

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

|                             |   |                 |
|-----------------------------|---|-----------------|
| DEMBO TRAVEL                | ) |                 |
| CONSULTANTS, INC.,          | ) |                 |
| on behalf of itself and all | ) |                 |
| others similarly situated,  | ) |                 |
|                             | ) |                 |
| Plaintiff,                  | ) |                 |
|                             | ) |                 |
| vs.                         | ) | No. 03 CH 20187 |
|                             | ) |                 |
| PCS INTERNATIONAL, LTD.     | ) | Judge McGann    |
|                             | ) |                 |
| Defendant.                  | ) |                 |
|                             | ) |                 |

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

The Parties enter into the following Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”). This Settlement Agreement is entered into by and among Dembo Travel Consultants, Inc., the named Plaintiff in this class action, in its individual capacity and on behalf of the class described in this Agreement, (“Class Representative”), and PCS International, Ltd., (“PCS”), who collectively shall be the “Settling Parties,” as more fully defined below. This Settlement Agreement is intended by the Settling Parties to fully, finally and forever resolve, discharge and settle on behalf of the entire class the Released Claims, as defined herein, upon and subject to the terms and conditions herein.

**RECITALS**

WHEREAS, Plaintiff filed a lawsuit in the Circuit Court of Cook County, Illinois, Chancery Division (the “Court”), entitled *Dembo Travel Consultants, Inc. v. PCS International, Ltd.*, No. 03 CH 20817 (the “Action”);

WHEREAS, Plaintiff has alleged in the action that PCS sent or caused to be sent unsolicited facsimiles advertising the commercial availability of property, goods, or services to

Plaintiff and to others, and has asserted claims against PCS under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(b)(1)(C), for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, and for common law conversion, based upon transmission of such facsimiles;

WHEREAS, PCS denies and continues to deny each and all of the claims and contentions alleged in the Complaint;

WHEREAS, the Settling Parties have concluded that it is desirable for the Action as defined below to be settled to avoid further inconvenience, delay, and expense, to dispose of potentially burdensome and protracted litigation, and to fully and finally resolve, as against PCS, all claims that were or could have been asserted by the Class Members arising out of or related to the subject matter of the Complaint;

WHEREAS, the Settling Parties have engaged in extensive arms-length settlement negotiations, and have determined that the terms of this Settlement Agreement constitute a fair and reasonable compromise of the claims and defenses of all Settling Parties;

WHEREAS, Class Counsel believes that the claims asserted in the Complaint are meritorious, Class Counsel also recognizes, however, that these claims have an uncertain outcome and that pursuing this litigation through trial would involve substantial cost, risk and inevitable delay. Based on Class Counsel’s evaluation of the facts and law, and a weighing of the risks and benefits, which include, the expense and length of continued proceedings necessary to prosecute the Action against PCS through trial and any appeals, and the substantial benefits the Settlement confers upon the Class, Class Counsel has determined that the settlement set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class;

WHEREAS, the Class Representative, through Class Counsel, who has conducted an investigation into the relevant facts and circumstances and engaged in arms' length negotiations with PCS's Counsel, and has concluded that it is in the best interests of the Class to settle the Class Members' Claims on the terms set forth herein, which are deemed to be fair, reasonable, and adequate; and

WHEREAS, in consideration of the foregoing and other good and valuable consideration, it is stipulated and agreed by and between the Plaintiff and PCS that the claims of the Class as against PCS be and are hereby compromised and settled, subject to the approval of the Court, upon the following terms and conditions.

#### DEFINITIONS

1. Accessible Contact Information. "Accessible Contact Information" means the facsimile numbers for persons identified by PCS as having been sent the facsimiles at issue, a copy of which is attached to the Joint Motion for Preliminary Approval as Exhibit 2.
2. Action. "Action" means the above-captioned action currently pending in the Circuit Court of Cook County, Illinois County Department, Chancery Division.
3. Settling Parties. The Parties to this Class Action Settlement Agreement and Release are Dembo Travel Consultants, Inc. ("Plaintiff" or "Class Representative"), on behalf of itself and the class members, and PCS International, Ltd.
4. Claim Form. "Claim Form" means the Claim Form made in accordance with the instructions provided in the Class Notice, attached as Group Exhibit 3 to the Joint Motion for Preliminary Approval, or in such other form as the Parties may later agree upon in writing.

