

# Exhibit A

## **AGREEMENT FOR SETTLEMENT OF CARRIER AND NAR LITIGATION**

This Agreement for Settlement (“Settlement Agreement”) of Carrier v. ValueClick, Inc., et al., No. 2:07-cv-02641-FMC-CTx (C.D. Cal.) and Settlement Recovery Center et al. v. ValueClick, Inc. et al., No. 2:07-cv-02638-FMC-CTx (C.D. Cal.) (the “Litigation”) is entered into as of May 29, 2008 among plaintiff Mireille Carrier (“Carrier”), acting on her own behalf and on behalf of a proposed class of similarly-situated persons, plaintiff New Century International Corporation (“NAR”), acting on its own behalf and on behalf of a proposed class of similarly-situated persons, and defendants ValueClick, Inc., Commission Junction, Inc. and Be Free (collectively, the “Parties”). This Settlement Agreement memorializes and sets forth the settlement between the Parties on a class-wide basis.

### **I. DEFINITIONS**

1. “Advertiser” means any person or entity who had ads hosted by Publishers on, and/or paid commissions for ads placed through, Defendants’ online affiliate marketing network between April 20, 2003 and the date of entry of the Preliminary Approval Order, pursuant to a written contract with Commission Junction.
2. “Advertiser Settlement Class” means all Advertisers who, between April 20, 2003, and the date of entry of the Preliminary Approval Order, had ads hosted by Publishers on, and/or paid commissions for ads placed through, Defendants’ online affiliate marketing network. Advertiser Settlement Class shall not include any persons who already have settled or otherwise compromised their claims relating to the subject matter of this Litigation against the Defendants or any persons who are subject to Exclusion from the Class.
3. “Class Counsel” means Nassiri & Jung LLP and Hagens Berman Sobol Shapiro LLP, who are the attorneys of record for Plaintiffs and the Settlement Class Members in the Litigation.
4. “Defendants” means ValueClick, Inc., Commission Junction, Inc. and Be Free.
5. “Effective Date” shall mean the date on which the Judgment becomes Final.
6. “Exclusion” means to request and receive exclusion from the Settlement Agreement pursuant to Federal Rule Civil Procedure 23(c)(2)(B) and to the procedures described in paragraph 67 below.
7. “Final” means the termination of the Litigation after all of the following events have occurred: (i) the Settlement Agreement is approved in all respects by the Court; and (ii) a Judgment of dismissal with prejudice is entered as to all claims alleged by Plaintiffs and all Settlement Class Members and Settlement Recovery Center LLC; and (iii) the time for the filing of any appeals has expired or, if there are appeals, approval of the Settlement Agreement and Judgment has been affirmed in all respects by the appellate court of last resort and is no longer subject to further appeal or review.

8. “Judgment” means the judgment and order entered by the Court approving the Settlement Agreement in all aspects and dismissing with prejudice the claims of the Plaintiffs and the Settlement Class Members who are not subject to Exclusion.

9. “Long-Form Notice” means the notice of the Settlement Agreement (in a form substantially similar to that attached to this Settlement Agreement as Exhibit A) provided to the Settlement Class Members.

10. “Non-Compliant Software” means software that does not comply with CJ’s Publisher Code of Conduct and is intended or used to steal or divert commissions from Publishers and/or Advertisers on CJ’s Network.

11. “Parties” or “Settling Parties” means Plaintiffs, Settlement Class Members and Defendants.

12. “Payout Date” means 10 days after this Settlement Agreement becomes Final.

13. “Plaintiffs” or “Named Plaintiffs” means Carrier and NAR.

14. “Preliminary Approval Order” means the order of the Court: (i) certifying the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (ii) preliminarily approving the proposed Settlement Agreement; and (iii) approving the proposed notices.

15. “Publisher” means any person or entity who hosted ads on behalf of Advertisers in, and/or earned commissions for participating as a publisher in, Defendants’ online affiliate marketing network between April 20, 2003 and the date of entry of the Preliminary Approval Order, pursuant to a written contract with Commission Junction.

16. “Publisher Settlement Class” means all Publishers who, between April 20, 2003, and the date of entry of the Preliminary Approval Order, hosted ads on behalf of Advertisers in, and/or received commissions for participating as a publisher in, Defendants’ online affiliate marketing network. Publisher Settlement Class shall not include any persons who already have settled or otherwise compromised their claims relating to the subject matter of this Litigation or any persons who are subject to Exclusion from the Class.

17. “Released Claims” means any and all claims, causes of action, demands, rights, liabilities, debts, defenses, liens, obligations, suits, appeals, sums of money, accounts, reckonings, covenants, contracts, controversies, attorneys’ fees and costs, expenses, losses, damages, judgments, orders, promises whatsoever, known or unknown, present or future, concealed or hidden, liquidated or unliquidated, suspected or unsuspected, matured or unmatured, fixed or contingent, anticipated or unanticipated, known or unknown, that have been, could have been or might in the future be asserted by Plaintiffs or the Settlement Class Members or any of their respective heirs, spouses, executors, administrators, partners, attorneys, predecessors, successors, assigns, agents and/or representatives, and/or anyone acting or purporting to act on their behalf, arising both out of the facts or allegations giving rise to any claims asserted in the Litigation and relating to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ’s networks, including but not limited to any such claim which incorporates, refers to, relates to or arises out of (i) Defendants’ acts or failure to act

in connection with the use of Non-Compliant Software and/or commission theft or hijacking, (ii) Defendants' determination of commission payments owed by Advertisers to Publishers due to the use of Non-Compliant Software and/or commission theft or hijacking, and/or (iii) representations, statements, omissions or advertising of or regarding these practices, or relied upon by, Advertisers and/or Publishers. Released Claims further include but are not limited to:

i. any claim that is both (1) related to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ's networks, or CJ's actions or omissions in connection with Non-compliant Software use and/or commission theft or hijacking, and (2) for breach of, violation of, or benefits conferred by, any federal, state, territorial or local laws, provisions, common law, or any other statute regulation or judicial interpretation or other theory, including without limitation those concerning consumer or other transactions, fraud, deceptive or unfair business practices, false advertising, violation of consumer protection laws, consumer legal remedies, intentional misrepresentation, concealment, omission, unfair competition, conversion, conspiracy, private attorney general laws, and the federal Computer Fraud and Abuse Act and similar state laws;

ii. any claim that is both (1) related to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ's networks, or CJ's actions or omissions in connection with Non-compliant Software use and/or commission theft or hijacking, and (2) for breach of any duty imposed in equity or by law, by contract or otherwise, including without limitation breach of contract, constructive trust, restitution or unjust enrichment;

iii. any claim that is both (1) related to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ's networks, or CJ's actions or omissions in connection with Non-Compliant Software use and/or commission theft or hijacking, and (2) based upon principles of tort law, consumer protection, or other kind of liability, including without limitation, negligence, fraud or consumer fraud, false or misleading advertising, negligent or intentional misrepresentation, conversion, concealment, omission, or other direct or derivative liability;

iv. any claim for damages of any type, including but not limited to compensatory damages, damages for emotional distress, damages for reputational injury, statutory damages, consequential damages, incidental damages, punitive and exemplary damages, as well as all claims for equitable, declaratory or injunctive relief, related to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ's networks, or CJ's actions or omissions in connection with Non-Compliant Software use and/or commission theft or hijacking;

v. any claim that is both (1) related to or arising from Non-Compliant Software use and/or commission theft or hijacking on CJ's networks, or CJ's actions or omissions in connection with Non-Compliant Software use and/or commission theft or hijacking, and (2) for penalties, punitive damages, exemplary damages, or any other claim for damages based on a multiplication of compensatory damages or otherwise;

vi. all claims for interest, costs and fees arising out of any of the claims asserted or that could have been asserted in the Litigation.

Nothing in this Settlement Agreement shall be deemed a release of the Parties' respective rights and obligations under this Settlement Agreement.

18. "Released Parties" means Defendants and their present, former and future officers, directors, partners, employees, agents, attorneys, servants, heirs, administrators, executors, members, member entities, predecessors, successors, affiliates, subsidiaries, parents, representatives, trustees, principals, insurers, vendors and assigns, jointly and severally.

19. "Settlement Agreement" means this agreement among plaintiff Carrier, on behalf of herself and on behalf of the Publisher Settlement Class, plaintiff NAR, on behalf of itself and on behalf of the Advertiser Settlement Class, and Defendants to settle and compromise the issues arising out of Plaintiffs' complaints (and amendments to the complaints) in the Litigation and the issues arising out of the Litigation, finally and forever, as memorialized in this Settlement Agreement.

20. "Settlement Administrator" means third-party settlement administrator Epiq Systems, Inc., or another independent administrator agreeable to all Parties.

21. "Settlement Classes" and "Members of the Settlement Classes" are used in this Settlement Agreement for convenience only and refer to both the Publisher Settlement Class and the Advertiser Settlement Class, inclusively.

## II. RECITALS

22. On April 20, 2007, Plaintiff Mireille Carrier filed a class action in the United States District Court for the Central District of California, No. 2:07-cv-02641-FMC-CTx, against ValueClick, Inc. and its wholly-owned subsidiaries Commission Junction, Inc. ("CJ") and Be Free, on behalf of all publishers who joined or were members of CJ's online affiliate marketing network ("Publisher Action"). Carrier alleges causes of action for: (1) breach of contract, (2) negligence, and (3) unlawful, unfair or fraudulent business acts or practices and/or unfair, deceptive, untrue or misleading advertising in violation of California Business and Professions Code section 17200. Carrier is and was represented by Class Counsel.

23. Also on April 20, 2007, Plaintiff Settlement Recovery Center, LLC ("SRC") filed a class action in the United States District Court for the Central District of California, No. 2:07-cv-02638-FMC-CTx, against ValueClick, Inc., Commission Junction, Inc. and Be Free, on behalf of all advertisers who joined or were members of CJ's online affiliate marketing network ("Advertiser Action"). New Century International Corporation (d/b/a Natural Area Rugs) joined the Advertiser Action as an additional plaintiff on November 13, 2007, and, together with SRC, alleged causes of action for: (1) breach of contract, (2) unjust enrichment and (3) any unlawful, unfair or fraudulent business act or practice and/or unfair, deceptive, untrue or misleading advertising violation of California Business and Professions Code section 17200. SRC will dismiss its claims against Defendants without prejudice before the filing of any Preliminary Approval application. NAR remains a plaintiff, and is and was represented by Class Counsel.

