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UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

10 Attorneys for Debtors-in-Possession Netcentives, Inc.,
11 Post Communications, Inc., and Maxmiles, Inc.

12 **UNITED STATES BANKRUPTCY COURT**

13 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 3**

14 In re 15 NETCENTIVES, INC., 16 Debtor.	Case No. 01-32597 -SFM-11 (LEAD CASE) Chapter 11
17 In re 18 POST COMMUNICATIONS, INC., 19 Debtor.	Case No. 01-32620-SFM-11 Chapter 11
20 In re 21 MAXMILES, Inc., 22 Debtor.	Case No. 01-32621-SFM-11 Chapter 11 (Cases Jointly Administered)

23 **DEBTORS' PLAN OF REORGANIZATION**
24 **(May 7, 2002)**

25 **I. INTRODUCTION**

26 Debtors and debtors in possession Netcentives, Inc., Post Communications, Inc.,
27 and Maxmiles, Inc. (collectively, the "Debtors") hereby submit to their creditors this
28 Debtors' Plan of Reorganization (May 7, 2002) (the "Plan"), pursuant to Chapter 11 of
title 11 of the United States Code. This Plan is a liquidation plan under which the

1 Debtors' bankruptcy cases will be substantively consolidated upon plan confirmation to
2 pool all assets and liabilities. The Debtors will then complete the sale of their assets,
3 collect their accounts receivable, pursue actions to recover avoidable transfers, and
4 make payment to creditors of all available funds less sums necessary for operations
5 and litigation needed to complete the Plan..
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7 II. DEFINITIONS

8 As used in this Plan and the accompanying Debtor's Second Amended
9 Disclosure Statement (the "Disclosure Statement"), the following definitions shall apply:

10 "Administrative Claim" means a claim entitled to priority under section 507(a)(1)
11 of the Code.

12 "Allowed Claim" means a claim which is evidenced by either (a) an amount
13 contained in the Debtors' Schedules of Liabilities D, E, or F in their respective
14 bankruptcy cases, or any amendments thereto, and listed other than as disputed,
15 contingent or unliquidated, or (b) a timely-filed proof of claim docketed by the
16 Bankruptcy Court to which no objection has been filed, or which has been allowed by a
17 final order of the Bankruptcy Court.
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19 "Bankruptcy Cases" mean jointly administered cases, In re Netcentives, Inc.,
20 Case No. 01-32597-SFM, In re Post Communications, Inc., Case No. 01-32620-SFM-
21 11, and In re Maxmiles, Inc., Case No. 01-32621-SFM-11, all pending in the
22 Bankruptcy Court.
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24 "Bankruptcy Court" means the United States Bankruptcy Court for the Northern
25 District of California, San Francisco Division, acting in the Bankruptcy Cases.

26 "Cash" means cash and cash equivalents, including but not limited to checks and
27 similar forms of payment or exchange.
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"Code" means title 11, United States Code, sections 101 through 1330.

"Confirmation" means the date of entry of the Confirmation Order.

"Confirmation Order" means the order confirming the Plan under section 1129 of the Code.

"Disputed Claim" means any claim which is not an Allowed Claim.

"Effective Date" means 11 days after the entry of the Confirmation Order.

"Plan" means the Plan in its current form or as it may be further amended and/or supplemented from time to time.

III. PLAN OF REORGANIZATION

A. Classification and Treatment of Claims: The treatment of claims described below applies only to Allowed Claims. Distributions to claimants who hold claims which are not Allowed Claims will be withheld in accordance with the Plan's provisions for the treatment of Disputed Claims.

1. Description of Claims:

Unclassified Claims: Section 1123(a)(1) of the Code provides that certain claims, including administrative expense claims and tax claims by governmental units entitled to priority under section 507(a)(1) of the Code, and pre-petition unsecured priority claims entitled to priority under section 507(a)(8) of the Code, shall not be classified under the Plan.

Administrative priority claims consist of claims for post-petition services and events including bankruptcy professionals' fees, post-petition tax claims, and post-petition rent owed to real and personal property lessors.