5. Class Counsel. "Class Counsel" means counsel for the Class Representative and the Class Members: Lance A. Raphael, Stacy M. Bardo, and Allison Krumhorn of The Consumer Advocacy Center, P.C., 180 West Washington, Suite 700, Chicago, Illinois 60602.

6. Class Members. "Class Members" shall mean Persons defined in the following manner:

All persons with Illinois telephone fax numbers who, on or after a date four years prior to the filing of this action (December 2, 2003), were sent advertising faxes by the PCS International, Ltd. and with respect to whom PCS International, Ltd. cannot provide evidence of prior express permission or consent for the sending of such faxes.

7. Class Representative. "Class Representative" means Dembo Travel Consultants, Inc.

8. Complaint. Complaint means the Complaint filed in the Circuit Court of Cook County, Illinois County Department, Chancery Division, No. 03 CH 20817.

9. Court. The "Court" means the Circuit Court of Cook County, Illinois, County Department, Chancery Division.

10. Defendant. "Defendant" means PCS International, Ltd.

11. PCS International, Ltd.'s Counsel. "PCS International, Ltd.'s Counsel" means:

James X. Bormes  
Shannon and Associates, Ltd.  
8 South Michigan  
26th Floor  
Chicago, IL 60603

12. Effective Date. "Effective Date" means the date on which Final Approval of the Settlement is entered and/or all appeals have been exhausted.

13. Final. “Final” means that date on which the Final Judgment Order is entered, a proposed form of which is attached to the Joint Motion for Preliminary Approval as Exhibit 5 and incorporated herein.

14. Final Judgment. “Final Judgment” means the Final Judgment provided for in paragraph 38, a form of which is attached to the Joint Motion for Preliminary Approval as Exhibit 5 and incorporated herein.

15. Notice. “Notice” means the Notice of Proposed Class Action Settlement in the forms attached to the Joint Motion for Preliminary Approval as Group Exhibit 3 and incorporated herein.

16. Notice Date. “Notice Date” means the date that Notice is sent to the Class Members via facsimile and published in the Chicago Tribune, as further explained in ¶ 23 below.

17. Opt-Out Date. “Opt-Out Date” means the deadline for Class Members to postmark requests for exclusion from the Settlement. The Opt-Out Date will be at least 45 days after the Notice Date, and requests for exclusion postmarked after that date will have no legal effect.

18. Person. For the purposes of this Agreement only, “Person” (when used in the singular or in the plural form) means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity and any other recognizable legal entity.

19. Preliminary Approval Order. “Preliminary Approval Order” means the order preliminarily approving this Settlement Agreement, approving the Notice, and setting the Final

Approval Hearing, as provided in paragraph 35 of this Settlement Agreement, a form of which is attached to the Joint Motion for Preliminary Approval as Exhibit 4 and incorporated herein.

20. Related Parties. “Related Parties” shall mean each of a Person’s past or present officers, directors, trustees, members, employers, employees, partners, member firms, affiliates, principals, agents, shareholders, attorneys, accountants, auditors, advisors, personal and legal representatives, heirs, beneficiaries, assigns, predecessors, successors, parents, subsidiaries, divisions, associates, related or affiliated entities, any members of their immediate families, and all Related Parties’ and Settling Parties’ insurers and their reinsurers.

21. Released Claims. “Released Claims,” means the claims and liabilities released and discharged under paragraph 32.

22. Settlement. “Settlement” means the terms and conditions set forth in this Agreement, including all Exhibits to the Joint Motion for Preliminary Approval.