24. On January 14, 2008, the Publisher Action and Advertiser Action were consolidated, under the caption Settlement Recovery Center v. ValueClick, Inc. et al., 2:07-cv-2638.

25. In the Litigation, Plaintiffs contend that Defendants inadequately monitored CJ's Network to check for the use by third parties of Non-Compliant Software, facilitated commission payments and collected transaction fees in connection with transactions arising from third parties' use of Non-Compliant Software, and failed to make sufficient disclosures regarding the existence of such Non-Compliant Software, resulting in losses to both Advertisers and Publishers on CJ's Network.

26. Defendants contend that Plaintiffs' claims and the relief they are seeking are barred by the express terms of written agreements entered into by Plaintiffs and the Members of the Settlement Classes, which specifically disclaim any liability for losses caused by Non-Compliant Software or any responsibility for restoring or paying commission payments diverted or stolen by Non-Complaint Software. Defendants further contend that even if Plaintiffs could establish the existence of a legal obligation to monitor, detect or remedy the use of such Non-Compliant Software, their compliance efforts satisfied any such duty. For these and other reasons, Defendants therefore have denied, and continue to deny vigorously, each and every allegation of liability and wrongdoing, and they assert that they have substantial factual and legal defenses to all claims alleged and that such claims are without merit. Without admitting any wrongdoing or liability whatsoever, Defendants are nevertheless willing to agree to the terms of this Settlement Agreement provided that all of the Settled Claims are settled and compromised, in order to fully resolve all issues relating to the subject of this Litigation.

27. In addition to the Parties' formal discovery, Defendants have provided Class Counsel with evidence describing the Defendants' Network Quality efforts. Class Counsel have supplemented this with their own investigation into the underlying events and facts related to the subject matter of the lawsuits, including through the retention of an independent expert, and have engaged in discussions with Defendants' counsel with regard to these and other issues relevant to the litigation. Class Counsel also have undertaken an extensive analysis of the legal principles applicable to the Settlement Classes' claims against Defendants, potential defenses against these claims and potential damages that could be recovered in the event that Plaintiffs succeeded in prevailing on their claims.

28. Class Counsel have engaged in mediation with counsel for Defendants with a view to achieving substantial benefits for the Members of the Settlement Classes while avoiding the cost, delay and uncertainty of future litigation, trial and appellate review. After the mediation session, the Parties continued to engage in intensive arms-length negotiations in an attempt to reach a settlement.

29. As a result of the Parties' negotiations and Class Counsel's investigation, analysis and discovery, Plaintiffs and Class Counsel determined that this Settlement Agreement would be fair, reasonable and adequate and in the best interests of Plaintiffs and the other Members of the Settlement Classes. Plaintiffs and Class Counsel have agreed to enter into this Settlement Agreement and urge approval by the Court, after considering (1) the substantial factual and legal defenses available to Defendants to the claims asserted in the Litigation, which render the

outcome of the Litigation extremely uncertain, (2) the difficulties Plaintiffs would encounter in establishing the elements of each of their claims, (3) the substantial benefits that the Members of the Settlement Classes will receive pursuant to the Settlement, (4) the fact that the Settlement provides for Members of the Settlement Classes to receive relief in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated successfully through trial and appeal, (5) the difficulty of proving any damages with the requisite degree of certainty, and (6) the fact that the Settlement Agreement allows Members of the Settlement Classes to exclude themselves from the Settlement Classes should they so desire and thereby not be precluded by the Settlement Agreement from individually seeking to pursue the claims alleged in the Litigation or any other claims relating to the conduct of Defendants at issue in the Litigation.

30. The Parties recognize that the outcome of this Litigation is uncertain, and that a final result through the litigation process would create substantial risk and would require additional discovery, time, and expense. The Parties also recognize that a large portion of the Members of the Settlement Classes continue to have an ongoing business and contractual relationship with the Defendants. In particular, many of the Advertisers in the Settlement Classes have current accounts with CJ and have contracted with CJ for online affiliate management services. Likewise, many of the Publishers in the Settlement Classes are current affiliates on CJ's Network and have contracted with CJ for online affiliate management services. Given these ongoing business relationships, the Parties and their counsel recognize that the prompt resolution of the issues in this Litigation, and commencement of the practices outlined in the injunctive relief provided for by this Settlement Agreement, are in the interests of all Parties.

31. For the purposes of avoiding the burden, expense and uncertainty of continued litigation, and to put to rest the controversies engendered by the Litigation, the Parties and their counsel therefore have agreed and desire to resolve this Litigation as a settlement class action according to the terms of this Settlement Agreement. The Parties and their counsel shall act in good faith to not make representations of public statements regarding the other party's motives to settle the Litigation or which are inconsistent with the terms of this Settlement Agreement.

32. The Parties and their counsel believe that the Settlement Agreement is a fair, reasonable, and adequate resolution of the Litigation. The Parties further believe that the prompt implementation of the Settlement Agreement is preferable to further prosecution of the Litigation as a means for resolving all claims, if any, that the Plaintiffs and Members of the Settlement Classes may have concerning: (1) breach of contract, (2) negligence, (3) unjust enrichment, (4) any unlawful, unfair or fraudulent business act or practice and/or unfair, deceptive, untrue or misleading advertising in violation of California Business and Professions Code section 17200, et seq. and (5) any legal or equitable claim relating to Commission Junction's actions or omissions in connection with the use of Non-Compliant Software or commission hijacking or theft on Commission Junction's network.

### **III. GENERAL TERMS AND CONDITIONS**

33. Subject to the approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure, (a) the Litigation shall be dismissed with prejudice against Plaintiffs and all Members of the Settlement Classes, and (b) any and all claims, rights and causes of action,

damages, punitive or statutory damages, penalties, losses, costs or attorneys fees, and issues of any kind or nature whatsoever resulting from or relating to the Released Claims shall be compromised, settled, released and discharged with prejudice, upon and subject to the terms, conditions and exceptions set forth below. Thereafter, the Members of the Settlement Classes and their successors and assigns will be fully, finally and forever barred and enjoined from asserting any of the Released Claims in any court or forum whatsoever, as described in Section VIII of this Settlement Agreement.

34. Benefit to Plaintiffs. Plaintiffs and Class Counsel have concluded, under the circumstances and considering the pertinent facts and applicable law, that it is in Plaintiffs' and the Members of the Settlement Classes' best interests to enter into this Settlement Agreement to avoid the uncertainties of litigation and to ensure a benefit to Plaintiffs and all Members of the Settlement Classes. Plaintiffs and Class Counsel consider this Settlement Agreement to be fair, reasonable, and adequate and in the best interests of the Members of the Settlement Classes.

35. No Admission of Liability. By entering into this Settlement Agreement, the Settling Parties agree that Defendants are not admitting any liability to the Plaintiffs, the Members of the Settlement Classes, or any other person or entity, and Defendants expressly deny all such liability. Defendants' sole motivation for entering into this Settlement Agreement is to dispose expeditiously of the claims that have been asserted against them in the Litigation by settlement and compromise rather than incur the expense and uncertainty of protracted litigation. No portion of this Settlement Agreement may be admitted into evidence in any action, except as required to enforce this Settlement Agreement and/or to cease, bar the assertion of claims in, or enjoin other litigation.

#### **A. SCOPE OF SETTLEMENT CLASSES.**

36. Settlement Classes Definitions. Plaintiffs shall propose, and Defendants shall not oppose, for settlement purposes only, that the District Court certify each of the Advertiser Settlement Class and the Publisher Settlement Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure. The parties stipulate and agree to the certification of two separate nationwide classes for purposes of this Settlement Agreement only, defined as set forth in paragraphs 2 and 16. The Advertiser Settlement Class and the Publisher Settlement Class, however, shall not include any persons who have already settled or otherwise compromised their claims relating to the subject matter of this Litigation and the subjects covered by this Release, against the Defendants or include any persons who request and are granted Exclusion from the Settlement Classes.

37. Appointment of Representative Plaintiffs and Lead Counsel: Plaintiffs shall propose, and Defendants shall not oppose, that plaintiff NAR be appointed representative plaintiff for the Advertiser Settlement Class, plaintiff Carrier be appointed representative plaintiff for the Publisher Settlement Class, and Class Counsel be appointed lead counsel for the Advertiser Settlement Class and for the Publisher Settlement Class.

38. Class Certification. The Court's certification of the Advertiser Settlement Class and the Publisher Settlement Class shall not be treated as the adjudication of any fact or issue for any purpose other than this Settlement Agreement and shall not be considered as law of the case,



res judicata, or collateral estoppel in any other proceeding. The Court's certification of the Advertiser Settlement Class and the Publisher Settlement Class shall not be treated as the adjudication of any fact or issue also shall not be considered as law of the case, res judicata, or collateral estoppel in this proceeding unless the Settlement Agreement receives final approval and the Judgment approving the terms of this Settlement Agreement is entered and becomes Final. If this Settlement Agreement is not accomplished according to all the terms of this Settlement Agreement, the Litigation will revert to its status prior to the execution of this Settlement Agreement: the Court's certification order shall be null and void and shall be vacated, and thereafter no Class will remain certified. Plaintiffs and Class Counsel may then seek certification of a class before the Court, and Plaintiffs and Defendants expressly reserve all rights to support or oppose such certification of a class for trial or any other purposes in this or any other action on all available grounds as if no Settlement Class had been certified in this action.

## **B. RELEASE.**

39. Release. Upon the Effective Date, Plaintiffs and each Member of the Settlement Classes, their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigns and all those acting or purporting to act on their behalf, shall conclusively be deemed to have fully, finally and forever released, relinquished and discharged the Released Parties from any and all of the Released Claims.

40. Waiver of Unknown Claims. Plaintiffs and the Members of the Settlement Classes, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigns, and all those acting or purporting to act on their behalf, agree that unknown losses or claims could possibly exist and that present losses may have been underestimated in amount or severity. Plaintiffs and the Members of the Settlement Classes, on behalf of themselves and their respective spouses, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors and assigns, and all those acting or purporting to act on their behalf, explicitly take that into account in entering into this Settlement Agreement, and a portion of the consideration and the covenants by Defendants contained in this settlement have been bargained for between Plaintiffs and the Members of the Settlement Classes, on the one hand, and Defendants, on the other hand, with the knowledge of the possibility of such unknown claims and losses, and were given in exchange for a full accord, satisfaction and discharge of all such Released Claims. Consequently, Plaintiffs and the Members of the Settlement Classes expressly waive all rights under California Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASES, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs and all Members of the Settlement Classes understand and acknowledge the significance of this waiver of California Civil Code Section 1542 and/or of any other applicable law relating to limitations on releases. In connection with such waiver and relinquishment,

Plaintiffs and all Members of the Settlement Classes acknowledge that they are aware that they may later discover facts in addition to, or different from, those facts which they now know or believe to be true with respect to the subject matter of this Litigation and/or Settlement Agreement, but that it is their intention to fully, finally and forever release all claims against the Released Parties relating to this Litigation and/or the Released Claims, and in furtherance of such intention, the release of all claims will be and remain in effect despite the discovery or existence of any such additional or different facts.

