declined to comment.

Although Mr. Fodor grew up in France and studied law in Paris, some aspects of his background parallel those of many American computer entrepreneurs. He said he was diverted from a legal career in the 1970s when he discovered VisiCalc, the first spreadsheet software. "VisiCalc changed everything for me," he said. "I was seduced by the fun of programming."

He went on to form a small business developing database software for the real estate industry. In 1992, he decided to move to the United States when a bank said it was prepared to invest in his business, but only if he was willing to convert his software for a French computer company.

Settled in Coral Gables, Fla., he stumbled on the idea of e-mail synchronization because he had one computer that was connected to the Internet and multiple computers around his home, plus multiple e-mail accounts on services like CompuServe and MCI Mail. Synchronizing them in one universal mailbox on all his computers seemed an obvious step, he said.

“I was tired of having to swap between multiple clients all the time,” Mr. Fodor said. He began selling his synchronization software through CompuServe in 1993. In 1999 he sold a robust version of the original program to SFR, which is the second-largest mobile operator in France.

In 2002, SetNet reached a distribution deal with Hewlett-Packard. This made it possible for a cellular carrier to offer push e-mail to consumers with ordinary e-mail accounts, without the need for Microsoft Exchange or BlackBerry software. From 2003 to 2006, the service was available to several million subscribers on the Vodafone Live service in Europe, Mr. Fodor said.

Now, he thinks he has found a way to extend his software. In addition to synchronizing accounts on services like Yahoo Mail, Hotmail and Gmail, Freedom Mail will offer spam filtering and privacy protection and, in the future, additional features that may be sold by subscription, Mr. Fodor said.

The service is being developed by a team of 11, including legal and business staff members, and backed by $6 million in financing from family and friends. Mr. Fodor said he might file for patents on some aspects of the service to give it a clear path for future development, but would consider allowing others to make use of them without paying royalties.

Despite the hurdles his service will face, Mr. Fodor has supporters who think he is in a good position.

“I’m confident that he was there first,” said Bill Race, an independent technology consultant, who as worldwide manager of telecommunications for Hewlett-Packard helped strike a deal with SetNet. “Nick is probably holding all the cards.”

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Exhibit G

STEPHANE LIPSKI

EXPERT-COMPTABLE
COMMISSAIRE AUX COMPTES
CERTIFIED INFORMATION SYSTEMS AUDITOR
EXPERT AGRÉÉ PAR LA COUR DE CASSATION
EXPERT EN INFORMATIQUE ET EN COMPTABILITÉ
PRÈS LA COUR D'APPEL DE PARIS
EXPERT PRÈS LA COUR ADMINISTRATIVE D'APPEL DE PARIS

19, RUE CLÉMENT MAROT – 75008 PARIS
TÉL : 01 47 23 99 98 TÉLÉCOPIE : 01 47 23 77 66
E-MAIL : stephane.lipski@edassocies.fr

E 37

Note technique faisant suite aux réunions d'expertise tenues jusqu'au 4 mai 2011

La présente note a pour objet de rappeler, préciser et expliciter la position de Setnet au regard de la mission de l'expert.

A- Définition d'un « USER »

Comme l'expert nous considérons qu'il s'agit de toute personne qui détient :
- un téléphone
- une adresse mail,
- un code d'accès.

Cette définition s'applique pour Setnet, à tout abonné SFR ayant une adresse « sfr.fr » ou « vizavi.fr ».

Ceci est confirmé par le test que j'ai réalisé comme tout abonné SFR ayant :
- un téléphone
- un code d'accès à son téléphone.

J'ai ainsi pu me faire attribuer une adresse e-mail « lispki@sfr.fr » en me connectant sur la fonction **Vodafone live** et en indiquant à la demande qui m'était faite, un pseudo : j'ai indiqué « lipski ». Ceci sans même avoir accepté les Conditions Générales de Vente. Apparemment, les Conditions Générales de Vente SFR qui sont acceptées lors de la souscription à un abonnement téléphonique à SFR suffisent.

J'ai constaté, par ailleurs, que j'étais dès lors à même d'utiliser deux adresses e-mails, non seulement l'adresse e-mail « lipski@sfr.fr » mais aussi une adresse e-mail constituée du numéro téléphonique de mon portable, suivi de @sfr.fr.

B- Comptage des « USERS »

Ni SFR ni HP n'apporte de justifications probantes concernant ce comptage.
Les fichiers n'ont pas été conservés ni même les sauvegardes, ce qui est contraire aux règles de l'art. Ceci alors même que dès 2006 la question du comptage constituait un litige soumis aux avocats des parties.

Aujourd'hui, sont donc transmises les informations de comptage dont on constate :

1- qu'elles n'ont pas toutes été remises à Setnet, ce qui est anormal,

2- qu'il y a eu des effacements, cas qui n'est prévenu nulle part ; il n'y aucune définition de l'utilisateur désinscrit, c'est-à-dire sorti du système, et, a fortiori, aucun accord entre les parties sur ce point,

3- que Setnet n'avait aucun moyen de contrôler les chiffres transmis et on ne lui en a apparemment pas donné la possibilité.