23. Settlement Administration Costs and Expenses. “Settlement Costs and Expenses” means the costs and expenses connected with: (1) the costs of providing the Class Notice and Claim Form via facsimile, which includes, but is not limited to, sending class notice via facsimile; (2) publishing notice in the Chicago Tribune newspaper; (3) processing Claim Forms; (4) creating a web page and claim form request form located at [www.caclawyers.com/faxsettlement/](http://www.caclawyers.com/faxsettlement/) and (5) the cost of hiring an independent Settlement Administrator proposed by Class Counsel and approved by PCS, in this case, First Class, Inc. of Chicago, Illinois, to process claim forms and mail Settlement Checks to eligible Class Members. All Notice and Settlement Administration Fees, Costs and Expenses are to be paid from the Settlement Fund prior to any distribution to the class and are separate from any award of attorneys’ fees or costs reimbursement to Class Counsel. Plaintiff is solely responsible for

administering and processing the Class Notice and Claim Form, managing the web page and claim form request form, and working with the Settlement Administrator but all quotes for such services will be paid for by the Defendant from the settlement fund upon receipt of the invoice of the administrator.

24. Settlement Fund. “Settlement Fund” means the \$600,000.00 fund PCS or its insurer will establish to pay the amounts due to the Class, including the Class Representative, to pay class counsel’s attorneys fees, and to pay settlement administration costs and expenses, as further described in paragraph 28. The first \$100,000.00 will be contributed to the Settlement Fund within seven days after entry by the Court of the Preliminary Approval Order. The remaining \$500,000.00 will be contributed to the Settlement Fund seven days after the entry by the Court of the Final Approval Order.

25. Settlement Checks. “Settlement Checks” are the checks used to pay Class Members. Settlement Checks that are returned, undeliverable, or remain uncashed for 90 days from the date upon which they were mailed to Class Members shall have no legal or monetary effect.

26. Settlement Class. “Settlement Class” is the class defined in paragraph 6 and is agreed and stipulated by the parties to meet the requirements of 735 ILL. COMP. STAT. 5/2-801 and be certified for settlement purposes.

27. Final Approval Hearing. “Final Approval Hearing” means the hearing to determine whether the settlement of the Class Action should be given final approval, whether the proposed Plan of Allocation should be finally approved, and whether the applications of Class Counsel for attorneys’ fees, costs, and expenses should be finally approved.

## PLAN OF ALLOCATION

28. Settlement Fund. Consistent with Paragraph 24, Defendant PCS or its insurer will establish a settlement fund totaling \$600,000.00 which shall be distributed, subject to court approval, as follows:

- a) For its role in the litigation, as well as for its individual claims, the Class Representative shall receive \$5,000.00. The Class Representative's payment shall be made within 14 days after the entry of a Final Approval Order.
- b) Class Counsel shall receive attorney's fees and costs in the amount of 25% of the Settlement Fund, or \$150,000.00. Class Counsel's payment shall be made within 14 days after the entry of a Final Approval Order.
- c) Prior to distributing settlement checks to class members who have sent in claim forms, as described in (d) below, Plaintiff's counsel and the Settlement Administrator shall deduct from the Settlement Fund the cost of publication notice, web notice, and fax notice to the class members, as well as any other Settlement Administration Costs and Expenses, as described in paragraph 23.
- d) After the costs of publication notice, web notice, and fax notice have been paid, along with the costs for processing claim forms and distributing settlement checks, the balance of the Settlement Funds will be divided among the class members as described herein. Each Class Member who returns a fully-executed, complete, timely, and truthful Claim Form, postmarked no later than 45 days after the Notice Date, indicating a desire to receive a share of the Settlement Fund, shall receive their pro rata share of the Settlement Fund, in an amount not to exceed \$500.00. A Claim Form will be on the bottom of the faxed Class Notice and available on [www.caclawyers.com/faxsettlement](http://www.caclawyers.com/faxsettlement). Any person who timely and effectively requests exclusion from the Settlement shall not be entitled to

submit a Claim Form or receive any portion of the Settlement Fund. Under no circumstances will any Class Member receive more than a single Settlement Check.