### **C. MONETARY RELIEF.**

41. In addition to providing the Injunctive Relief described below, Defendants will pay \$1,000,000 for the creation of a common fund (“Common Funds”), which will be the sole and exclusive source of all monetary payments to the Members of the Settlement Classes in this Settlement. Other than as set forth in paragraphs 55 and 56 below concerning Attorneys’ Fees, Costs, & Expenses and Settlement Administration Fees, the Members of the Settlement Classes and Class Counsel shall have no right to seek any monetary relief, fees, or costs from Defendants in excess of the \$1,000,000 allocated to the Common Funds.

42. Allocation of Common Funds to the Settlement Classes: After deducting for payment of any Incentive Award payments awarded by the Court, fees payable to the Designated Consultant as described below, and Settlement Administration Fees, thirty percent (30%) of the balance of the Common Funds shall be allocated to Advertisers (“Advertiser Fund”), and the remaining seventy percent (70%) shall be allocated to Publishers (“Publisher Fund”). In arriving at this allocation, the Parties considered, among other things, that Defendants collect a fee from Advertisers that is generally equal to 30% of the commissions payable to Publishers, and that services were rendered to Advertisers in transactions where Publishers allegedly were credited for qualifying transactions based on their use of Non-Compliant Software.

43. Calculation of Pro Rata Percentage: Defendants will provide a Plan of Distribution to Class Counsel within 30 days after receiving the Settlement Administrator’s Final Report on Exclusions and Objections. This Plan shall show: (1) the total commissions paid by each Advertiser in the Advertiser Settlement Class to Publishers during the period from April 20, 2003 to the Exclusion Deadline (“Advertiser’s Individual Commission Payments”); (2) the total amount of commissions paid by Advertisers in the Advertiser Settlement Class to Publishers during the period from April 20, 2003 to the Exclusion Deadline (“Total Advertiser Commission Payments”); (3) the percentage of total commissions paid by each Advertiser in the Advertiser Settlement Class during the period from April 20, 2003 to the Exclusion Deadline, calculated by dividing each Advertiser’s Individual Commission Payments by the Total Advertiser Commission Payments (“Advertiser Pro Rata Percentage”); (4) the total commissions paid to each Publisher in the Publisher Settlement Class during the period from April 20, 2003 to the Exclusion Deadline (“Publisher’s Individual Commissions”), excluding all commissions paid within 365 days prior to CJ’s termination of such Publisher for Code of Conduct violations, if any; (5) the total amount of commissions paid to the Publishers in the Publisher Settlement Class during the period from April 20, 2003 to the Exclusion Deadline (“Total Publisher Commissions”), excluding all commissions paid to any Publisher within 365 days prior to CJ’s termination of such Publisher for Code of Conduct violations; (6) the pro rata share of commissions paid to each Publisher in the Publisher Settlement Class calculated by dividing the

Publisher's Individual Commissions by the Total Publisher Commissions ("Publisher Pro Rata Percentage"). The Plan shall also show all Advertiser and Publisher Initial Calculations, Adjusted Total Advertiser Commission Payments, Adjusted Total Publisher Commissions, Adjusted Advertiser and Adjusted Publisher Pro Rata Percentages, and Individual Advertiser and Individual Publisher Payments, as defined in paragraph 44 below. Advertisers and Publishers will be identified on the Plan solely by CJ account number.

44. Determination of Individual Monetary Payments: An initial calculation of awards to members of the Settlement Classes shall be calculated as follows: (a) for each Advertiser Settlement Class member, the Advertiser Pro Rata Percentage multiplied by the balance remaining in the Advertiser Fund after payment of all other costs and expenses, including Settlement Administration Fees payable by the Advertiser Settlement Class pursuant to paragraph 56 ("Advertiser Initial Calculation"); and (b) for each Publisher Settlement Class member, the Publisher Pro Rata Percentage multiplied by the balance remaining in the Publisher Fund after payment of all other costs and expenses, including Settlement Administration Fees payable by the Publisher Settlement Class pursuant to paragraph 56 ("Publisher Initial Calculation"). Recognizing that administration costs for low-value payments can greatly exceed the value of these payments, no payment shall be made where the Member of the Settlement Class is entitled to payment of less than \$1.00 according to the Advertiser Initial Calculation (for Advertisers) or Publisher Initial Calculation (for Publishers). The Total Advertiser Commissions and Total Publisher Commissions shall then be recalculated, excluding the commissions of the Members of the Settlement Class whose Initial Calculation values were less than \$1.00. All Advertiser and Publisher Pro Rata Percentages shall be recalculated once pursuant to paragraphs 43 and 44, resulting in Adjusted Total Advertiser Commission Payments, Adjusted Total Publisher Commissions, Adjusted Advertiser and Adjusted Publisher Pro Rata Percentages. Each Advertiser shall be entitled to a monetary payment equal to its Adjusted Advertiser Pro Rata Percentage multiplied by the Advertiser Fund ("Individual Advertiser Payment"). Each Publisher shall be entitled to a monetary payment equal to its Adjusted Publisher Pro Rata Percentage multiplied by the Publisher Fund ("Individual Publisher Payment").

45. Form of Payment:

The Individual Publisher Payment due to all Publishers with a current CJ account shall be made by depositing the amount due into the Publisher's CJ account. CJ pays its Publishers amounts from their CJ accounts monthly, if the amounts exceed the minimum payout. If commissions do not reach a minimum payout, the month's earnings are rolled into the following month. For those Publishers whose historic activity levels indicate that they may not reach the amount necessary to receive a payout within the upcoming 180 days, payment will instead be made by the Settlement Administrator in the manner described in paragraph 46. The Individual Advertiser Payment due to each Advertiser with a current CJ account shall be made by applying a credit to each such Advertiser's CJ account, to be applied against future transaction fees that would otherwise be owed by such Advertiser to CJ pursuant to the terms of the Advertisers' contracts with CJ. These payments or credits will be made no later than the Payout Date. For those Advertisers whose historic activity levels indicate that they may not use their credit within the upcoming 180 days, payment will instead be made by the Settlement Administrator in the manner described in paragraph 46. In the event that (i) an Advertiser does not engage in future transactions sufficient to extinguish the full amount of the credit within 180 days, or (ii) an

Advertiser chooses to terminate its relationship with Defendants at any time while some portion of the credit remains in its CJ Account, then Defendants shall issue payment to that Advertiser in the full amount of any remaining credit, with no penalties or extra fees whatsoever, within 10 days of either (i) or (ii). In its sole discretion, CJ may elect to pay any Settlement Class member earlier than 180 days, including but not limited to, causing a check to issue on the Payout Date. In the event CJ elects to pay out a Settlement Class member on the Payout Date, CJ will issue, or will bear the costs for causing to issue, such a check, except as provided in paragraph 46.

46. Form of Payment to Inactive Members of the Settlement Classes: If a Member of the Settlement Classes no longer maintains a Commission Junction account on the Payout Date, payment will be made in the form of a check, which shall only be valid for a period of 90 days. Within 10 days after the Payout Date, Defendants will transfer to the Settlement Administrator the balance of the Advertiser Fund and Publisher Fund. Defendants also will provide the Settlement Administrator with the name, last known email address, last known mailing address, and pro rata distribution due to each of these Members of the Settlement Classes. Within 15 days, the Settlement Administrator shall send a check to the last known address of these non-current Members of the Settlement Classes. If the check is returned, the Settlement Administrator will forward the check to any forwarding address provided by the mail carrier. If, 180 days after the Payout Date, any of these funds remain undistributed and the period for cashing these checks has expired, the Settlement Administrator shall make payment of the balance to the Electronic Frontier Foundation, a charity selected by the Parties' counsel, on behalf of Defendants.

47. Report of Payment: Within 10 days after the final distribution of all portions of the Settlement Amount, the Settlement Administrator shall certify to the Court that the distributions have been made and shall serve a copy of such certification on Class Counsel and Defendants' counsel.

#### **D. PROSPECTIVE INJUNCTIVE RELIEF.**

48. Independent Audit: Defendants agree to retain, at their own expense, a qualified, independent auditor to perform an audit of CJ's practices, systems and network quality efforts with respect to the prevention and detection of, and response to, third parties' use of malicious software to "force" or "hijack" clicks on CJ's network ("Audit"). The identity of the auditor will be mutually agreed upon by the parties on or before the date that the motion for final approval of the Settlement Agreement is submitted to the Court. The Audit shall commence within 30 days after the date that the Court approves the Parties' Stipulation for Dismissal and dismisses the Action with prejudice, and shall continue for a period of 60 days thereafter. CJ shall provide the auditor with access, at reasonable times and upon reasonable notice, to its employees, systems, facilities and other information and data as necessary for the auditor to perform the Audit. In addition, Plaintiffs' counsel and Designated Consultant pursuant to Section III.E shall have an opportunity to provide input and suggestions to the auditor with respect to the scope of the Audit prior to the commencement of the Audit. Following the completion of the Audit, the auditor shall prepare a final report documenting his or her methodology and findings and proposing recommendations for improving or enhancing CJ's practices, systems and network quality efforts with respect to the prevention and detection of, and response to, the use of malicious software by third parties to "force" or "hijack" clicks on its networks ("Report"). The auditor shall disclose

the Report solely to CJ and to counsel for Plaintiffs (including its Designated Consultant) and Defendants within 30 days following completion of the Audit. Thereafter, CJ will work cooperatively with the auditor for a period of up to 30 days to develop a plan for implementing certain recommendations made by the auditor in the Report to the extent appropriate and reasonable. CJ shall provide a report to plaintiff's counsel and its Designated Consultant and the auditor within 30 days after receiving the Report identifying those recommendations that it has implemented and/or will be implementing and the reasons for not adopting other recommendations, if any. Counsel for the parties shall develop a mutually approved statement summarizing the measures to be implemented by CJ in response to the Audit and the Report, which may be disclosed to the Members of the Settlement Classes in a manner to be mutually determined by counsel for the parties. Except as provided immediately above, Plaintiffs' counsel and its Designated Consultant shall not publicly disclose the contents of the Report, in whole or in part.

