

Atty. No. 41106

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

ADDUCCI, DORF, LEHNER, MITCHELL)	
& BLANKENSHIP, P.C.)	
)	
Plaintiff,)	11 CH 09629
)	
v.)	
)	
C J OPERATING LLC)	
doing business as UNITED RISK)	
INTERNATIONAL and JOHN DOES 1-10,)	
)	
Defendants.)	

CLASS SETTLEMENT AGREEMENT

RECITALS

1. **Parties.** Plaintiff Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C. (“ADLMB” or “Plaintiff”) individually and as representative of the class of persons defined below in Paragraph 8 (the “Settlement Class”) and Defendant CJ Operating LLC doing business as United Risk International (“CJ” or “Defendant”) enter into this Settlement Agreement (“Agreement”).

2. **Nature of litigation.** In this lawsuit, entitled *Adducci, Dorf, Lehner, Mitchell & Blankenship, P.C. v. CJ Operating LLC doing business as United Risk International*, No. 11 CH 9629, and pending in the Circuit Court of Cook County, Illinois, Chancery Division, (“Action”), Plaintiff alleges that CJ violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq., and Illinois common law (conversion) by sending unsolicited facsimile advertisements to telephone facsimile machines without having an established business

relationship or consent from the recipients and without providing an “opt out” notice as described in 47 U.S.C. § 227.

3. **Denial of Liability.** Defendant denies violating the TCPA, ICFA and any other state or federal law, further denies any liability to Plaintiff and the Class for the claims alleged or any claims that could be alleged. Defendant desires to settle all claims solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims, known or unknown, that have been or might have been asserted by the Plaintiff or the Settlement Class against them concerning the matters alleged in the Class Action Complaint.

4. Plaintiff, individually and on behalf of the Class, believing Defendant violated the TCPA and would be found liable, desires to settle its claims against Defendant, having taken into account through Plaintiff’s counsel the risks, delay, and difficulties involved in establishing a right to recovery and the ability to in fact recover, an amount in excess of that offered by this settlement and the likelihood that further litigation will be protracted and expensive.

5. Plaintiff’s counsel has investigated the facts and the applicable law. Based on the foregoing, and upon an analysis of the benefits afforded by this Agreement, Plaintiff’s counsel considers it to be in the best interest of the class to enter into this Agreement.

6. In consideration of the foregoing and other valuable consideration, Plaintiff and Defendant CJ agree to settle the claims of the Plaintiff and the Class, subject to the Court’s approval, on the following terms and conditions.

TERMS

7. **Effective Date.** If there is no objection to the Court approving this Settlement, then this Agreement shall become effective (hereinafter the "Effective Date") on the latest of the

following: the Court's entry of a final order approving this Agreement as fair, reasonable, and adequate to the Settlement Class; and finding that this Agreement is fair, negotiated at arm's length and made in good faith, and dismissing the claims of Plaintiff and the class members, except those who opt out, against CJ with prejudice. If there is an objection to the Court approving this Settlement, then the Settlement shall become effective five (5) days after the date that the Court's final order becomes a final, non-appealable order, or if anyone appeals from the final order, 5 (five) days after a disposition of the appeal that affirms or otherwise upholds the Court's final order, the terms and provisions of this Settlement and orders the consummation of the Settlement in accordance with the terms and provisions of this Agreement.

8. **Class Definition.** The Class is defined as:

(a) all persons and entities with fax numbers, (b) who, on November 17, 2010, November 19, 2010, November 22, 2010, November 23, 2010, November 24, 2010, November 30, 2010, December 1, 2010, December 2, 2010, December 9, 2010, December 10, 2010 and January 6, 2011, (c) were sent faxes by CJ Operating, LLC promoting its goods or services for sale in the form of Exhibit A to the complaint and (d) who were not provided with an "opt out" notice as described in 47 U.S.C. § 227.