Settlement checks to the Class Members shall expire 90 days from the date that they are issued.

- e) With regard to any balance remaining in the Settlement Fund after the payment of submitted claims, such balance shall revert back to PCS and its insurer.

29. Class Notice. Notice shall be sent at the time provided in paragraph 34a, and Settlement Checks to Class Members shall be distributed within 14 days after entry of the Final Judgment Order or, if an objection to the settlement is filed than in that instance, upon the expiration of 45 days from the date of the final approval order or, if an appellate proceeding is commenced, within 45 days of the conclusion of such proceedings.

30. Class Members' Right of Exclusion. Any Class Member may seek to be excluded from this Settlement Agreement and from the Class within the time and in the manner provided in paragraph 37 of this Agreement, as approved by the Court. Any Class Member so excluded shall not be bound by the terms of this Settlement Agreement nor entitled to any of its benefits.

31. The Settling Parties agree that the Settlement Amount is sufficient to satisfy each Settling Party's obligation to every other Settling Party with regard to all Released Claims.

### RELEASED CLAIMS

32. It is the agreement and intent of the Settling Parties that this Settlement Agreement be construed and enforced as a mutual and global release subject to the limitations and exclusions provided in paragraph 33 of this Agreement. Accordingly, it is hereby agreed that upon the Effective Date of this Settlement Agreement, each Settling Party, Class Member who does not opt out and his, her, or its respective Related Parties, shall hereby be deemed to have, and by operation of this Settlement Agreement shall have, fully, finally, and forever

released, relinquished, discharged, and waived, against each and every other Settling Party, including their respective Related Parties, any and all claims of whatever kind or nature, known or unknown, from the beginning of time to the Effective Date hereof, on account of any and all losses or damages of any kind whatsoever, known or unknown, arising out of, resulting from or relating to all allegations, claims or defenses which have been raised or could have been raised in Plaintiff's Complaint regarding the sending of the facsimile at issue in this case.

33. The Settling Parties understand and agree that the provisions of paragraph 32 shall be construed to exclude, and shall not impair, any right or cause of action arising from a breach of this Settlement Agreement, including but not limited to, any future claims that may arise with regard to the operation of the Plan of Allocation, or the implementation of the Settlement Agreement. The Settling Parties also understand and agree that the provisions of paragraph 32 shall be construed to exclude, and shall not impair, any right or cause of action arising from factually dissimilar complaints, without limitation but by way of example, claims for lack of payment on products purchased from PCS or defenses to paying on such purchased products, such as a product liability or personal injury claim.

#### **PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL HEARING**

34. Preliminary Approval Motion. In accordance with the procedures and time schedules below, Settling Parties shall take such actions, and prepare and file, subject to the prior approval by all other Settling Parties, all appropriate notices, motions, and proposed order forms as are reasonably necessary to obtain both preliminary and final approval of this Settlement Agreement from the Court. All Settling Parties shall reasonably cooperate, and as appropriate, shall join with Class Counsel in seeking to accomplish the following:

a. Within 10 days of the signing of this Agreement, the Settling Parties shall jointly move for preliminary approval of this Agreement, including requests that the

Court approve the facsimile transmission and publication of the Notice within 14 days of the entry of an order granting preliminary approval of this Agreement. All Settling Parties shall join in that motion, and shall support any order approving this Agreement through any appeal, if necessary. Without prior approval of any other Settling Party, Class Counsel may file memoranda in support of the preliminary (and final) approval of this Settlement Agreement; and

b. The Preliminary Approval Order shall require, and the Notice shall set out, that any objections to this Settlement Agreement must be made in writing, filed with the Court, and served upon Class Counsel as more fully described in paragraph 36, below. The Notice shall provide that any objection that is not received within the time set by the Court is deemed waived.