49. Tracking of Additional Data and Information: Defendants agree that no later than 30 days after the date that the Court approves the Parties' Stipulation for Dismissal and dismisses the Action with prejudice, CJ will supplement its existing detection procedures and practices by implementing systems responsible for tracking the following categories of data and information:

A. Prior Publisher Investigations: CJ will design and implement fields and/or tables in its database that identify and record: 1) the number of instances on which any publisher has been assigned a "fraud role" or has been under investigation for the potential use of malicious software to "force" or "hijack" clicks; 2) the time period of each such investigation; 3) the CJ employee(s) responsible for conducting the investigation; and 4) the outcome of the investigation. CJ agrees to maintain such information for a period of no less than 3 years.

B. Termination/Deactivation Codes: CJ will design and implement detailed codes identifying the specific reason(s) that a particular publisher was deactivated or terminated from its network, including specific codes identifying whether a publisher was terminated for "forcing" or "hijacking" clicks using malicious software. CJ agrees to record and preserve such reason codes for each publisher deactivated or terminated from its network for a period of no less than 3 years following such deactivation or termination.

C. Software Testing: CJ will design and implement a database and/or table identifying all software that is manually tested or investigated by CJ to determine whether it is being utilized to "force" or "hijack" clicks, and for each such software application, will record in such database and/or table: 1) the particular software application tested; 2) the time, date and manner in which such software was tested; 3) any publishers determined to be using such software; and 4) the conclusions of the testing. CJ agrees to record and preserve such information for a period of no less than 3 years.

50. Primary Investigative Tools: Defendants agree that no later than 30 days after the date that the Court approves the Parties' Stipulation for Dismissal, and dismisses the Action with prejudice, it will implement the following enhancements to its Network Quality procedures:

A. CJ will continue to circulate to all members of its Network Quality team a daily "hijack report" identifying all instances of two clicks for the same end user being dropped within

five seconds of each other, and will assign a member of its Network Quality team to be principally responsible for reviewing daily “hijack” reports and for investigating instances of potential click “hijacking” based on such reports.

B. CJ will begin to circulate a weekly “high conversion report” to all members of its Network Quality team identifying all publishers with a lifetime conversion ratio greater than 30% and a percentage of “null” referring URLs greater than 50%, and will assign a member of its Network Quality team to be principally responsible for reviewing weekly “high conversion reports” and for investigating instances of potential “forced” clicks using malicious software based on such reports.

C. CJ will agree to consider in good faith implementing any additional investigative reports or tools recommended by the auditor to assist in its efforts to detect forced click and hijacking activity.

51. Automated Software Investigative Tool: Defendants agree that no later than 30 days after the date that the Court approves the Parties’ Stipulation for Dismissal and dismisses the Action with prejudice, CJ will implement an automated testing protocol utilizing a proprietary software tool designed to detect particular publishers’ use of known malicious software applications. The tool will run on a continuous basis, and the independent auditor will be permitted to evaluate the automated tool and to make recommendations concerning the design and implementation of the automated tool in his or her Report.

52. Preservation of Publisher Data During Publisher Investigations: Defendants agree that no later than 30 days after the date that the Court approves the Parties’ Stipulation for Dismissal and dismisses the Action with prejudice, CJ will implement an automated system for preserving all “click data” associated with a particular publisher during any period of time that such publisher is under investigation for the potential use of malicious software to “force” or “hijack” clicks on CJ’s network. Notwithstanding the foregoing, no failure to preserve such data during the pendency of any such investigation shall be admissible to establish liability or breach of any discovery obligation in any collateral litigation, and no inadvertent failure to preserve such data shall give rise to any claim for breach of this Settlement Agreement.

#### **E. OTHER PAYMENTS**

53. Incentive Awards: In recognition of the time and effort the Plaintiffs Carrier and Natural Area Rugs expended in pursuing the lawsuits, in participating in discovery, and in fulfilling their obligations and responsibilities as class representatives, and of the benefits conferred on all of the Members of the Settlement Classes by the Settlement, Class Counsel will ask the Court to award an “Incentive Award” from the Advertiser Fund and the Publisher Fund, accordingly, to each Plaintiff in an amount not to exceed \$5,000 per award. Defendants agree that they will not oppose this request by Class Counsel for Incentive Awards. These payments shall be made on the Payout Date.

54. Designated Consultant Fees: The Parties and their counsel have agreed to the retention of an expert to provide input and suggestions with respect to the scope of the Audit described in Section III.D (“Designated Consultant”). Plaintiffs will select, and disclose the

identity of, the Designated Consultant to Defendants no later than 15 days before filing the motion for final approval of this Settlement Agreement. Defendants will be permitted to object to the proposed consultant if the consultant has worked for, whether as a consultant, contractor, volunteer, employee or otherwise, any of Defendants' competitors in the preceding 3 years; if such objection is made, Plaintiffs must designate a new consultant within 3 business days. Up to \$15,000 of Common Funds shall be allocated for the payment of the Designated Consultant. This payment shall be made on the Payout Date.

55. Attorneys' Fees, Costs, & Expenses: Pursuant to the express terms of written contracts between the Parties, any party that primarily prevails in an action brought under those contracts is entitled to recover from the other party its reasonable attorneys fees and costs. Without admitting or denying whether one or another party, if any, would be deemed to be the prevailing party in this Litigation, in order to fully resolve all issues relating to the subject of this Litigation, the Parties and their counsel have agreed that in addition to payments made towards the creation of Common Funds, as described above, Defendants will pay Class Counsel's fees, expenses and costs in an amount to be approved by the Court. No portion of Plaintiffs' Attorneys' Fees, Costs and Expenses shall be deducted from the Advertiser Fund and/or Publisher Fund. Class Counsel will file a motion for reimbursement of reasonable out-of-pocket litigation costs up to \$25,000 and for attorneys' fees not to exceed \$475,000. Defendants will not oppose this request. No other agreement exists between the Parties as to attorney's fees, expenses, and costs. Payment to Class Counsel shall be made on the Payout Date via wire transfer to Hagens Berman Sobol Shapiro LLP as escrow agent for Class Counsel, to an account to be provided by Hagens Berman Sobol Shapiro LLP to Defendants no later than five business days before the Payout Date.

56. Settlement Administration Fees: The Parties and their counsel have agreed that with respect to all payments to be made to the Settlement Administrator pursuant to paragraph 58 of the Settlement Agreement as well as all costs incurred in providing notice in accordance with Section IV of the Settlement Agreement (together "Settlement Administration Fees"), the Common Funds will contribute \$100,000 and Defendants will contribute \$15,000. Any amounts in excess of \$115,000 will be split evenly, with the Defendants paying 50% and the Common Funds paying 50%. If the Settlement Administration Fees are less than \$115,000, the surplus shall be divided equally between the Common Funds and Defendants.

#### **IV. NOTICE OF SETTLEMENT**

##### **A. NOTICE TO THE SETTLEMENT CLASS.**

57. For purposes of providing Court-approved class notices and ensuring that the best notice practicable has been given, class notice will be accomplished in accordance with the provisions of this Section.

58. Settlement Administrator: The Parties shall retain Epiq Systems, Inc., or another independent administrator agreeable to all Parties, to administer the settlement and perform the other tasks designated to the administrator by this Settlement. All payments to be made to the Settlement Administrator shall be made as set forth in paragraph 56.

59. Creation of Settlement Classes List: Commission Junction will provide to the Settlement Administrator a list of all Members of the Settlement Classes, the last known email address associated with each Member of the Settlement Classes, the last known address of each Member of the Settlement Classes, and the pro rata share of Common Funds payable to each Member of the Settlement Classes (“Settlement Classes List”). Defendants shall have no additional obligation to identify or locate Members of the Settlement Classes.

60. Email Notice: Within 10 days after the Court’s entry of the Preliminary Approval Order, the Settlement Administrator shall send the Email Notice (in a form substantially similar to that attached hereto as Exhibit B) by email to each Member of the Settlement Classes at each member’s last known email address(es) as provided by the Defendants. Without limiting the foregoing provisions of this Settlement Agreement, in the event that these procedures are followed and the intended recipient does not receive the notice, the intended recipient shall remain a Member of the Settlement Classes. Not later than 30 days before the Final Approval Hearing, Defendants will cause proof of the emailing of the Email Notice to be filed with the Court.

61. Postcard Notice: In the event that an Email Notice sent to a particular Member of the Settlement Classes is “bounced back” from or is otherwise identified as having been undeliverable to the recipient’s email server, or no email address is located, Defendants shall cause the Settlement Administrator to send the Postcard Notice (in a form substantially similar to that attached hereto as Exhibit C) by standard U.S. mail, postage prepaid. The Postcard Notice shall be sent to the last known address reflected in the Settlement Classes List, as updated by utilizing the National Change of Address database. No skip trace of any returned mail shall be required, but any mailed notices returned to the Settlement Administrator as non-delivered before the Objection/Exclusion Deadline Date shall be sent to the forwarding address provided in those notices, if any. Without limiting the generality of any of the foregoing provisions of the Settlement Agreement, in the event that these procedures are followed and the intended recipient still does not receive the notice, the intended recipient shall remain a Member of the Settlement Classes. Not later than 30 days before the Final Approval Hearing, Defendants and/or the Settlement Administrator will cause proof of the mailing of the Postcard Notice to be filed with the Court.

62. Internet Notice: Defendants shall establish a designated website ([www.CJSettlement.com](http://www.CJSettlement.com)) that contains information about the Settlement Agreement (“Settlement Website”). The Settlement Website will be accessible no later than 5 days prior to the emailing of the Email Notice described above. The Settlement Website will set forth the following information: (i) the full text of the Settlement Agreement; (ii) a Long-Form Notice (in a form substantially similar to that attached hereto as Exhibit A); (iii) the Preliminary Approval Order and other relevant orders of the Court; and (iv) contact information for Class Counsel. Nationwide access to the settlement website will be ensured via the following methods: (i) the settlement website will be registered with Google so that appropriate queries on Google will yield a link to the settlement website; and (ii) the Email Notice and Postcard Notice will reference the settlement website. Not later than 30 days before the Final Approval Hearing, Defendants and/or the Settlement Administrator will cause proof of the establishment and maintenance of the Settlement Website to be filed with the Court.



