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11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 SETTLEMENT RECOVERY CENTER, )  
LLC, a California Limited Liability )  
16 Company, and NEW CENTURY )  
INTERNATIONAL CORPORATION, a )  
17 Nevada corporation d/b/a NATURAL )  
18 AREA RUGS, Individually and on )  
Behalf of All Others Similarly Situated, )  
19 Plaintiffs, )

20 v. )

21 VALUECLICK, INC., a Delaware )  
22 Corporation, Its Wholly-Owned )  
Subsidiary COMMISSION )  
23 JUNCTION, INC., and Its Wholly- )  
24 Owned Subsidiary BE FREE, )  
25 Defendants. )

No. 07-cv-02638-FMC (CTx)

CLASS ACTION

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
SETTLEMENT, PRELIMINARILY  
CERTIFYING CLASSES, AND  
PROVIDING FOR NOTICE**

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1           WHEREAS a consolidated class action is pending before the Court entitled  
2 *Settlement Recovery Center, LLC et al. v. Valueclick, Inc., et al.*, Case No. CV-07-  
3 2638-FMC (CTx) (the “Litigation”);

4           WHEREAS the Court has received a Settlement Agreement, dated as of May  
5 29, 2008 (the “Settlement Agreement”), that has been entered into by Plaintiffs  
6 Mireille Carrier and New Century International Corporation and Defendants, and the  
7 Court has reviewed the Settlement Agreement and its attached Exhibits;

8           WHEREAS the Plaintiffs, having made application pursuant to Federal Rule of  
9 Civil Procedure 23(e) for an order preliminarily approving the settlement of this  
10 Litigation, in accordance with the Settlement Agreement which, together with the  
11 Exhibits annexed thereto sets forth the terms and conditions for a proposed settlement  
12 of the Litigation and for dismissal of the Litigation with prejudice upon the terms and  
13 conditions set forth therein; and the Court having read and considered the Settlement  
14 Agreement and Exhibits annexed thereto; and

15           WHEREAS all defined terms contained herein shall have the same meanings as  
16 set forth in the Settlement Agreement;

17           NOW, THEREFORE, IT IS HEREBY ORDERED:

18           1.     The Court does hereby preliminarily approve the Settlement Agreement  
19 and the settlement set forth therein, subject to further consideration at the Settlement  
20 Hearing described below.

21           2.     A hearing (the “Fairness Hearing”) shall be held before this Court on  
22 January 5, 2009 at 10:00 a.m., at the United States District Court, located at 255 East  
23 Temple Street, Los Angeles, California in Courtroom 750, to determine whether to  
24 approve certification of the class for settlement purposes; whether the proposed  
25 settlement of the Litigation on the terms and conditions provided for in the Settlement  
26 Agreement is fair, reasonable and adequate to the Settlement Classes and should be  
27 approved by the Court; whether a Judgment as provided in paragraph 70 of the  
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1 Settlement Agreement should be entered herein; whether the proposed plan of  
2 distribution should be approved; and to determine the amount of fees and expenses  
3 that should be awarded to Class Counsel. The Court may adjourn the Fairness  
4 Hearing without further notice to the members of the Settlement Classes.

5 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
6 preliminarily certifies, for purposes of effectuating this settlement, an Advertiser  
7 Settlement Class of all persons who, between April 20, 2003, and the date of entry of  
8 the Preliminary Approval Order, had ads hosted by Publishers on, or paid  
9 commissions for ads placed through, Defendants' online affiliate marketing network.  
10 Excluded from the Advertiser Settlement Class are any and all persons who have  
11 already settled or otherwise compromised claims against the Defendants that are  
12 asserted in this litigation. Also excluded from the Advertiser Settlement Class are  
13 those Persons who timely and validly request exclusion from the Settlement Class  
14 pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

15 4. The Court designates plaintiff New Century International Corporation,  
16 d/b/a Natural Area Rugs ("NAR"), as the representative plaintiff for the Advertiser  
17 Settlement Class.

18 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court  
19 preliminarily certifies, for purposes of effectuating this settlement, a Publisher  
20 Settlement Class of all persons who, between April 20, 2003, and the date of entry of  
21 the Preliminary Approval Order, received commissions or hosted advertisement(s)  
22 pursuant to a publisher service agreement with Defendants for affiliate marketing  
23 management services. Excluded from the Publisher Settlement Class are any and all  
24 persons who have already settled or otherwise compromised claims against the  
25 Defendants that are asserted in this litigation. Also excluded from the Publisher  
26 Settlement Class are those Persons who timely and validly request exclusion from the  
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1 Settlement Class pursuant to the Notice of Pendency and Proposed Settlement of Class  
2 Action.

3 6. The Court designates plaintiff Mireille Carrier as the representative  
4 plaintiff for the Publisher Settlement Class.

5 7. The Court designates the following as co-lead counsel for both the  
6 Advertiser Settlement Class and the Publisher Settlement Class: (a) Nassiri & Jung  
7 LLP; and Hagens Berman Sobol Shapiro LLP (collectively, “Class Counsel”).