Unsecured priority tax claims include portions of claims asserted by the State Board of Equalization, the Internal Revenue Service, the Franchise Tax Board, the City

1 and County of San Francisco, the City of New York Department of Finance, and any
2 other taxing authority or agency entitled to priority under section 507(a)(8) of the Code.

3 Class 1A consists of the Allowed Claims of the Debtors' present and former
4 employees for wages up to \$4,650 per individual entitled to priority under section
5 507(a)(3) of the Code.

6 Class 1B consists of the Allowed Claims of creditors entitled to priority under
7 section 507(a)(6) of the Code.

8 Class 2 consists of the Allowed Claims of all general unsecured creditors and
9 other claimants not included in Class 1A or Class 1B above or Class 3 below.

10 Class 3 consists of the interests of the Debtors' equity security holders.

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12 2. Treatment of Claims:

13 a. Administrative Claims.

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15 The holders of Allowed Claims which are Administrative Claims shall be paid in
16 Cash in full on the Effective Date unless otherwise agreed by the holder of such Allowed
17 Claim.

18 b. Priority Tax Claims.

19 The holders of Allowed Claims for taxes entitled to priority under 11 U.S.C.
20 section 507(a)(8) shall be paid in Cash on Effective Date.

21 c. Classified Claims.

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23 Class 1A. The holders of priority employee wage claims which are Allowed
24 Claims shall receive payment of their Allowed Claims in Cash on the Effective Date.

25 Class 1B. The holders of priority claims for consumer deposits which are Allowed
26 Claims shall receive payment of their Allowed Claims in Cash on the Effective Date.

1 that would, if they were Allowed Claims, be paid to the holders of Disputed Claims, (c)
2 the amounts payable, if any, to any LMG group employees entitled to a bonus, and (d)
3 the amounts payable, if any, to any EMG group employees entitled to a bonus. The
4 Debtors shall make quarterly payments of all available cash less the aforementioned
5 sums each October 1st, January 1st, April 1st, and July 1st thereafter until the Plan has
6 been concluded as set forth in paragraph 11 below.
7

8 4. The Debtors shall distribute bonuses to the LMG group employees
9 identified by prior order of the Bankruptcy Court once payments equal to 50% of the
10 Allowed Claims of Class 2 claimants have been mailed to such claimants.

11 5. Professional fees and costs incurred after Confirmation, and the hourly
12 compensation and expense reimbursement paid to Eric Larsen and Gene Meken, shall
13 be paid as follows: an application to approve the fees and costs by any professional
14 employed in the Bankruptcy Cases, including any disbursing agent, as shall be filed with
15 the Bankruptcy Court and mailed to any creditors who state in writing that they wish to
16 receive copies of said applications. The notice shall provide that the application will be
17 approved after notice and opportunity for hearing in accordance with section 102(1) of
18 the Code and Bankruptcy Local Rule 9014-1. If no objection is filed and served on the
19 applicant within ten (10) days of the date of service of notice, then an order may be
20 submitted to the Bankruptcy Court approving said fees and expenses. Upon receipt of
21 an approved order, the Debtors shall pay the fees and expenses allowed from funds on
22 hand. If an objection is filed, then the professional requesting fees shall set a hearing
23 and file and serve notice upon the objecting party. The application for Messrs. Larsen
24 and Meken may consist of a one page cover sheet with summary categories and
25 attaching the time sheets listing the tasks performed and may be submitted monthly.
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1 6. After the Effective Date, the Debtors shall prosecute all preference and
2 avoidance actions or other legal actions which they, in their discretion and in consultation
3 with the Creditors' Committee as set forth below, determine are likely to result in an
4 economic benefit to the estate and bring objections to the claims which they dispute,
5 except as otherwise provided herein. The Debtors will notify the Committee of all actions
6 which they intend to pursue and provide copies of status conference statements to the
7 Committee. The Debtors will also provide the Committee with a written litigation status
8 update encompassing all pending adversary proceedings every 30 days. The Debtors
9 will consult with the Committee before agreeing to settle any litigation. The Debtors shall
10 also be required to accept the direction of a majority vote of the Committee to
11 compromise any adversary proceeding, contested matter or other legal dispute, whether
12 a filing commencing an action has occurred or not, on reasonable terms and subject to
13 the Bankruptcy Court's review and approval.
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16 7. The Creditors' Committee shall have the right to prosecute any avoidance
17 actions, objections to claim, or other legal proceedings against current and former
18 officers and employees of the Debtors, along with any other actions which the Debtors
19 elect not to pursue or pursue or, after commencement, seek to dismiss without a
20 compromise approved by the Bankruptcy Court.
21