63. Costs of Notice: All costs associated with the notice program described in Section IV of the Settlement Agreement shall be paid in accordance with paragraph 56.

## V. COURT APPROVAL

64. Preliminary Approval: Class Counsel and Defendants' counsel will submit this Settlement Agreement and exhibits, along with such other supporting papers as may be appropriate, to the Court for preliminary approval of this Settlement Agreement pursuant to Rule 23 of the Federal Rules of Civil Procedure. In the event the Court grants preliminary approval of the Settlement Agreement, the parties will request that the Court enter a scheduling order setting the dates by which Members of the Settlement Classes must request Exclusion from the Settlement Classes and file any objections, as well as schedule the final fairness hearing in this matter.

65. Notice to Settlement Classes: The Settlement Administrator will be responsible for preparing and sending the prescribed notice to the Settlement Classes as described in Section IV – Notice to the Settlement Classes. The Settlement Administrator shall be responsible for keeping records of Members of the Settlement Classes that request Exclusion from the Settlement Classes or object to the settlement. Any claim or demand by Members of the Settlement Classes against Defendants or the Settlement Administrator arising out of or in connection with the performance of these responsibilities shall be limited to seeking, as the sole and exclusive remedy, the specific performance of these responsibilities.

i. No later than 5 days after entry by the Court of the Preliminary Approval Order, the Defendants shall provide the Settlement Administrator with the name, account number, email address and mailing address for each Publisher and Advertiser from their records, to the extent available.

ii. No later than 10 days after entry by the Court of the Preliminary Approval Order, the Settlement Administrator will send electronic notice to all Members of the Settlement Classes in the manner described by Section IV of this Settlement Agreement.

iii. No later than 25 days after entry by the Court of the Preliminary Approval Order, the Settlement Administrator will send the postcard notice described by Section IV of this Settlement Agreement.

66. Objection/ Exclusion Period: Members of the Settlement Classes will have a period of 45 days to request exclusion from, or file and serve notice of objection to, this Settlement Agreement. This Objection/ Exclusion Deadline will be 70 days after entry by the Court of the Preliminary Approval Order. The date of the postmark on the envelope containing the objection or exclusion form shall be the sole basis for determining whether the request is timely if it is received more than 5 days after the deadline.

i. *Exclusion*: Members of the Settlement Classes will have the opportunity to request exclusion from the Settlement Agreement, by completing an Exclusion Request Form; this form may be obtained from the Settlement Administrator or from the settlement website. This Form will require the Members of the Settlement Classes' name, address, telephone number, email address, and account number(s) with

Defendants. This Form may be returned by registered, certified or regular mail to the Settlement Administrator, with a postmark on or before the Objection/ Exclusion Deadline. Any Member of the Settlement Classes that does not request Exclusion in this manner will be bound by all terms of this Settlement Agreement. Any Member of the Settlement Classes who properly requests Exclusion will not be bound by the Settlement Agreement; as a result, the Member of the Settlement Classes will not release any claims nor receive any monetary relief.

Settlement Administrator:

Settlement Recovery Center v. ValueClick Settlement Administrator  
P.O. Box 3656  
Portland, Oregon 97208-3656

ii. *Objection:* Members of the Settlement Classes may object to the Settlement Agreement. Members of the Settlement Classes who wish to object to the Settlement Agreement must file an objection with the Court and serve a written statement on the Court and counsel for the Parties, at the addresses below, on or before the Objection/ Exclusion Deadline. Any objection must contain: (a) reference to Settlement Recovery Center v. ValueClick, Inc. et al., 2:07-cv-02638-FMC-CTx, (b) the objector's name, address, telephone number, email address, and account number(s) with Defendants, (c) a statement whether the objector will appear at the Final Approval Hearing, in person or through counsel, (d) the name, address, and telephone number of objector's counsel (if any), and (e) a statement of the reasons or basis for the objection.

If to the Court to:

Clerk to Hon. Florence-Marie Cooper  
US District Court - Central District of California  
255 East Temple Street, Room 750  
Los Angeles, California 90012

If to Plaintiffs or the Settlement Classes to:

Kassra P. Nassiri  
Nassiri & Jung LLP  
251 Kearny Street, Suite 501  
San Francisco, California 94108

Jeff D. Friedman  
Hagens Berman Sobol Shapiro LLP  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710

If to Defendants to:

Ashlie Beringer  
Gibson Dunn & Crutcher  
1801 California Street, Suite 4200  
Denver, Colorado 80202

iii. *Appearance at Final Approval Hearing:* No Member of the Settlement Classes will be entitled to be heard at the Final Approval Hearing unless written notice of the Member's intention to appear at the hearing was filed with the Court and served on counsel for the Parties on or before the Objection/ Exclusion Deadline.

iv. *Non-Solicitation:* The Parties and their counsel agree not to encourage Members of the Settlement Classes to submit written objections to, or request exclusion from, this Settlement Agreement. The Parties and their counsel also agree not to encourage Members of the Settlement Classes to appeal from this Court's Final Judgment.

v. *Attorneys Fees, Costs, Expenses.* Defendants shall not be responsible for any attorneys fees, costs, or expenses incurred by Members of the Settlement Classes in this Litigation, or those payments to be made by the Common Funds such as administrative expenses, other than those payments to Class Counsel specified by this Settlement Agreement and denominated for payment by Defendants.

67. Report on Exclusions & Objections: The Settlement Administrator will provide weekly reports to both Class Counsel and Defendants on the number of Exclusion requests received during the Objection/Exclusion Period. The Settlement Administrator will provide a final report not later than 10 days after the Objection/Exclusion Deadline, which will be 85 days after entry by the Court of the Preliminary Approval Order.

68. Plan of Distribution: Thirty days after the Settlement Administrator's Final Report on Exclusions and Objections is due, Defendants will provide to Class Counsel a plan of distribution, which shows the pro rata entitlement of each Member of the Settlement Classes. This plan shall show the Member's entitlement as a percentage.

69. Final Settlement Approval Hearing: Within 10 days after receipt of the Plan of Distribution, Class Counsel will file a motion seeking a Final Approval Hearing at which the Court will determine whether to grant final approval of the Settlement. At this hearing, the Court shall determine whether this Settlement Agreement is a fair, reasonable, and adequate settlement, such that the Judgment should be entered, and if so approved, consider an application by Class Counsel for an award of reasonable attorneys' fees, costs and expenses.

70. Final Judgment: The Settling Parties agree that the Settlement Agreement is expressly conditioned upon dismissal with prejudice of the Litigation, entry of a Judgment and the Judgment becoming Final. The Settling Parties will jointly submit a proposed Judgment prior to the fairness hearing.

## VI. TERMINATION

71. Defendants shall have the unilateral and unfettered right to individually terminate this Settlement Agreement, and declare it null and void, such that all parties are returned to their respective positions in this action prior to the signing of this Settlement Agreement, if any of the following conditions occurs:

- i. The extent and manner of notice provided for in this Settlement Agreement are not approved by the Court (or any other court) in all material respects;
- ii. The Court fails to issue a Preliminary Approval Order in accordance with the terms of the Settlement Agreement;
- iii. More than 5% of Members of the Settlement Classes elect to request Exclusion;
- iv. Members of the Settlement Classes whose cumulative pro rata monetary entitlements total more than 10% of Common Funds payable to Members of the Settlement Classes elect to request Exclusion;
- v. The Court fails to enter a Judgment dismissing the Litigation with prejudice and incorporating the material terms of the Settlement Agreement, including but not limited to the scope of the Released Claims and Released Parties
- vi. The Judgment is appealed and such Judgment is finally reversed or modified on appeal.

72. If any of the conditions described above occur, and the Defendants elect to terminate the Settlement Agreement, then: (i) the Settlement Agreement (including without limitation the class certification provisions of the Settlement Agreement) shall have no further force and effect with respect to any Party to the Litigation and shall not be offered in evidence or used in the Litigation or any other proceeding by the parties or by anyone else; (ii) counsel for the Parties shall seek to have any Court orders, filings, or other entries on the Court's file that result from the Settlement Agreement set aside, withdrawn, and stricken from the record; (iii) the Settlement Agreement, and all negotiations, proceedings, and documents prepared, and statements made in connection with either of them, shall be without prejudice to any Party and shall not be deemed or construed to be an admission or confession by any Party of any fact, matter, or proposition of law; and (iv) all Parties to the Litigation shall stand in the same procedural position as if the Settlement Agreement had not been negotiated, made, or filed with the Court.

## **VII. MISCELLANEOUS PROVISIONS**

73. Governing Law: To the extent not governed by the Federal Rules of Civil Procedure, the contractual terms of this Settlement Agreement shall be interpreted and enforced in accordance with the substantive law of the State of California without regard to principles of conflict of laws.

74. Severability: In the event any one or more of the provisions contained in this Settlement Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Settling Parties and their counsel mutually elect by written stipulation to be filed with the Court within 20 days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Settlement Agreement.

75. Waiver: The waiver by one party of any provision or breach of this Settlement Agreement shall not be deemed a waiver of any other provision or of any other breach.

76. Headings: Headings contained in this Settlement Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Settlement Agreement.

77. Integration Clause: This Settlement Agreement contains a full, complete, and integrated statement of each and every term and provision agreed to by and among the Settling Parties and supersedes any prior writings or agreements (written or oral) between or among the Settling Parties, which prior agreements may no longer be relied upon for any purpose. This Settlement Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Settling Parties. In the event a dispute arises between the Settling Parties over the meaning or intent of this Settlement Agreement, the Settling Parties agree that prior drafts, notes, memoranda, discussions or any other oral communications or documents regarding the negotiations, meaning or intent of this Settlement Agreement shall not be offered or admitted into evidence. Plaintiffs and Class Counsel acknowledge that, in entering into this Settlement Agreement, they have not relied upon any representations, statements, actions, or inaction by Defendant or its counsel that are not expressly set forth in this settlement Agreement.

78. Mutual Interpretation: The Settling Parties agree and stipulate that this Settlement Agreement was negotiated on an arms-length basis between parties of equal bargaining power. Also, the Settlement Agreement has been drafted jointly by Class Counsel and counsel for Defendants. Accordingly, this Settlement Agreement shall be neutral, and no ambiguity shall be construed in favor of or against any of the Settling Parties. The parties expressly waive the presumption of California Civil Code section 1654 that uncertainties in a contract are interpreted against the party who caused the uncertainty to exist.