9. **Fax List.** Based on the records obtained in the course of litigation, the Plaintiff and Defendant agree that the Class is comprised of approximately 829 unique fax numbers. Defendant sent a total of 1,428 faxes to 829 unique fax numbers. Specifically, the class members are those fax numbers identified both in the phone records produced by OneSuite Corporation and located in Martindale-Hubbell. Defendant estimates and the OneSuite records show that most fax numbers (approximately 60%) were sent only one fax transmission in the form of Exhibit A to the complaint. Approximately 2% of the fax numbers were sent between 5-8 faxes by CJ in the form of Exhibit A to the complaint.

10. **Designated Days.** The following days are herein referred to as the designated days: November 17, 2010, November 19, 2010, November 22, 2010, November 23, 2010, November 24, 2010, November 30, 2010, December 1, 2010, December 2, 2010, December 9, 2010, December 10, 2010 and January 6, 2011. These days are set forth in the class definition.

11. **Relief to Plaintiff and the Class.** Defendant CJ, through its insurer, Western Heritage Insurance Company (“Western Heritage”) shall pay \$150,000 to establish a Settlement Fund. Payment shall be made by check to Edelman, Combs, Lattuner & Goodwin, LLC Client Trust Account within 14 days after the Court’s entry of the Final Approval Order, (Exhibit 4). Distributions set forth in paragraphs 12(b)-(d) shall be made within 14 days of receipt of the Settlement Fund. Plaintiff’s Counsel shall send the Settlement Fund, less the court approved distributions set forth in paragraphs 12(b)-(d), for distribution to the Settlement Class Members who submitted valid claims within 14 days of receipt of the Settlement Fund.

12. **Distribution of Settlement Fund.** The Settlement Fund shall be used to provide the following relief to Plaintiff and the Class, subject to the Court’s approval:

- a. the creation of a \$150,000.00 settlement fund which shall be divided as set forth below;
- b. \$3,000.00 of the above settlement funds shall be paid to ADLMB, as an incentive award in recognition of its services as Class Representative, in addition to its recovery as a member of the Settlement Class;
- c. counsel for Plaintiff and the Settlement Class, Edelman, Combs, Lattuner & Goodwin, LLC, shall request and Defendant will not oppose 30% of the settlement fund as payment for attorney’s fees;
- d. costs related to providing notice, claims administration and delivery of settlement payments to the Settlement Class shall be paid from the Settlement Fund. Class Counsel may seek reimbursement of the costs of notice and administration from the Settlement Fund, which will not be counted in the 30% figure described above; and

- e. each class member who submits a valid Claim Form will receive a check for its pro rata share per fax number up to \$500 of the settlement funds after the amounts set forth in paragraphs 12(b) - 12(d) are paid. There will be no cap on each Settlement Class Member's recovery. A Settlement Class Member may submit a Claim Form with more than one fax number and will be paid benefits under this settlement per fax number.

13. **Settlement Checks.** All settlement checks issued to Settlement Class Members shall be void 60 days after issuance and shall so state on the check. The Settlement Class Members' checks must be mailed within 21 days of receiving the Settlement Fund. Checks shall be mailed by the Class Administrator to Settlement Class Members to the addresses provided on their Claim Forms. Class Administrator shall attempt to mail out any returned checks that forwarding address information or otherwise have an ascertainable address.

If Settlement Class Members are expected to recover more than \$600, W-9 forms will need to be issued by the Class Administrator. The W-9 forms will be issued after entry of the Final Approval Order and before any Settlement Checks are issued. Settlement Class Members will have 30 days to respond to a W-9 request. If W-9 forms need to be collected, all remaining dates set forth in the Agreement will begin to toll after the deadline for returning W-9 forms. Any funds remaining in the Settlement Fund as a result of any Settlement Class Member who does not submit a W-9 form shall become a *cy pres* award.

14. **Cy Pres Payments.** Any amounts remaining in the Settlement Fund, including uncashed settlement checks and undistributed Settlement Funds shall be distributed to Chicago Coalition for the Homeless upon satisfaction of the statutory criteria set forth in 735 ILCS 5/2-807, and approval by the Court. Thirty (30) days after expiration of the void date on the Settlement Class Members' checks, and payments made in paragraphs 12(b)-(d), payment to the Court approved *cy pres* recipient shall be made by the Class Administrator or Class Counsel.