35. Preliminary Approval Order. The Preliminary Approval Order entered by the Court shall be substantially in the same form as Exhibit 4 to the Joint Motion For Preliminary Approval, but as a condition of this Settlement Agreement shall at a minimum contain the following provisions:

a. Preliminary approval of the Settlement Agreement set forth herein and, subject to any objections that may be presented to the Court prior to the Final Approval Hearing, a finding that the Settlement Agreement is fair, adequate, reasonable, and in the best interests of the Class; and

b. Approval of the form of a Notice of Settlement that includes the general terms of the settlement set forth in the Settlement Agreement (substantially in the form of Group Exhibit 3 attached to the Joint Motion For Preliminary Approval and incorporated herein) and explains the procedures for objections and opt-outs as described below, and

directing PCS: 1) to publish notice in the Chicago Tribune on a date certain; and 2) to fax, when available, Notice to all Class Members at their respective Accessible Contact Information within 14 days from the date of said order; and 3) provide payment from the Settlement Fund so that notice may be published on the internet providing a copy of the lawsuit, the class certification order, the settlement agreement, the claim form, the class notice, and other supporting documents at [www.caclawyers.com/PCSFaxsettlement](http://www.caclawyers.com/PCSFaxsettlement).

c. A finding that the Notice to all Class Members as provided herein constitutes valid, due and sufficient notice to the Class Members and their Related Parties, and constitutes the best notice practicable under the circumstances, complying fully with the requirements of 735 ILL. COMP. STAT. 5/2-803 of the Illinois Rules of Civil Procedure, the Constitution of the United States, and any other applicable law and that no further notice to the Class is required.

d. A finding that transmission of the Notice by facsimile does not constitute a violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C), or any similar state statute.

36. Objections. Any Class Member who objects to the Settlement contemplated by this Agreement shall have a right to appear and be heard at the Final Approval Hearing provided that such Class Member files with the Court and delivers to Class Counsel and Defendant's Counsel a written notice of objection, together with a statement of reasons for the objection, no later than 14 days before the Final Approval Hearing date. Counsel may, but need not, respond to the objections, if any, by means of a memorandum of law of no more than 15 pages filed and served no later than 3 days prior to the Final Approval Hearing. The manner in which a notice of objection should be prepared, filed, and delivered shall be stated in the Notice. Only Class

Members who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Final Approval Hearing, unless the Court orders otherwise. Any Class Member who does not make his or his objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the Settlement or the award of Attorneys' Fees to Class Counsel, unless otherwise ordered by the Court.

37. Exclusion from the Class. Any Class Member may seek to be excluded from the Settlement. Any Class Member so excluded shall not be bound by the Settlement and shall not be entitled to any of its benefits. To be timely, a request for exclusion must be sent to First Class, Inc. and be postmarked no later than the Opt-Out Date. The Class Notice, attached as Group Exhibit 3 to the Joint Motion for Preliminary Approval, shall contain the instructions for opting out of the settlement.

### **FINAL JUDGMENT**

38. Final Judgment. The Final Judgment Order entered upon the Final Approval Hearing by the Court shall be substantially in the same form as Exhibit 5 attached to the Joint Motion for Preliminary Approval, but as a condition of this Settlement shall, at a minimum, include the following provisions:

- a. A finding that the distribution of the Notice fully and accurately informed all Class Members and Related Parties entitled to notice of the material elements of the Settlement, constituted the best notice practicable under the circumstances, constituted valid, due and sufficient notice, and complied fully with 735 ILL. COMP. STAT. 5/2-803, the United States and Illinois Constitutions, and any other applicable law; and

b. A finding that transmission of the Notice by facsimile did not constitute violation of the Telephone Consumer Protection Act 47 U.S.C. § 227(b)(1)(C) or any similar state statute.