79. Notice: Except as otherwise specifically provided, whenever any written notice is required by the terms of this Settlement Agreement, it shall be deemed effective on the date received, addressed as follows:

If to Plaintiffs or the Settlement Classes to:

Kassra P. Nassiri  
Nassiri & Jung LLP  
251 Kearny Street, Suite 501  
San Francisco, California 94108

Jeff D. Friedman  
Hagens Berman Sobol Shapiro LLP  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710

If to Defendants to:

Ashlie Beringer  
Gibson Dunn & Crutcher  
1801 California Street, Suite 4200  
Denver, Colorado 80202

80. Privacy of Documents and Information: Plaintiffs and Class Counsel agree that within 30 days of the filing of the Final Judgment they shall provide a declaration that all documents and information provided to them by Defendants have been destroyed and that none of the documents and information provided to them by Defendants will be used for any purpose. Notwithstanding the foregoing, as to those materials that contain or reflect information provided by Defendants, but that constitute or reflect counsel's work product, Class Counsel shall be entitled to retain such work product in their files. Counsel shall be entitled to retain pleadings, affidavits, motions, briefs, other papers filed with the Court, and deposition transcripts, even if such materials contain information provided by Defendants.

81. Assignment: The Plaintiffs and Class Counsel represent that they have not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of the claims covered by this Settlement Agreement, including any claims released, nor are they aware of any such assignments, transfers, or encumbrances by any Member of the Settlement Classes.

82. Binding Upon Successors: This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their representatives, heirs, successors, and assigns.

83. Stay: The parties agree to further stay all discovery and other non-settlement-related proceedings in this Litigation until further order of the Court.

84. Extension of Time: Without further Order of the Court, the Parties or their counsel may agree in writing to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement.

85. Calculation of Time: To the extent any deadline set by this Settlement Agreement falls on a Saturday, Sunday or legal holiday, that deadline shall be continued until the following business day. All references to "days" in this agreement refer to calendar days unless the Settlement Agreement specifically provides for "business days."

86. Counterpart Execution: This Settlement Agreement shall become effective upon its execution by all of the undersigned. This Settlement Agreement may be executed in any number of counterparts and will be binding when it has been executed and delivered by the last signatory to execute a counterpart. A facsimile signature shall be deemed to constitute an original signature for purposes of this Settlement Agreement. After execution and delivery of counterparts by each designated signatory, Defendants agree to furnish each Party with a composite conformed copy of this Settlement Agreement reflecting all counterparts' signatures.

87. Warranty of Counsel: Class Counsel unconditionally represent and warrant that they are fully authorized to execute and deliver this Settlement Agreement on behalf of the Plaintiffs. Defendants unconditionally represent and warrant that they are fully authorized to execute and deliver this Settlement Agreement on behalf of Defendants.

88. Jurisdiction: The Court shall retain jurisdiction over the interpretation, effectuation, and implementation of this Settlement Agreement. Counsel for the Parties shall confer in good faith to resolve any alleged failure to comply with the terms, including timelines, set by this Settlement Agreement.

The undersigned Parties have executed this Settlement Agreement as of the date first above written.

Dated: \_\_\_\_\_, 2008

MIREILLE CARRIER

By: \_\_\_\_\_  
Mireille Carrier

Dated: \_\_\_\_\_, 2008

NEW CENTURY INTERNATIONAL  
CORPORATION

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

VALUECLICK, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

COMMISSION JUNCTION, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

BE FREE

By: \_\_\_\_\_

Its:

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2008

NASSIRI & JUNG LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

HAGENS BERMAN SOBOL SHAPIRO LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

GIBSON, DUNN & CRUTCHER LLP

By: \_\_\_\_\_

Attorneys for Defendant



The undersigned Parties have executed this Settlement Agreement as of the date first above written.

Dated: June 3, 2008

MIREILLE CARRIER

By: M Carrier  
Mireille Carrier

Dated: \_\_\_\_\_, 2008

NEW CENTURY INTERNATIONAL CORPORATION

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

VALUECLICK, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

COMMISSION JUNCTION, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

BE FREE

By: \_\_\_\_\_

Its:

The undersigned Parties have executed this Settlement Agreement as of the date first above written.

Dated: \_\_\_\_\_, 2008

MIREILLE CARRIER

By: \_\_\_\_\_  
Mireille Carrier

Dated: June 3, 2008

NEW CENTURY INTERNATIONAL CORPORATION

By: Lina Kermani  
Its: Lina Kermani  
market director

Dated: \_\_\_\_\_, 2008

VALUECLICK, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

COMMISSION JUNCTION, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

BE FREE

By: \_\_\_\_\_

Its:

The undersigned Parties have executed this Settlement Agreement as of the date first above written.

Dated: \_\_\_\_\_, 2008

MIREILLE CARRIER

By: \_\_\_\_\_  
Mireille Carrier


Dated: \_\_\_\_\_, 2008

NEW CENTURY INTERNATIONAL  
CORPORATION

By: \_\_\_\_\_  
Its:

Dated: \_\_\_\_\_, 2008

VALUECLICK, INC.

By:   
Its: U.P. + General Counsel

Dated: \_\_\_\_\_, 2008

COMMISSION JUNCTION, INC.

By: \_\_\_\_\_  
Its:

Dated: \_\_\_\_\_, 2008

BE FREE

By: \_\_\_\_\_  
Its:

The undersigned Parties have executed this Settlement Agreement as of the date first above written.

Dated: \_\_\_\_\_, 2008

MIREILLE CARRIER

By: \_\_\_\_\_  
Mireille Carrier

Dated: \_\_\_\_\_, 2008

NEW CENTURY INTERNATIONAL CORPORATION

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

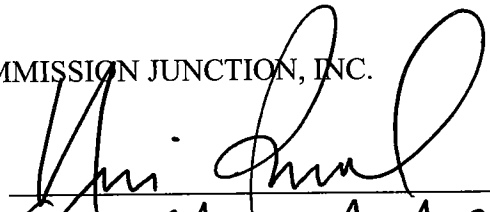
VALUECLICK, INC.

By: \_\_\_\_\_

Its:

Dated: \_\_\_\_\_, 2008

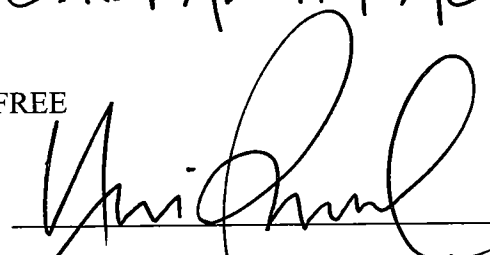
COMMISSION JUNCTION, INC.

By:  \_\_\_\_\_

Its: GENERAL MANAGER

Dated: \_\_\_\_\_, 2008

BE FREE

By:  \_\_\_\_\_

Its: GENERAL MANAGER

APPROVED AS TO FORM:

Dated: June 4, 2008

NASSIRI & JUNG LLP

By:  \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

HAGENS BERMAN SOBOL SHAPIRO LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

GIBSON, DUNN & CRUTCHER LLP

By: \_\_\_\_\_

Attorneys for Defendant

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2008

NASSIRI & JUNG LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: 6/5, 2008

HAGENS BERMAN SOBOL SHAPIRO LLP

By:  \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

GIBSON, DUNN & CRUTCHER LLP

By: \_\_\_\_\_

Attorneys for Defendant

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2008

NASSIRI & JUNG LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: \_\_\_\_\_, 2008

HAGENS BERMAN SOBOL SHAPIRO LLP

By: \_\_\_\_\_

Attorneys for Plaintiffs

Dated: June 3, 2008

GIBSON, DUNN & CRUTCHER LLP

By: Paul E. Lewis / JDS

Attorneys for Defendant

# Exhibit A



**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

SETTLEMENT RECOVERY CENTER, LLC, a California Limited Liability Company, and NEW CENTURY INTERNATIONAL CORPORATION, a Nevada Corporation d/b/a NATURAL AREA RUGS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

VALUE CLICK, INC, a Delaware Corporation, Its Wholly-Owned Subsidiary COMMISSION JUNCTION, Inc., and its Wholly-Owned Subsidiary BE FREE.

Defendants.

Case No. CV-07-02638-FMC (CTx)

CLASS ACTION

Judge Florence-Marie Cooper

**NOTICE OF CLASS ACTION, PROPOSED SETTLEMENT, AND HEARING**

TO: All individuals who entered into or were parties to a publisher or advertiser service agreement for affiliate marketing management services, with ValueClick, Commission Junction, or Be Free, during the period from April 20, 2003 through \_\_\_\_\_, 2008, and who, during that same time period, either (a) hosted ads on, or had ads hosted on, ValueClick's, Commission Junction's or Be Free's online affiliate marketing network, or (b) paid or received commissions pursuant to a publisher service agreement with ValueClick, Commission Junction or Be Free for affiliate marketing management services.

**YOU MAY BE ENTITLED TO BENEFITS UNDER THE TERMS OF  
THIS CLASS ACTION SETTLEMENT.**

THIS IS NOT A SUMMONS. IT IS NOT AN ORDER TO COME TO COURT.

It is a notice of a class action lawsuit, a proposed settlement of the lawsuit, and an announcement of a court hearing that you may choose to attend. The hearing will concern whether the proposed settlement should be approved.

This proposed settlement may affect your rights.

**PLEASE READ THIS NOTICE CAREFULLY.**

**If You Take No Action, You Will Be Bound By This Settlement.**

The purpose of this Notice is to notify you that a proposed settlement of the lawsuit *Settlement Recovery Center, et al v. ValueClick, et al.* (Central District of

California Case No. CV-07-02638-FMC (CTx)), has been reached by the parties, and to advise you of your rights in connection with the settlement. The settlement has been preliminarily approved by the Court and will be considered for final approval by the Court on the date and at the location described below. This Notice is not intended to be, and should not be considered to be, an expression of any opinion by the Court regarding the truth of the claims in the lawsuit or the merits of the claims or defenses asserted by the parties.

## **I. WHY SHOULD YOU READ THIS NOTICE?**

The parties have proposed to settle this lawsuit. Because you may be a member of the “Settlement Class,” as that term is described below, your legal rights may be affected if the settlement receives final approval by the Court.

This Notice summarizes what the lawsuit is about and the terms of the proposed settlement. The Notice describes what you need to do to receive certain benefits under the settlement, how you can obtain more information about the settlement, which persons would be covered and what legal claims would be resolved by final approval of the settlement by the Court, how to exclude yourself from the settlement if you do not wish to participate, and how to object to the settlement or intervene in the lawsuit if you wish to do so. The Notice also explains the procedures that the Court will follow regarding the settlement, including holding a hearing to consider the fairness, reasonableness, and adequacy of the proposed settlement and to consider the plaintiffs’ application for attorneys’ fees and costs.