Cette méconnaissance par Setnet est d'ailleurs manifeste lorsque l'on constate que quand le comptage des « USERS », transmis à Setnet, en novembre 2005, révèle une baisse significative et qu'il y a manifestement des suppressions, Setnet exprime, dès le mois de décembre 2005, son désaccord.

Il convient que l'expert mette en avant le caractère inhabituel de cette relation d'autant plus que la similitude des chiffres relevés au 25 octobre 2004 montre, soit qu'il y a manipulation des chiffres, soit que les chiffres transmis à Setnet résulte d'un simple copié-collé de HP, ce qui est pour le moins étonnant eu égard au fonctionnement habituel d'entreprises comme SFR et/ou HP.

C- Le « TOOL »

Comme Monsieur l'Expert l'a constaté, il convient de considérer que celui-ci n'est pas défini.

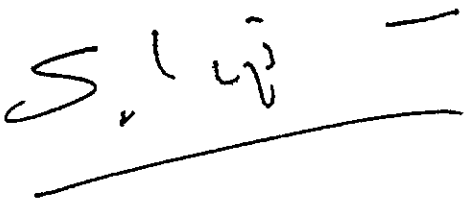
CONCLUSION :

En définitive, rien ne prouve que les comptages ont été fidèles à la réalité.

Il conviendrait que soient :

- exposées les positions respectives des parties qui sont en profond désaccord,
- précisé que les éléments fournis comme étant l'application du « MOU » ne présentent aucun caractère probant et illustrent, au contraire, un fonctionnement profondément anormal et qu'il est ainsi impossible de quantifier avec sureté un nombre de « USERS » devant s'appliquer au cas particulier.

Paris, le 11 mai 2011



Stéphane LIPSKI

Exhibit H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE VODAFONE GROUP, PLC SECURITIES LITIGATION	:	**ORDER AWARDING FEES AND ALLOWANCES**
	:	02 Civ. 7592 (AKH)
THIS DOCUMENT RELATES TO: ALL CLASS ACTIONS	:	

ALVIN K. HELLERSTEIN, U.S.D.J:

Lead Counsel for plaintiffs renew their request for an award of fees and allowances. Their declarations and exhibits follow the format I set out at the hearing conducted on September 19, 2005, and provide full details of the tasks they performed and the hours they expended, functionally analyzed in accordance with those tasks. They justify the time rates of the attorneys who worked on the case, and the levels of efficiency and creativity with regard to the tasks they accomplished. I am completely satisfied with the level of detail and the responsiveness of their submission.

At the hearing of September 19, 2005, I set out various discounts and multiples that I considered applicable to the quality of plaintiffs' attorneys' services, and the value contributed at each phase of the case. I stated at the time that plaintiffs' attorneys' request for a fee of $6.9 million was too high, but that, applying the discounts and multiples that I considered appropriate, a "5 million fee is easily justified . . . slightly more, somewhat less."

Applying their more precise analysis of time and function, and using the discounts and multiples that I provided, plaintiffs' attorneys' produce a revised lodestar calculation of $5,295,453. I accept the submission, and order a fee of that amount to be

paid to plaintiffs' attorneys as their reasonable fee for producing the recovery in favor of their clients. The fee is reasonable in relation to the $24.5 million recovered for the plaintiffs' class, plus interest earned thereon.

Plaintiffs' attorneys have also incurred expenses in the amount of $176,718. The expenses incurred are reasonable and proper, and expenses are allowed in that amount. They may be paid promptly.

Co-Lead Counsel shall allocate the award of fees and expenses to themselves, in accordance with their respective entitlements and as checks are disbursed to the members of the plaintiffs' class. However, interest shall not be awarded on the amounts recited in this order. Payments shall be made from the settlement fund.

As I ruled previously, Non-Lead Counsel are awarded, after discount, $130,612 as their reasonable fee, plus their expenses of $30,057, as previously allowed, each counsel to receive their allocated share at the rate of 50% their submitted lodestar, plus their share of expenses. Co-Lead Counsel shall be responsible for administering the payments from the settlement fund, and resolving disputes, subject to overall guidance by the court.

Plaintiffs' attorneys represent that they are well along in the process of identifying, and distributing the proceeds of settlement to, the appropriate persons in the plaintiffs' class. They are prepared to absorb any additional time and expenses in the fees and allowances provided above. I accept their representation to this effect.

I retain jurisdiction over the case until Co-Lead Counsel complete their administration over the settlement fund, and over all issues that may arise – from that administration, or this order, and any of the prior or subsequent proceedings. Co-Lead

Counsel shall file a report when their administration is complete, for my review and approval. At that time, the case will be closed.

As with my earlier order approving the settlement as fair and reasonable and authorizing entry of final judgment thereon, there also is no just reason for delay in entering this order. Fed. R. Civ. P. 54(b). Accordingly, this is a final order, and the Clerk shall enter judgment thereon.

SO ORDERED.

Dated: New York, New York
June 19, 2006

Alvin K. Hellerstein
United States District Judge