22 8. The Debtors shall file any objections to claims which they intend to bring
23 not later than 60 days after the Effective Date. The aforementioned deadline shall not
24 prohibit or bar the Debtors from objecting after the Effective Date to claims or
25 amendments to claims filed, or raising new objections to Disputed Claims based upon
26 newly discovered facts. Neither the Creditors' Committee nor any other party in interest
27 shall be subject to the 60 day limitation set forth in this paragraph.
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1 9. The Debtors are authorized to operate after Confirmation with a
2 management staff consisting of (1) Eric Larsen and/or Gene Meken, and (2) an
3 accounting staff consisting of Cheryl Lee or a successor designated by the Debtors.
4 Should Mr. Meken and Mr. Larsen resign, the Committee shall be entitled to approve any
5 replacement. Should Ms. Lee resign, the Debtors will seek the advice of the Committee
6 prior to hiring any replacement. If at any time both members of the management staff
7 (Mr. Larsen and Mr. Meken and their replacements) and the accounting staff (Ms. Lee
8 and her replacement) resign and are not replaced within 15 days, then a disbursing
9 agent shall take their place with authority to take all steps necessary to complete the
10 Plan, including full power to prosecute and settle litigation of all kinds and object to
11 claims, and shall be subject to all of the rights and obligations of the Debtors under the
12 Plan. The management and accounting staff referenced above and in the projections
13 attached to the Disclosure Statement shall remain in place through and including
14 September 30, 2002, unless terminated by operation of this paragraph. After October 1,
15 2002, the management and accounting staff shall continue in place unless the Creditors'
16 Committee by majority vote resolves that a disbursing agent should replace the
17 management and/or accounting staff. The Debtors and Committee shall attempt to
18 agree on the identity of a disbursing agent. In the event of a dispute, the Bankruptcy
19 Court shall have exclusive jurisdiction to appoint a disbursing agent. The cost of the
20 disbursing agent's bond shall be paid by the Debtors.

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24 10. After Confirmation, the Debtors shall operate according to the budget
25 attached as Exhibit "C" to the Disclosure Statement. The Debtors are authorized by the
26 Plan to expend in each calendar month up to 10% more than the total expenditures set
27 forth in said Exhibit "C" for additional expenditures that they deem to be reasonably
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1 necessary. The Debtors shall be required to obtain the permission of the Creditors'
2 Committee to expend more than 10% more than the expenditures set forth in the
3 aforementioned Exhibit "C" for non-emergency expenses. The Debtors may also expend
4 funds to pay for emergency expenses not in Exhibit "C" and in excess of the
5 aforementioned 10% authorized over-expenditure in their discretion and may request
6 that the Creditors' Committee approve such expenses retroactively. The Debtors shall
7 provide written notice to the Creditors' Committee of any emergency expenditure within
8 one business day of such expenditure.
9

10 11. The Plan shall conclude when the Debtors and Committee have completed
11 the prosecution, to the extent feasible, of all preference and avoidance actions or other
12 law suits brought, collected all monies owing as a result of all preference and avoidance
13 actions or other law suits, and made all payments due under the Plan.
14

15 12. When the assets needed to maintain operations sufficient to perform the
16 Plan are no longer necessary, the Debtors shall sell all of their remaining assets through
17 a noticed motion to creditors, after a hearing in the Bankruptcy Court.
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19 VI. EXECUTORY CONTRACTS

20 All executory contracts of the Debtors not previously and expressly assumed by
21 the Debtors by final order of the Bankruptcy Court, including all severance and
22 employment agreements between the Debtor and any other party, shall be deemed
23 rejected by the Debtors pursuant to section 365 of the Code on Confirmation unless a
24 motion to assume is filed and served by the Debtors prior to Confirmation. The bar date
25 for any party to an executory contract rejected by operation of the Plan to file a claim on
26 account of such rejection shall be 30 days after Confirmation.
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1 **VII. COMPROMISES OF CONTROVERSY**

