

PATENT ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY
CONVEYING PARTY DATA	
Name	Execution Date
Morrison & Foerster LLP	06/25/2003
RECEIVING PARTY DATA	
Name:	Avalon Digital Marketing Systems, Inc.
Street Address:	2120 Main Street
Internal Address:	Suite 200
City:	Huntington Beach
State/Country:	CALIFORNIA
Postal Code:	92648
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6449635
CORRESPONDENCE DATA	
Fax Number:	(770)804-0900
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	770-804-9080
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Correspondent Name:	Steven P Wigmore
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Address Line 2:	Two Ravinia Drive, Suite 700
Address Line 4:	Atlanta, GEORGIA 30346
ATTORNEY DOCKET NUMBER:	19011.1500
NAME OF SUBMITTER:	Steven P Wigmore, Reg. No. 40,447
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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is entered into as of the 25th day of June 2003, by and between Avalon Digital Marketing Systems, Inc., a Delaware corporation ("Avalon") and Morrison Foerster LLP ("MoFo"), with reference to the following facts:

RECITALS

A. MoFo provided, over the course of the past two years, various legal services to Avalon. MoFo billed Avalon on a regular basis for legal services rendered and costs incurred.¹ MoFo ceased performing legal services for Avalon on May 12, 2003. At that time, the amount invoiced by MoFo to Avalon for legal services and costs, but unpaid by Avalon, was in excess of \$715,000.00 (the "Unpaid Invoices").

B. On or about March 18, 2003, Avalon executed and delivered to MoFo a promissory note dated March 18, 2003, in the principal sum of Seven Hundred Fifteen Thousand Dollars (\$715,000) with reference to certain of the Unpaid Invoices (the "Note"). In connection with the Note, Avalon granted to MoFo a security interest in virtually all assets of Avalon. MoFo filed a UCC Financing Statement in connection therewith with the Delaware Secretary of State on March 27, 2003, as Initial Filing Number 30797475 (the "UCC Financing Statement"), which UCC Financing Statement specifically delineates the assets that are subject to the security agreement.

C. Avalon has been unable to repay the Note as prescribed by the terms of the Note, and the parties hereto have reached a resolution regarding the non-payment of the Note. The parties believe it to be in their respective best interests to enter into the restructuring of the Note and mutual releases as set forth herein..

AGREEMENT

For valuable consideration, receipt of which is hereby acknowledged, Avalon and MoFo hereby agree to the following:

1. Incorporation of Recitals. Subject to this Agreement and conditions stated herein, Recitals A through C, inclusive, are incorporated herein by this reference.
2. Settlement Amount. In express reliance on the covenants, representations and release contained herein, Avalon hereby agrees (i) to pay to MoFo the sum of One Hundred Fifty

¹ The Invoices rendered by MoFo to Avalon referenced "Avalon Digital Marketing, Inc."

Thousand Dollars (\$150,000) (the "Settlement Payment") by wire transfer pursuant to wire instructions to be provided by MoFo; and (ii) to issue MoFo 1,000,000 shares of Avalon's Series D Convertible Preferred Stock, at a purchase price of \$.25 per share, with such rights and preferences as are set forth in the Certificate of Designation attached hereto as Exhibit A (the "Settlement Shares"), in full and final payment of the Note, all Unpaid Invoices and any and all other obligations of Avalon to MoFo, except as to Avalon's obligations to MoFo as set forth in this Agreement and as a preferred stockholder under such Certificate of Designation. The Settlement Payment and the Settlement Shares shall be delivered to MoFo on the later of (i) June 30, 2003; or (ii) on the day of the closing of the anticipated sale of assets to Silverpop Systems, Inc., but in any case, no later than July 30, 2003.

3. Termination of Security Interest. Concurrently with the execution of this Agreement, MoFo shall execute and deliver a UCC Financing Statement Amendment (Form UCC-3), indicating the termination of the UCC Financing Statement referenced in paragraph B herein. Only after Avalon has delivered to MoFo the Settlement Payment and issued to MoFo the Settlement Shares, Avalon shall be authorized to file the UCC Financing Statement Amendment.