c. A finding that after proper notice to the Class and after sufficient opportunity to object, no timely objections to this Settlement Agreement have been made, or that all timely objections have been considered and denied; and

d. Approval of the settlement, as set forth in the Settlement Agreement, as fair, reasonable, adequate, and in the best interests of the Class, finding that the Settlement is in good faith, and ordering the Parties to perform the settlement in accordance with the terms of this Settlement Agreement, including directing payments from the Settlement Fund of \$600,000.00 as follows: \$5,000.00 to the Class Representative, \$150,000.00 to the Class Counsel, distribution of any costs of settlement administration and class notice costs, distribution to each Class Member who timely returned a valid claim form of their pro-rata share of the remaining Settlement Fund up to a maximum of \$500.00 per class member, and reverter of any remaining funds due from unclaimed funds or un-cashed reverting to Defendant; and

e. A finding that neither the Final Judgment nor the Settlement Agreement shall constitute an admission of liability by the Settling Parties, or any of them, of any liability or wrongdoing; and

f. Subject to reservation of jurisdiction for matters discussed in subparagraph (h), below, dismisses with prejudice the Complaint as to Defendant;

g. Finds that there is no just reason for delay, and orders the entry of a Final Approval; and

h. A finding that all Class Members and their Related Parties shall, as of the entry of the Final Judgment, conclusively be deemed to have released and forever discharged the Defendant and its Related Parties from all Released Claims, and forever enjoining and barring all Class Members and their Related Parties from asserting, instituting or prosecuting in any capacity, before any court or governmental agency, any action or proceedings against the Defendant that asserts any Released Claims; and

i. A reservation of exclusive and continuing jurisdiction over the Action and the Settling Parties for the purposes of, among other things: (i) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Order, and the Final Judgment; and (ii) supervising the administration and distribution of the relief to the Class and resolving any disputes that may arise with regard to any of the foregoing.

**CONDITIONS OF SETTLEMENT, EFFECT OF  
DISAPPROVAL, RECISSION, OR TERMINATION**

39. This Settlement Agreement, including the releases herein, shall be null and void, and the provisions of paragraphs 40 below shall apply, if any of the following conditions fail to occur or be satisfied prior to the date that the Final Judgment becomes Final:

a. All non-settlement related activities regarding the Complaint shall be, and shall remain, stayed by the Court pending Final Judgment approving this Settlement Agreement; and

b. All Settling Parties shall approve, execute, and perform all such material acts or obligations that are required by this Settlement Agreement to be performed prior to the date that the Final Judgment becomes Final; and

c. A Preliminary Approval Order, in a form as described by paragraph 35 above and attached as Exhibit 4 to the Joint Motion for Preliminary Approval, shall be entered by the Court; and

d. At or prior to the Final Approval Hearing, no objections to this Settlement Agreement have been received, or if any such objections have been received, all such objections have been considered and denied by the Court; and

f. A Final Judgment, in a form as described by paragraph 38, above, shall be entered by the Court; and

g. Subject to the reservation of jurisdiction for matters described in paragraph 38i, the Complaint must be dismissed with prejudice.

40. In the event that this Settlement Agreement is finally rejected upon the Final Approval Hearing, or in the event a Final Judgment is not entered, or does not become Final, or in the event that the Settlement Agreement is rejected by the mandate of an appellate court, then the terms of this Agreement shall be null and void:

a. The terms of this Agreement shall have no further force and effect with respect to the Settling Parties.

b. This Agreement shall neither be deemed as an admission by any Settling Party regarding any claims or defenses nor used in this litigation for any purpose; provided, however, this Agreement may be used for bringing an action for failure of a Settling Party to take steps required by this Agreement to secure judicial approval of this Agreement; and

c. The Settling Parties shall be restored to their respective positions in the litigation as of the date of the Settlement Agreement; and

d. Any Judgment or orders entered by the Court in accordance with this Settlement Agreement shall be treated as vacated.