15. **Release.** Plaintiff, the Settlement Class, and CJ grant the following releases:

- a. Upon the Effective Date, Plaintiff, ADLMB, including each and every one of its past, present or future officers, employees, agents, representatives, attorneys (as counsel for ADLMB), heirs, assigns, or any other person acting on its behalf or for its benefit, or any person claiming through it (collectively "Releasors"), hereby fully releases and discharges: CJ Operating, LLC, Western Heritage Insurance Company, as well as their predecessors and successors in interest and present and former, affiliates, parents, subsidiaries, officers, directors, agents and principals, in their capacities as such with respect to the acts that are the subject of the Action (with all the foregoing released parties in this paragraph being collectively referred to as the "Released Parties"), from all causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time, which Releasor, now has, did have, or may have in the future against the Released Parties, or any of them, arising from the sending of unsolicited faxes containing advertisements related to CJ's goods or services for sale in the form of Exhibit A to the complaint on the designated days and who were not provided with an opt out notice as described in 47 U.S.C. § 227. Without limiting the generality of the foregoing, Releasors release the Released Parties of all claims that were made or that could have been made in the Action.
- b. Each member of the Settlement Class who does not opt out hereby releases and discharges the Released Parties from all causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time, which each member of the Settlement Class now has, did have, or may have in the future against the Released Parties, or any of them, arising from the sending of unsolicited faxes containing advertisements related to CJ's goods or services for sale in the form of Exhibit A to the complaint. Without limiting the generality of the foregoing, each member of the Settlement Class releases the Released Parties of all claims that were made or that could have been made in this the Action.
- c. This Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the claims released herein.

16. If this Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

17. **Attorneys' Fees, Notice Costs and Related Matters.** Counsel for the Class will retain a third party administrator to administer the claims submitted by Class Members, send notice to the Class Members and/or print and mail the Class Members their settlement checks. Plaintiff's counsel will seek reimbursement of reasonable costs incurred in giving notice to the class, administering claims, and issuing and mailing the settlement checks from the Settlement Fund. Reimbursement of these costs shall be in addition to Plaintiff's Counsel's request of 30% of the Settlement Fund to provide for attorney's fees. Defendant CJ agrees not to oppose either of Plaintiff's counsel's requests for attorney's fee or cost reimbursement. Defendant shall front up to \$5,000 from the Settlement Fund to pay for the costs of notice. This amount shall be paid to plaintiff's counsel within 7 days of preliminary approval of the settlement agreement and upon the request of Plaintiff's Counsel. Any amount up to \$5,000 fronted by Defendant from the Settlement Fund to pay for the costs of notice shall not be included in any request by Plaintiff's Counsel for reimbursement at Final Approval of the Settlement Agreement.

18. **Notice.** Within 30 days after entry of Preliminary Approval Order (Exhibit 3), Plaintiff's counsel or their agent shall send the Class Notice (Exhibit 1) and Claim Form (Exhibit 2) to those identified on the Fax List. Class Counsel shall also post the Class Notice, Exhibit A to the complaint, and the Settlement Agreement, without exhibits, on its website, www.edcombs.com. Fourteen days after the Class Notice is sent, Plaintiff's counsel's agent shall send Notice again either by fax or U.S. Mail to those who have not submitted a Claim Form or otherwise responded to the Class Notice. Mailing may be done if addresses of those on the Fax List are reasonably ascertainable. All costs of Notice shall be deducted from the Settlement Fund.

Class Counsel shall retain all documents and records generated during its administration

of the settlement – including records of notice given to Class Members, confirmations of transmittals of such notices by facsimile, unconfirmed facsimile transmissions, records of undelivered mail, claim forms, and payment to Class Members – for a period of at least one year following the issuance of an order dismissing the Litigation with prejudice, and the expiration of all deadlines for appeal from such order.