2 The following compromises of controversy with the Debtors are effective and fully
3 binding upon Confirmation: (1) the compromise of all administrative claims by Comdisco,
4 Inc., including but not limited to claims for post-petition rent and for the return of its
5 collateral, for a payment of \$113,000; (2) the compromise of all administrative claims by
6 Finova Capital Corporation for the sale or disposition of its collateral for a payment of
7 \$117,500; (3) the compromise of the \$100,000 administrative claim by North Bay
8 Networks arising from items purchased by it that could not be delivered for a payment of
9 \$67,255; (4) the compromise of all claims by Exodus Communications, Inc. in exchange
10 for (a) release of the \$500,000 cure payment provided by prior order of the Bankruptcy
11 Court, and (b) an allowed Class 2 general unsecured claim in the amount of
12 \$643,207.90; and (5) the compromise of all claims by former real property lessor
13 Townsend & Associates for) an allowed Class 2 general unsecured claim in the amount
14 of \$450,000.00.
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17 **VIII. DISPUTED CLAIMS**

18 The Debtors shall maintain in their operating account prior to distribution 100% of
19 the amounts to which the holder of any Disputed Claim would be entitled on distributions
20 made under the Plan to that date. The Debtors shall hold those amounts until such time
21 as the rights of the claimant for whom funds have been segregated have been
22 determined. If the claim becomes an Allowed Claim, then the Debtors shall distribute the
23 funds according to the terms of the order allowing a particular claim. If the Disputed
24 Claim is ultimately disallowed, then the Debtors shall utilize the funds withheld to pay
25 creditors according to the terms of the Plan.
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1 facilitate the consummation of the Plan; (h) to enter an order closing the Bankruptcy
2 Cases; and (i) for such other matters as may be set forth in the Plan or Confirmation
3 Order.

4 The Bankruptcy Court further specifically retains jurisdiction to hear all adversary
5 proceedings and contested matters, including but not limited to the recovery of
6 preferential transfers and avoidance actions.
7

8 C. Injunction

9 Pursuant to section 1141 of the Code, the provisions of the Plan after
10 Confirmation will bind the Debtors, any entity acquiring property under the Plan, and any
11 creditor and equity security holder in the Debtors, whether or not the claim or interest of
12 such creditor, equity security holder is impaired under the Plan and whether or not such
13 creditor, equity security holder, or general partner has accepted the Plan. The property
14 dealt with by the plan is also free and clear of all claims and interests of creditors and
15 equity security holders in the Debtors. Pursuant to section 362 of the Code, the
16 automatic stay shall remain in place to operate as an injunction against the
17 commencement or continuance of any action, to collect, recover, or offset from the
18 Debtors any claim or interest which is treated in the Plan, except as otherwise permitted
19 by the Plan, or by final order of the Bankruptcy Court. The Bankruptcy Court shall have
20 jurisdiction to determine an award of damages to the Debtors for any violation of the
21 automatic stay and any injunction provided for in the Code as set forth above, including
22 but not limited to, compensatory damages, professional fees and expenses and costs,
23 and exemplary damages for any willful violation of said injunction.
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1 D. Vesting of Property of the Estate

2 All of the interest in the property of the Debtors shall not revest in the Debtors on
3 the Effective Date. Such property shall be collected by the Debtors and used or
4 distributed according to this Plan. All of the property of the estate shall be available for
5 administration by a Chapter 7 trustee in the event that the Bankruptcy Cases are
6 converted to cases under Chapter 7 of the Bankruptcy Code.
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8 E. Post-Confirmation United States Trustee Quarterly Fees

9 A quarterly fee shall be paid by the Debtors to the United States Trustee, for
10 deposit into the Treasury, for each quarter (including any fraction thereof) until the
11 Bankruptcy Cases are converted, dismissed, or closed pursuant to final decree, as
12 required by 28 U.S.C. §1930(a)(6).
13