### **MISCELLANEOUS PROVISIONS**

41. **Enforcement.** The Settling Parties acknowledge that violation of the Settlement Agreement or any of the releases will cause immediate irreparable injury for which no remedy at law is adequate. If any Party fails to perform his, his or its obligations hereunder, any other Party shall be entitled to specific performance, including through mandatory preliminary and injunctive relief, in addition to such other remedies as provided herein. Nothing contained herein shall be construed to preclude any party from applying for contempt or other remedy or sanction provided by the Illinois Rules of Civil Procedure for breach of this Settlement Agreement.

42. **Agreement to Cooperate.** The Settling Parties agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

43. **Good Faith Settlement and Advice of Counsel.** The Settling Parties represent and warrant that the terms of the Settlement reflect a good-faith settlement of the Class Representative's and the other Class Members' claims in the Action, reached knowingly and voluntarily after consultation with experienced legal counsel.

44. **Incorporation.** All of the Exhibits to the Agreement are material and integral parts of the Settlement and are fully incorporated herein by this reference.

45. **No Waiver.** The waiver of one Settling Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement; nor shall such a waiver be deemed a waiver by any other Party of that breach or a waiver by that Party of any other Party's breach.

46. Modification. The Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors-in-interest.

47. Headings. The headings of the paragraphs herein are for convenience only and do not define, limit, or construe the contents of this Agreement.

48. Entire Agreement. Except as provided herein, the Agreement and the Exhibits attached to the Joint Motion For Preliminary Approval constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Agreement or its Exhibits other than the representations, warranties and inducements contained and memorialized in the Agreement and the Exhibits thereto.

49. Authority to Settle. Class Counsel represent and warrant that they are expressly authorized by the Class Representative to take all appropriate action to effectuate the terms and conditions of the Settlement and also are expressly authorized to enter into any modifications of, or amendments to, the Agreement on behalf of the Class which they deem appropriate.

50. Authority to Execute. Each counsel or other person executing the Agreement or any of its Exhibits on behalf of any Party hereto hereby represents and warrants that he or she has the full authority to do so. Additionally, each Class Representative represents and warrants that he or she has not assigned or otherwise transferred to any other person or entity any claim that is subject to this Agreement.

51. Counterparts. The Agreement may be executed in one or more counterparts, each of which shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange among themselves signed counterparts, and a complete set of executed counterparts shall be filed with the Court.

52. Binding Effect. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. All Settling Parties waive the right to appeal or collaterally attack the Final Judgment entered under this Settlement Agreement, and covenant not to initiate or support such a challenge.

53. Exclusive Jurisdiction and Venue for Enforcement. Any dispute relating to this Agreement and/or Final Judgment shall be resolved exclusively in the Circuit Court of Cook County, Illinois County Department, Chancery Division, which Court shall retain exclusive jurisdiction and venue with respect to the consummation, implementation, enforcement, construction, interpretation, performance, and administration of the Agreement and/or Judgment. The Parties agree to submit to the exclusive jurisdiction and venue for the purposes described above.

54. Choice of Law. This Agreement and any document executed in furtherance of the Settlement shall be governed by, subject to, and construed in accordance with the laws of the State of Illinois, without regard to conflicts-of-laws principles.

55. Costs and Expenses. Except as otherwise provided herein, each Party shall bear its own costs and expenses.

56. Interpretation. All Settling Parties have participated in the drafting of this Settlement Agreement and, accordingly, any claimed ambiguity should not be presumptively construed for or against any of the Parties.

IN WITNESS WHEREOF, the Parties hereto have caused the Agreement to be executed, by their duly authorized attorneys.

Dated: Chicago, Illinois  
Aug 20, 2008

Dated: Chicago, Illinois  
\_\_\_\_\_, 2008



On Behalf of the  
Class Representative  
Lance Raphael  
The Consumer Advocacy Center, P.C.  
180 W. Washington  
Suite 700  
Chicago, Illinois 60602



On Behalf of  
PCS International, Ltd.  
Jim Bormes  
Shannon and Associates, Ltd.  
8 South Michigan  
26th Floor  
Chicago, Illinois 60603