This Notice, which has been approved by the Court, contains only a summary of the terms of the proposed settlement. You may obtain a copy of the complete Settlement Agreement from the Clerk’s Office at the Court at the address listed below or by writing to the Settlement Administrator at the address listed below, in section VII.D of this Notice. You may also obtain a copy of the Settlement Agreement on the settlement website, [www.CJSettlement.com](http://www.CJSettlement.com).

## **II. WHAT IS THIS LAWSUIT ABOUT?**

The plaintiffs in this lawsuit are two current and former members of the Commission Junction (“CJ”) Network who entered into either a publisher service agreement (“Publishers”) or an advertiser service agreement (“Advertisers”) with the defendants. They contend that the defendants did not do enough to monitor the CJ Network for the use by third-parties of software programs that do not comply with CJ’s Publisher Code of Conduct and are intended to steal or divert commissions from Publishers and Advertisers on CJ’s Network (“Non-Compliant Software”) or to monitor for or prevent third parties from engaging in the theft or “hijacking” of commissions from Advertisers and Publishers on CJ’s Network. They further contend that the Defendants failed to make sufficient disclosures regarding the existence of such Non-Compliant Software and commission theft, resulting in losses to both Advertisers and Publishers on CJ’s Network. As a result, the plaintiffs believe both Advertisers and Publishers suffered losses on the CJ Network.

The defendants in this case are ValueClick, Inc., and its subsidiary, Commission Junction, Inc., and former subsidiary, Be Free (which has since been merged into CJ). Defendants vigorously deny the allegations in these lawsuits. Defendants further contend that Plaintiffs' claims are barred by the express terms of written contracts between the Parties, that they owe no legal duty to Plaintiffs to monitor for or detect the use of Non-Complaint Software or to restore any commission payments made by Publishers or Advertisers that were made due to third parties' use of such Non-Complaint Software or otherwise, and that CJ's monitoring and compliance systems satisfy any legal obligations they may have. Defendants also deny that these lawsuits could be certified for trial as one or more class actions in light of severe manageability problems that would exist.

### **III. WHAT ARE THE REASONS FOR THE SETTLEMENT?**

Defendants have agreed to the proposed settlement to avoid the threat and expense of years of further litigation. Plaintiffs reached this Settlement after weighing the risks and benefits to the Class of this Settlement as compared with continuing litigation. Class Counsel believe that the claims asserted in the litigation have merit, but that the proposed settlement is fair, reasonable, and in the best interest of the members of the Settlement Class given the risk and expense of further litigation, including the uncertainty of particular legal issues that have yet to be determined and the delay associated with a trial and appeals.

### **IV. WHO IS COVERED BY THE SETTLEMENT?**

As part of the settlement, the plaintiffs and defendants have agreed to the certification of a "Settlement Class" for purposes of this settlement only. The Settlement Class includes all persons and entities who, between April 20, 2003 and \_\_\_\_\_, 2008, either (a) hosted ads on, or had ads hosted on, Defendants' online affiliate marketing network, or (b) paid or received commissions pursuant to a publisher service agreement with Defendants for affiliate marketing management services. However, any and all persons who have already settled or otherwise compromised claims against the Defendants arising from the issues involved in this lawsuit, or any persons who timely request exclusion, are not included in the Settlement Class.

If you fall within the Settlement Class definition above, **you are automatically a Class Member unless you exclude yourself from the Settlement Class by following the procedure for exclusion described below.** Persons who are Class Members and do not exclude themselves will be eligible for the compensation offered by the settlement if they meet the specified criteria and the settlement receives final approval by the court. Class Members will be bound by the settlement if approved by the Court and will be prevented from bringing other claims covered by the settlement. Persons who exclude themselves from the Settlement Class will neither be bound by, nor benefit from, the terms of the settlement.

## **V. WHAT ARE THE PROPOSED TERMS OF THE SETTLEMENT?**

The proposed settlement was negotiated between the plaintiffs and defendants, through their attorneys, and has been preliminarily approved by the Court. The terms of the settlement are as follows:

### **A. Monetary Compensation**

Defendants have agreed to pay \$1,000,000 into a Common Fund. The Common Fund will provide benefits to current and former CJ Network Advertisers and Publishers as follows:

After deducting for payment of any money awarded by the Court in connection with representation of the Class in this litigation and settlement (for example, Incentive Awards made to the named plaintiffs, consulting fees, certain costs of class settlement administration, and related expenses), the balance of the Common Fund shall be allocated 70% to the Publishers and 30% to the Advertisers in a Publisher Fund and an Advertiser Fund.

Recognizing that administration costs for low-value payments can greatly exceed the value of these payments, no payment will be made if the Settlement Class Member's pro rata share is calculated to be less than \$1.00.

Each Publisher with a claim of more than \$1.00 will receive a pro rata share of the Publisher Fund equal to the percentage of total commissions it received between April 20, 2003 and \_\_\_\_\_. For example, if a Publisher received 1% of the total commissions paid on the CJ Network during that period, it will receive approximately 1% of the Publisher Fund. Each Advertiser with a claim of more than \$1.00 will receive a pro rata share of the Advertiser Fund equal to the percentage of total commissions it paid between April 20, 2003 and \_\_\_\_\_. For example, if an Advertiser paid 1% of the total commissions on the CJ Network during that period, it will receive approximately 1% of the Advertiser Fund. If a publisher was deactivated for violating the Code of Conduct, the commissions received in the year prior to that deactivation will be excluded from these calculations.

The monetary payment due to each Publisher shall be made by depositing the amount due into the Publisher's Commission Junction account. The monetary payment due to each Advertiser shall be made by applying a credit to the Advertiser's Commission Junction account, to be applied against future transaction fees that would otherwise be owed to Commission Junction. If a Class Member no longer maintains a CJ Account at the time these payouts are made, or if Commission Junction so requests, a class member will receive payment in the form of a check rather than a credit. In the event that a portion of the Common Fund remains due to uncashed or undeliverable checks, the Settlement Administrator will pay the balance to charity.

Additional details concerning monetary compensation may be found in section III.C of the Settlement Agreement.

## **B. Injunctive Relief**

Defendants have agreed to undertake an independent audit of CJ's practices, systems and network quality efforts with respect to the prevention and detection of, and response to, third parties' use of malicious software to "force" or "hijack" clicks on CJ's network. This audit will be conducted by an independent auditor retained at CJ's expense, and a designated consultant selected by Class Counsel and compensated by the Common Fund. Following the completion of the Audit, the auditor shall prepare a final report documenting his or her methodology and findings and proposing recommendations for improving or enhancing CJ's practices, systems and network quality efforts with respect to the prevention and detection of, and response to, the use of malicious software by third parties to "force" or "hijack" clicks on its networks. Thereafter, the parties shall issue a statement to the Class Members summarizing the measures to be implemented by CJ in response to the Audit and the Report.

Defendants also agree that CJ will begin tracking additional data and information, and implement enhancements to its Network Quality procedures, including to its primary investigative tools and automated software investigative tools. In addition, CJ will implement an automated system for preserving all "click data" associated with a particular publisher during any period of time that such publisher is under investigation for the potential use of malicious software to "force" or "hijack" clicks on CJ's network.

Please see section III.D of the Settlement Agreement for the specific details concerning, and limitations to, the injunctive relief agreed upon by the parties.

## **C. Releases**

In return for the compensation and benefits under the Settlement Agreement, the proposed settlement will release the Defendants from all claims (known or unknown) arising in any way out of (i) Defendants' detection, prevention or response to the use of Non-Compliant Software and/or commission theft, (ii) Defendants' determination of commission payments owed by Advertisers to Publishers, and/or (iii) representations, statements, omissions or advertising of or regarding these practices, which arise at any time up to and including the effective date of the Settlement Agreement.

Additional details concerning the scope and nature of the releases are contained in sections II and III.B of the Settlement Agreement.

## **D. Other Payments**

Incentive Awards: In recognition of the time and effort the named plaintiffs (Mireille Carrier and New Century International Corporation) expended in pursuing the lawsuits, in participating in discovery, in fulfilling their obligations and responsibilities as Class Representatives, and of the benefits conferred on all of the Class Members by the Settlement, Class Counsel will ask the Court to award an "Incentive Award" from the common fund to each Plaintiff in an amount not to exceed \$5,000 per award; Defendants have agreed that they will not oppose this request by Class Counsel for

Incentive Awards. Please see section III.E of the Settlement Agreement for the specific details concerning these payments.

Designated Consultant Fees: The Parties and their counsel have agreed to the retention of an expert to assist in the conduct of the audit described in Section V.B. Fifteen thousand dollars (\$15,000) of the common fund shall be allocated for the payment of the Designated Consultant. Please see section III.E of the Settlement Agreement for the specific details concerning these payments.

Attorneys' Fees, Costs, & Expenses: In accordance with CJ's Advertiser and Publisher Service Agreements, in addition to the \$1,000,000 Common Fund, Defendants will pay Class Counsel's fees, expenses and costs in an amount to be approved by the Court and subject to the limitation described below. Class Counsel will file a motion for reimbursement of, and Defendants have agreed to pay, reasonable out-of-pocket litigation costs up to \$25,000 and attorneys' fees not to exceed \$475,000. No other agreement exists between the Parties as to attorney's fees, expenses, and costs. Please see section III.E of the Settlement Agreement for the specific details concerning these payments.

Settlement Administration Fees: The Parties and their counsel have agreed that a portion of the Settlement Administrator's fees and costs incurred in providing notice in accordance with Section IV of the Settlement Agreement, will be paid from the common fund. The Common Fund will contribute \$100,000 and Defendants will contribute an additional \$15,000 towards settlement administration fees. Any amounts in excess of \$115,000 will be split evenly, with the Defendants paying 50% and the Common Fund paying 50%. If the settlement administration costs are less than \$115,000, the surplus shall be divided equally between the Common Fund and Defendants. Please see section III.E of the Settlement Agreement for the specific details concerning these payments.

#### **E. Failure To Request Exclusion**

If you do not exclude yourself from the Settlement Class following the procedures set forth in this Notice and the Court approves the proposed settlement, you will be deemed to have entered into the release in the Settlement Agreement, whether or not you receive any compensation.