14 F. Chapter 11 Post-Confirmation Reports And Final Decree

15 1. Post-Confirmation Reports. Commencing 30 days after the Effective
16 Date, and on the 15th day of each month thereafter, the Debtors shall submit to the
17 Creditors' Committee and its counsel a cash flow report detailing expenses and income
18 for the prior month unless prevented from doing so on that date by circumstances
19 beyond their control. The report will be accompanied by a comparison of cash inflows
20 and outflows projected in Exhibit "C" to the Disclosure Statement. On the same date, the
21 Debtor shall submit a litigation summary report to the Committee and its counsel
22 detailing the status of each adversary proceeding and contested matter which has been
23 commenced, as well as all non-bankruptcy litigation to which any of the Debtors are a
24 party.
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26 Not later than 90 days after entry of the Confirmation Order the Debtors shall file a
27 post-confirmation status report. The report shall explain the progress made toward
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1 substantial consummation of the Plan. The report shall include a statement of accrued
2 liabilities, receipts and disbursements, with the ending cash balance, for the entire 90-
3 day period. The report shall also include information sufficiently comprehensive to
4 enable the Bankruptcy Court to determine (1) whether the order confirming the Plan has
5 become final; (2) whether payments under the Plan have commenced; (3) whether
6 accrued fees due to the United States Trustee under 28 U.S.C. §1930(a)(6) have been
7 paid; and (4) whether all motions, contested matters and adversary proceeding have
8 been commenced and their progress toward final resolution. Further reports must be
9 filed every 90 days thereafter until entry of a final decree, unless otherwise ordered by
10 the Bankruptcy Court; and (7) list the persons, including professionals, who performed
11 work for the Debtors and the amount that they charged or were paid for services.
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14 2. Service Of Reports. A copy of each report shall be served, no later
15 than the day upon which it is filed with the Bankruptcy Court, upon the United States
16 Trustee, the Creditors' Committee, and such other persons or entities as may request
17 such reports in writing by special notice filed with the Bankruptcy Court.

18 3. Effect Of Failure To File Post-Confirmation Reports. Failure to
19 timely file the required reports may constitute a ground for the bringing of a motion to
20 convert or dismiss the Bankruptcy Cases, whichever is in the best interest of the
21 creditors and the estate, pursuant to section 1112(b) of the Code.
22

23 4. Final Decree. After the estate is fully administered, the Debtors
24 shall file an application for a final decree. The Debtors shall serve the application on the
25 United States Trustee. The form of proposed order granting the application shall be
26 approved by the United States Trustee prior to submission of the order to the Bankruptcy
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1 Court. The approval of the United States Trustee should be sought prior to The Debtors
2 seeking a final decree closing the Bankruptcy Cases.

3 G. Severability. Should any term or provision of the Plan be determined to be
4 unenforceable, such determination shall in no way limit or affect the enforceability and
5 operative effect of any other term or provisions of the Plan.
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7 H. Plan Controls Disclosure Statement. In the event and to the extent that any
8 provision of the Plan is inconsistent with or contrary to the provisions of the Disclosure
9 Statement, the provisions of the Plan shall control and take precedence.

10 I. Survival Of Creditors' Committee. The Official Unsecured Creditors'
11 Committee shall remain constituted after the Effective Date. The Committee's
12 professionals shall be entitled to seek fees and costs rendered after Confirmation from
13 the estate according to the procedures set forth above.
14

15 J. Plan Default and Termination. If the Debtors fail to perform any payment
16 obligations under the Plan, then the party to whom performance was owed may provide
17 written notice of default to the Debtors and their counsel. If the default is not cured within
18 30 calendar days of delivery of said notice, then the party to whom or which performance
19 is owed may, at its option, (1) bring suit in State Court or the Bankruptcy Court to enforce
20 the terms of the Plan, (2) file a Notice of Default Under Confirmed Plan with the
21 Bankruptcy Court and set a hearing on a motion to convert to Chapter 7 on 15 days'
22 notice.
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24 Dated: May 7, 2002

NETCENTIVES, INC.
POST COMMUNICATIONS, INC.
MAXMILES, INC.

27 By: _____

Eric Larsen

28 Their: President

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Dated: May 7, 2002

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Attorneys for Debtors-in-Possession Netcentives, Inc.,
Post Communications, Inc., and Maxmiles, Inc.