4. Conditions Precedent to Performance. Avalon's obligation to perform under this Agreement is expressly conditioned upon execution of this Agreement by an authorized representative of MoFo and delivery by MoFo to Avalon of the UCC Financing Statement Amendment referenced in paragraph 3 hereinabove. MoFo's obligation to perform under this agreement is expressly conditioned upon execution of this Agreement by an authorized representative of Avalon, payment by Avalon of the Settlement Payment and issuance by Avalon to MoFo of the Settlement Shares and filing by Avalon of the Certificate of Designation with the State of Delaware.

5. Voluntary Settlement. The parties to this Agreement acknowledge and agree that each of them is entering into this Agreement freely and voluntarily and not acting under any misapprehension as to the effect hereof, and has acted and does hereby act freely and voluntarily and not under any coercion or duress, and acknowledge that upon satisfaction of the obligations hereunder, good and valuable consideration will have been received. The parties hereto declare that this Agreement is freely and fairly made and that, except as specifically referenced in this Agreement, there are no other agreements, oral or written or otherwise, pertaining to the subject matter of this Agreement.

6. General Release.

6.1 Provided that Avalon performs its obligations under this Agreement, MoFo, its successors and assigns, and each of them, shall and does hereby forever relieve, release and discharge Avalon, and its successors, assigns, past and present attorneys, accountants, representatives, and affiliates, jointly and severally, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses (including, but not limited to, attorneys' fees), damages, injuries, actions and causes of actions, of whatever kind or nature, whether legal or equitable, known or unknown, suspected or unsuspected, contingent or fixed, based upon, arising out of, or pertaining to, or in connection with any matter whatsoever, of any kind or type, from the

beginning of time to and including the date of this Agreement, including, without limitation any of the matters or facts alleged or set forth in Recitals A through C inclusive.

6.2 Provided that MoFo performs its obligations under this Agreement, Avalon, its successors and assigns, and each of them, shall and does hereby forever relieve, release and discharge MoFo, and its successors, assigns, past and present attorneys, accountants, representatives, affiliates, parents, partners, officers, directors, employees and stockholders, jointly and severally, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses (including, but not limited to, attorneys' fees), damages, injuries, actions and causes of actions, of whatever kind or nature, whether legal or equitable, known or unknown, suspected or unsuspected, contingent or fixed, based upon, arising out of, appertaining to, or in connection with any matter whatsoever, of any kind or type, from the beginning of time to and including the date of this Agreement.

6.3 As to the matters released herein, the parties expressly waive any and all rights under section 1542 of the Civil Code of the State of California, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6.4 The parties expressly waive and release any right or benefit which they have or may have under section 1542 of the Civil Code of the State of California, and any similar statute, code, law and/or regulation of the United States, or any state thereof, to the full extent that it may waive all such rights and benefits pertaining to the matters released herein. In connection with such waiver and relinquishment, each party acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which it now knows or believes to be true. Nevertheless, it is the intention of each party, through its release, to release all matters that are subject to this release, and all claims relative thereto, which now exist, may exist, or heretofore have existed. In furtherance of such intention, the release herein given shall be and remain in effect as a full and complete release of such matters notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

6.5 In entering into the release provided for in this Agreement, each party recognizes that no facts or representations are ever absolutely certain; accordingly, each party assumes the risk of any mistake, and if it should subsequently discover that any understanding of the facts or of the law was incorrect, neither party shall not be entitled to set aside this release by reason thereof, regardless of any mistake of fact or law.

6.6 The parties hereto are the sole and lawful owners of all right, title and interest in and to every claim and other matter which they purport to release herein, and they have not assigned or transferred, or purported to assign or transfer to any person or

entity any claims or other matters herein released. Avalon and MoFo shall and hereby do indemnify, defend and hold each other harmless from and against any claims, liabilities, actions, causes of action, demands, injuries, damages, costs, and expenses (including, but not limited to, attorneys' fees), based upon or arising in connection with any such prior assignment or transfer, or any such purported assignment or transfer, or any claims or other matters released herein.