19. **Claim Forms.** A Claim Form shall be timely if the Class Administrator or Class Counsel receives it within 90 days after entry of the Preliminary Approval Order. The Class Administrator or Class Counsel shall have 21 days after that date to reject any untimely or invalid claims. A valid claim is one that contains at least one fax number that is on the Fax List and is signed by the Class Member. If the Class Administrator or Class Counsel determines that a claim is untimely or invalid, it will send the Claim Form to counsel for Defendant. If counsel for Defendant and Class Counsel disagree to the validity of any claim, Class Counsel will bring the disputed claim before the Court.

20. **Preliminary Approval.** As soon as practicable after execution of this Agreement, the Parties shall make application to the Court to approve the Preliminary Approval Order (Exhibit 3), which:

- a. Preliminarily approves this Agreement;
- b. Appoints Edelman, Combs, Lattuner & Goodwin, LLC as Class Counsel;
- c. Schedules a hearing for final approval of this Agreement;
- d. Approves Exhibit 1 hereto as Class Notice to the Settlement Class, to be directed via facsimile (and/or U.S. Mail, if elected) to the Class Members to the numbers identified on the Fax List;
- e. Finds that the Notice Plan described herein and the other measures specified in Paragraph 22 is the only notice required and that such notice satisfies the requirements of due process and 735 ILCS 5/2-803; and

f. Sets deadlines to submit claims, opt out and object to the Agreement.

21. **Final Approval.** At the conclusion of, or as soon as practicable after, the close of the hearing on the fairness, reasonableness and adequacy of this Agreement, and after the deadline for submission of claim forms, requests for exclusion and objections expires, Plaintiff and Plaintiff's counsel, shall request that the Court enter a Final Order (Exhibit 4) approving the terms of this Agreement as fair, reasonable, and adequate, providing for the implementation of those terms and provisions, finding that the notice given to the Settlement Class satisfies the requirements of due process and 735 ILCS 5/2-803, and setting a date to report on the accounting of the Settlement Fund. A dismissal order will be entered at the Final Accounting Hearing.

22. The parties agree to request the entry of a final approval order in the form of Exhibit 4. The fact that the Court may require non-substantive changes in the notice or order does not invalidate this Agreement.

23. **Release of Attorneys' Lien.** In consideration of this Agreement, Plaintiff's counsel hereby waives, discharges and releases the "Released Parties," as defined in Paragraph 15(a) above, of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Plaintiff's counsel in connection with this Action, other than the amount awarded by the Court as specified above.

24. In the event more than 5% of the members of the Class as defined in paragraph 8 elect to opt-out of the Class as described in paragraph 25 of the Agreement, Defendant shall have the option to void the settlement agreement. Such option may be exercised by written notice to all parties prior to the hearing on the fairness, reasonableness and adequacy of this Agreement.

25. **Opt Outs.** Any Class Member may elect to be excluded from the Settlement by opting out of the Settlement Class. The opt out deadline shall be 90 days after entry of the

Preliminary Approval Order. Any Class Member who wishes to exclude themselves from the Settlement Class must send a written request for exclusion to Class Counsel and Counsel for Defendant at the addresses set forth in the Class Notice. The request must be received by Class Counsel or the Class Administrator on or before the opt out deadline. Any Class Member who opts out shall neither be bound by the Settlement nor entitled to any benefits of the Settlement. An opt out notice must contain the following information: (a) the Class Member's name (or business name if the facsimile number was owned or controlled by a business), address, and telephone number; (b) the telephone number for the fax machine on which the Class Member was sent the fax; (c) the Class Member's signature or that of the Class Member's representative (such as a business's officer or manager); and (d) a statement to the effect that the Class Member does not want to participate in the Settlement and waives all rights to any benefits of the Settlement. A request to opt out that does not include all of the foregoing information, or that is sent to an address other than those listed in the Class Notice, or that is not received on time shall be invalid, and the persons or entities serving such a request shall be members of the Settlement class and shall be bound as Settlement Class Members by the Settlement, if approved.