#### **VI. WHO REPRESENTS THE CLASS?**

The Court has designated Plaintiffs Mireille Carrier and New Century International Corporation to serve as class representative in this lawsuit. The attorneys that serve as Class Counsel are Nassiri & Jung LLP and Hagens Berman Sobol Shapiro LLP.

#### **VII. WHAT ARE YOUR RIGHTS AND OPTIONS?**

You have a number of rights and options that you should consider carefully.

**A. Remain a Member of the Class**

First, you may remain a Class Member, represented by Class Counsel. As a Class Member, you will be represented by Class Counsel and will have rights to participate in the Settlement. **If you do nothing, you will be a Class Member and will be bound by the terms of the Settlement.** If the Settlement is approved by the Court, you will automatically receive any payment to which you are entitled under the payout structure described in Section V. of this Notice. The Settlement will also result in an automatic dismissal of any claims you may have regarding (i) Defendants' detection, prevention or response to the use of Non-Compliant Software and/or commission theft, (ii) Defendants' determination of commission payments owed by Advertisers to Publishers, and/or (iii) representations, statements, omissions or advertising of or regarding these practices. Furthermore, as a Class Member, you will not be billed directly for any fees or costs incurred by Class Counsel; instead, these fees and costs will be paid in an amount determined by the district court and paid out of the Common Fund.

**B. Remain a Member of the Class and Elect to Hire Separate Counsel**

Second, you may remain a Class Member but elect to hire your own attorney to represent you. If you do not wish to be represented by Class Counsel, you may hire your own attorney at your own expense. Your attorney must file an Appearance, no later than \_\_\_\_\_, 200\_, with the Clerk to Hon. Florence-Marie Cooper, United States District Court for the Central District of California, 255 East Temple Street, Room 750, Los Angeles, California 90012, and must send a copy to the parties in care of the Commission Junction Settlement Administrator (listed in paragraph VII.D below), postmarked no later than \_\_\_\_\_, 200\_. Even though you are represented by your own attorney, you will continue to be a Class Member. You will be responsible for any fees and costs charged by your attorney.

**C. Remain a Class Member and Object**

Third, you may remain a Class Member and, on your own behalf or through your own attorney, object to the certification of the Class, to the Settlement and/or to the Application for Attorneys' Fees. To do so, you or your own attorney must file a written objection, which must contain: (1) the name of this lawsuit, *Settlement Recovery Center, et al. v. ValueClick, et al.* (Case No. CV-07-02638-FMC (CTx)); (2) your full name and current address; (3) a statement of the approximate dates you contracted with Defendants, whether you were a Publisher and/or Advertiser, and the amount you paid and/or received in commissions; (4) the specific reason(s) for your objection; and (5) any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. If you wish to appear at the Settlement Hearing and speak in support of, or in opposition to, the Settlement, you may do so if you indicate your desire to appear personally in your written objection. Objections, along with any supporting papers and briefs, must be filed with the Clerk to Hon. Florence-Marie Cooper by \_\_\_\_\_ and mailed to the parties postmarked no later than \_\_\_\_\_, 200\_, at the five addresses listed below:

Clerk to Hon. Florence-Marie Cooper  
US District Court - Central District of California  
255 East Temple Street, Room 750  
Los Angeles, California 90012

Kassra P. Nassiri  
Nassiri & Jung LLP  
251 Kearny Street, Suite 501  
San Francisco, California 94108

Jeff D. Friedman  
Hagens Berman Sobol Shapiro LLP  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710

Ashlie Beringer  
Gibson Dunn & Crutcher  
1801 California Street, Suite 4200  
Denver, Colorado 80202

If you do not comply with these procedures and the deadline for objections, you will lose any opportunity to have your objection considered at the Settlement Hearing or otherwise to contest the approval of the Settlement or to appeal from any orders or judgments entered by the Court in connection with the proposed Settlement.

#### **D. Exclusion from the Class**

Fourth, you may exclude yourself from the Class. If you are a Class Member, but do not want to remain in the Class, you may exclude yourself (“exclusion”). If you exclude yourself from the Class, you will lose any right to participate in the Settlement. You will also lose the right to have objections you might have to the Settlement considered by the Court before it rules on the Settlement. You will be free to pursue any claims you may have against Defendants on your own behalf, but you will not be represented by Class Counsel. In order to exclude yourself from the Class, you must execute a request for exclusion, which must contain: (1) the name of this lawsuit, *Settlement Recovery Center, et al v. ValueClick, et al.* (Case No. CV-07-02638-FMC (CTx)); (2) your full name and current address; (3) a statement of the approximate dates you contracted with Defendants, whether you were a Publisher and/or Advertiser, and the amount you paid and/or received in commissions; (4) a specific statement of your intention to exclude yourself from this lawsuit (for example, “Please exclude me from the Class in the *Settlement Recovery Center, et al v. ValueClick, et al.* litigation.”); and (5) your signature. Requests for exclusion must be postmarked no later than \_\_\_\_\_, 200\_\_, and sent to the parties in care of the Commission Junction Settlement Administrator at the address listed below:

Settlement Recovery Center v. ValueClick Settlement Administrator  
P.O. Box 3656  
Portland, Oregon 97208-3656



If you do not comply with these procedures and the deadline for exclusions, you will lose any opportunity to exclude yourself from the Class, and your rights will be determined in this lawsuit by the Settlement Agreement if it is approved by the Court.

#### **VIII. WHEN IS THE COURT HEARING AND WHAT IS IT FOR?**

On \_\_\_\_\_, at \_\_\_\_\_ a.m. the Court will hold a public hearing at the United States District Court for the Central District of California, 255 East Temple Street, Room 750, Los Angeles, California 90012, for the purposes of determining whether the preliminary certification of the Class was proper and whether the class should be certified for purposes of the settlement, whether the proposed Settlement is fair, adequate and reasonable and should be approved, and whether to approve Class Counsel's application for attorney's fees and expenses. This hearing may be continued or rescheduled by the Court without further notice. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Settlement Hearing. If you want to speak in opposition to the Settlement, either personally or through counsel, you must indicate your intention to appear at the Settlement Hearing in your written objection.

#### **IX. WHERE CAN YOU GET MORE INFORMATION?**

If you have questions about this Notice or the Settlement, or if you did not receive a notice either by electronic or US mail and you believe that you are or may be a Class Member, you should write to Jeff D. Friedman of Hagens Berman Sobol Shapiro LLP, 715 Hearst Avenue, Suite 202, Berkeley, California 94710, for more information or to request that a copy of this Notice be sent to you in the mail. If you wish to communicate directly with Class Counsel, you may contact Jeff D. Friedman of Hagens Berman Sobol Shapiro LLP, 715 Hearst Avenue, Suite 202, Berkeley, California 94710. You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed settlement, on the settlement website, [www.CJSettlement.com](http://www.CJSettlement.com). The Settlement Agreement is also on file with the Court and available to be inspected at any time during regular business hours at the Clerk's Office, United States District Court for the Central District of California, 255 East Temple Street, Los Angeles, California 90012. You may also review the pleadings, records and other papers on file in this lawsuit at the Clerk's Office.

**PLEASE DO NOT WRITE OR TELEPHONE THE COURT FOR INFORMATION ABOUT THE PROPOSED SETTLEMENT OR THIS LAWSUIT.**

# Exhibit B

## SHORT FORM NOTICE FOR EMAIL DISTRIBUTION

RE: Important Legal Notice Regarding Commission Junction's Affiliate Network

If you joined or were a member of the affiliate marketing networks operated by ValueClick, Inc., Commission Junction, Inc. and/or Be Free (collectively, "Defendants"), between April 20, 2003 and the present, you may be a class member in *Settlement Recovery Center et al. v. ValueClick, Inc. et al.*, No. 2:07-cv-02638-FMC-CTx, a lawsuit which is pending in the Central District of California. The Settlement Notice informs you of the Court's certification of a class for settlement purposes; the nature of the claims alleged; your right to participate in, or exclude yourself from, the class; a proposed settlement; and how you can claim an award of advertising credits under the settlement or object to the settlement.

The proposed settlement will resolve claims that Defendants failed to adequately monitor Commission Junction's Network for the use by third parties of software that does not comply with Commission Junction's ("CJ") Publisher Code of Conduct and that is intended to steal or divert commissions from publishers on CJ's network ("Non-compliant Software"), failed to adequately monitor or prevent third parties from engaging in the theft or "hijacking" of commissions from Advertisers and Publishers on CJ's Network, and failed to make sufficient disclosures regarding the existence of Non-compliant Software and commission theft, resulting in losses to both advertisers and publishers on the CJ Network.

The proposed settlement will provide a monetary recovery to eligible class members. For class members that currently maintain an account on the CJ Network will receive payment through payments or credits deposited or applied to their CJ accounts; eligible class members that no longer have accounts on the Commission Junction Network will receive a check for an equal amount.

If you are a member of the class, your legal rights are affected by whether you act or do not act. You should review the Settlement Notice as soon as possible as there are several important deadlines that you must meet to take certain actions in connection with this proposed settlement. In particular, the deadline for filing an objection or excluding yourself from the proposed settlement is \_\_\_\_\_, 2008. For further information, please refer to the Settlement Notice.

For a copy of the Settlement Notice, click on the link, or visit the case website at [CJSettlement.com](http://CJSettlement.com).

# Exhibit C

## SHORT FORM NOTICE FOR POSTCARD DISTRIBUTION

Notice Regarding: *Settlement Recovery Center et al. v. ValueClick, Inc. et al.*, No. 2:07-cv-02638-FMC-CTx

If you joined or were a member of the affiliate marketing networks operated by ValueClick, Inc., Commission Junction, Inc. and/or Be Free (collectively, “Defendants”), between April 20, 2003 and the present, you may be a class member in *Settlement Recovery Center et al. v. ValueClick, Inc. et al.*, a lawsuit in the Central District of California. The lawsuit alleges that Defendants inadequately monitored Commission Junction’s (“CJ”) Network and failed to make sufficient disclosures to members about software designed to steal or divert publisher commissions and commission theft or “hijacking” by third parties on CJ’s Network. If you are a member of the class, you may have valuable legal rights that will be affected by whether you act or do not act. You should review the Settlement Notice as soon as possible as there are important deadlines that you must meet to take certain actions in connection with this proposed settlement. The deadline for filing an objection or excluding yourself from the proposed settlement is \_\_\_\_\_, 2008; if you do not exclude yourself from the class, you will be bound by the settlement’s terms. For further information and a copy of the Settlement Notice, visit [CJSettlement.com](http://CJSettlement.com).