7. Mutual Representations and Warranties.

Avalon and MoFo hereby represent and warrant to each other the following (in so far as such matters relate to the representing and warranting party), each of which is a continuing representation and warranty:

7.1 This Agreement is a valid and binding obligation of Avalon and MoFo, enforceable against each of them in accordance with its terms.

7.2 Each party has the full power and authority to execute and deliver this Agreement and no consent or approval is required by any other person or entity in order for Avalon and MoFo, respectively, to carry out the provisions of this Agreement. Avalon represents that approval of its Board of Directors to the terms of this Agreement has been obtained. Each individual executing this Agreement on behalf of a party hereto has been duly authorized and empowered to execute and deliver this Agreement on behalf of said party.

7.3 Each of the parties hereto has received independent legal advice from attorneys of its or his choice with respect to the advisability of making the agreements provided herein and with respect to the advisability of executing this Agreement, and prior to the execution of this Agreement by the parties hereto, their attorneys reviewed this Agreement at length with them and have made all desired changes and signed this Agreement to indicate that they have approved this Agreement as to form.

7.4 Except as expressly stated in this Agreement, Avalon and MoFo have not made any statement or representation to each other regarding any facts relied upon by them in entering into this Agreement, and each of them specifically does not rely upon any statement, representation or promise of the other party hereto or any other person in entering into this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement. Each party has relied upon its own investigation and analysis of the facts and not on any statement or representation made by any other party in choosing to enter into this Agreement and the transactions contemplated herein.

7.5 The parties hereto and their respective attorneys have made such investigation of the facts pertaining to this Agreement and all of the matters pertaining thereto, as they deem necessary.

7.6 The terms of this Agreement are contractual, not mere recitals, and a result of negotiation among the parties.

7.7 This Agreement has been carefully read by, the contents hereof are known by, and it has been signed freely by each party executing this Agreement.

8. No Admission Against Interest. Until completion of the actions contemplated by this Agreement, nothing contained in this Agreement or negotiations and communications leading up to it shall be construed as admissions against the interest of any of the parties hereto. Except to enforce this Agreement, the terms of this Agreement including, without limitation, the recitals, representations and releases made by any party shall have no force or effect and will not be binding upon, enforceable against or deemed an admission or acknowledgment of any fact by any party except upon the completion of the actions contemplated in this Agreement. This Agreement shall not be admissible as evidence in any action or proceeding except one to enforce this Agreement, or to carry forward the actions contemplated herein.

9. Miscellaneous.

9.1 Except as provided herein, all covenants, releases, warranties, representations and indemnities made by the parties to one another pursuant to this Agreement shall survive this Agreement and shall be and remain in full force and effect thereafter.

9.2 The parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be appropriate or necessary, from time to time, to effectuate the agreements and understandings of the parties, whether the same occurs before or after the date of this Agreement.

9.3 This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, between the parties hereto with respect thereto. No claim of waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be made against any party, except on the basis of a written instrument executed by or on behalf of such party.

9.4 This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

9.5 The headings of all sections of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

9.6 To the extent that performance is to be governed by time, time shall be deemed to be of the essence hereof.

9.7 This Agreement is to be governed by and construed in accordance with the laws of the State of California.

9.8 This Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original,

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and all of which together shall constitute the same agreement. This Agreement may also be executed by facsimile followed by delivery of the original executed Agreement.

9.9 This Agreement is the product of negotiations of the parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any party by reason of that party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

9.10 Each party hereto shall bear all of their respective costs and expenses, including attorneys' fees, incurred in connection with the preparation, negotiation, and execution of this Agreement.

9.11 In the event any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of said provision and this Agreement shall nevertheless remain fully valid and enforceable.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

MORRISON FOERSTER, LLP
a limited liability partnership

By: *Allen Z. Sussman*
Name: Allen Z. Sussman
Its: Partner

AVALON DIGITAL MARKETING SYSTEMS, INC.
a Delaware corporation

By: *Robert Weber*
Name: ROBERT WEBER
Its: CEO

Approved as to form:

WINTHROP COUCHOT
PROFESSIONAL CORPORATION

By: _____
Marc J. Winthrop
Stacey D. Sarowatz
Attorneys for Avalon Digital Marketing Systems, Inc.