26. **Objections.** Class Members who do not timely file a request for exclusion may file an objection to the Settlement. Any Class Member may object to the Settlement and may appear in person or through counsel, at his, her or its own expense, at the final approval hearing to present evidence or argument that may be relevant as determined by the Court. The deadline to object shall be 90 days after entry of the Preliminary Approval Order. Class Members who object may file with the Clerk of the Court and mail to Class Counsel and to Counsel for Defendant at the addresses specified in the Class Notice, a written objection that includes: (a) the objector's name (or business name, if the objector is an entity), address and telephone

number; (b) the telephone number for the facsimile machine on which the Class Member was sent the fax; (c) a statement of the objection to the Settlement; (d) an explanation of the legal and factual basis for the objection; and (e) documentation, if any, to support the objection. The Court, in its discretion, may allow any Class Member to object, even though a Class Member does not request to object in the manner set forth above.

27. **Miscellaneous Provisions.** This Agreement shall be governed by and interpreted in accordance with the state laws of the state of Illinois.

28. The parties and their attorneys agree to cooperate fully with one another in seeking approval of this Agreement, and to use their best efforts to effect the consummation of this Agreement and the settlement provided for herein. Whether or not this Agreement and the settlement contemplated hereunder are consummated, this Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of CJ of any liability or wrongdoing whatsoever.

29. Each and every term of this Agreement shall be binding upon and inure to the benefit of the Plaintiff and the Settlement Class, and any of their successors and personal representatives, and shall bind and shall inure to the benefit of the Released Parties, all of which persons and entities are intended to be beneficiaries of this Agreement.

30. The Parties hereby represent to one another that they have full power and authority to enter into this Agreement and carry out their obligations. The corporate Parties and the Third Parties referenced in paragraph 15 further represent that all necessary corporate action has been duly taken to authorize the execution and delivery of this Agreement and that this Agreement has been duly executed and delivered.

31. After final approval of the settlement, and at the hearing on final accounting of the settlement, the parties shall present a stipulation of dismissal, dismissing the case with prejudice except those who have opted out of the settlement.

32. Within 30 days after this settlement is granted final approval, counsel for Western Heritage, shall file an agreed order of dismissal in *Western Heritage Insurance Company v. United Risk International, and Adducci, Dorf, Lehner, Mitchell & Blankenship*, 12 CH 37493 (Circuit Court of Cook County, Illinois, Chancery Division).

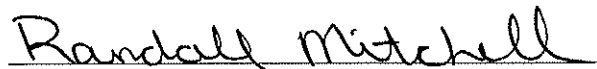
33. The foregoing constitutes the entire agreement among the signatories with regard to the subject matter hereof and may not be modified or amended except in writing, signed by all signatories hereto, and approved by the Court.

34. This Agreement may be executed in separate counterparts, in which case the various counterparts shall constitute one instrument for all purposes. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies, PDFs and facsimiles of executed copies of this Agreement may be treated as originals.

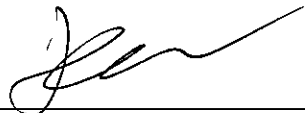
IN WITNESS WHEREOF, the signatories hereto, acting by and through their respective counsel of record, intending to be legally bound, have so agreed, on January_____, 2013.

Plaintiff and the Settlement Class
ADDUCCI, DORF, LEHNER,
MITCHELL & BLANKENSHIP, PC

Defendant CJ OPERATING, LLC


Randall Mitchell, on behalf of Plaintiff

For Plaintiff's Counsel



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*Counsel for Plaintiff
and the Settlement Class*

Approved as to form by Counsel:

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Counsel for Western Heritage Ins. Co.

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IN WITNESS WHEREOF, the signatories hereto, acting by and through their respective counsel of record, intending to be legally bound, have so agreed, on January 30, 2013.

Plaintiff and the Settlement Class
ADDUCCI, DORF, LEHNER,
MITCHELL & BLANKENSHIP, PC

Randall Mitchell, on behalf of Plaintiff

Defendant CJ OPERATING, LLC



Craig Jamerca

For Plaintiff's Counsel

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For Plaintiff's Counsel

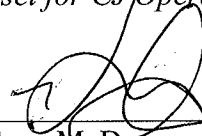
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