8 8. With respect to each of the Advertiser Settlement Class and the Publisher  
9 Settlement Class (collectively, “Settlement Classes”), this Court preliminarily finds for  
10 purposes of effectuating this settlement only that the class meets the Rule 23  
11 requirements for a settlement class.

12 9. The Court approves for publication, as to form and content, (a) the notice  
13 of the class action, the proposed settlement agreement and final fairness hearing (the  
14 “Long-Form Notice”); (b) the E-mail Notice; and (c) the Postcard Notice, annexed as  
15 Exhibits A-C hereto. The Court further finds that the electronic mailing and  
16 distribution of the E-mail Notice, the regular mailing of the Postcard Notice, and  
17 Internet publishing of the Settlement Agreement, Long-Form Notice, and relevant  
18 Court orders substantially in the manner and form set forth in paragraphs 10 of this  
19 Order meet the requirements of Federal Rule of Civil Procedure 23 and due process,  
20 and is the best notice practicable under the circumstances and shall constitute due and  
21 sufficient notice to all Persons entitled thereto.

22 10. Pursuant to Rule 53(c) of the Federal Rules of Civil Procedure, the Court  
23 appoints the firm of Epiq Systems, Inc. (“Settlement Administrator”) to supervise and  
24 administer the notice procedure as well as the processing of claims as more fully set  
25 forth below:

26 a. Not later than 10 days after the Court’s entry of the Preliminary  
27 Approval Order (the “Notice Date”), the Settlement Administrator shall cause a copy  
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1 of the E-mail Notice, substantially in the form annexed as Exhibit B, to be  
2 electronically mailed to all Settlement Class Members who can be identified with  
3 reasonable effort;

4 b. Not later than 25 days after entry by the Court of the Preliminary  
5 Approval Order (the “Postcard Date”), Defendants shall cause the Settlement  
6 Administrator to send the Postcard Notice, substantially in the form annexed as  
7 Exhibit C, to be delivered by regular U.S. Mail to those Settlement Class Members  
8 who can be identified with reasonable effort and for whom a bounceback notice was  
9 received;

10 c. Not later than 5 days after the Court’s entry of the Preliminary  
11 Approval Order (the “Publication Date”), Defendants shall cause the Long-Form  
12 Notice, substantially in the form annexed as Exhibit A, the full text of the Settlement  
13 Agreement, and Preliminary Approval Order to be published on a public website,  
14 located at [www.CJSettlement.com](http://www.CJSettlement.com);

15 d. At least thirty (30) calendar days prior to the Fairness Hearing,  
16 Defendants and/or the Settlement Administrator will cause proof, by affidavit or  
17 declaration, of such mailing and publishing to be filed with the Court.

18 11. All Members of the Settlement Classes shall be bound by all  
19 determinations and judgments in the Litigation concerning the settlement, whether  
20 favorable or unfavorable to the Settlement Classes.

21 12. Any Person who desires to request exclusion from the Settlement Classes  
22 shall do so within the time set forth and in the manner described in the Long-Form  
23 Notice. All Persons who submit valid and timely requests for exclusion in the manner  
24 set forth in the Long-Form Notice shall have no rights under the Settlement  
25 Agreement, shall not share in the distribution of Common Funds, and shall not be  
26 bound by the Settlement Agreement or the Judgment entered in the Litigation.  
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1           13. Any Member of the Settlement Classes may enter an appearance in the  
2 Litigation, at his, her or its own expense, individually or through counsel of his, her or  
3 its own choice. If the Member does not enter an appearance, he or she will be  
4 represented by Class Counsel.

5           14. Any Member of the Settlement Classes may appear and show cause, if he,  
6 she or it has any reason, why the proposed settlement of the Litigation should or  
7 should not be approved as fair, reasonable and adequate, why a judgment should or  
8 should not be entered thereon, why the plan of distribution should or should not be  
9 approved, or why attorneys' fees and expenses should or should not be awarded to  
10 Class Counsel; provided, however, that no Member of the Settlement Classes or any  
11 other Person shall be heard or entitled to contest the approval of the terms and  
12 conditions of the proposed settlement, or, if approved, the Judgment to be entered  
13 thereon providing the same, or the order approving the plan of distribution, or the  
14 attorneys' fees and expenses to be awarded to Class Counsel, unless that Person has  
15 delivered by hand or sent by first class mail written objections and copies of any  
16 papers and briefs such that they are received within 70 days after entry by the Court of  
17 the Preliminary Approval Order by:

18           If to Plaintiffs or the Settlement Classes:

19           Kassra P. Nassiri  
20           Nassiri & Jung LLP  
21           251 Kearny Street, Suite 501  
22           San Francisco, California 94108

23           Jeff D. Friedman  
24           Hagens Berman Sobol Shapiro LLP  
25           715 Hearst Avenue, Suite 202  
26           Berkeley, California 94710

27           If to Defendants:

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

Any Member of the Settlement Classes who does not make his, her or its objection in  
the manner provided shall be deemed to have waived such objection and shall forever

1 be foreclosed from making any objection to the fairness or adequacy of the proposed  
2 settlement as set forth in the Settlement Agreement, to the plan of distribution, or to  
3 the award of attorneys' fees and expenses to Class Counsel, unless otherwise ordered  
4 by the Court.

5 15. All papers in support of the settlement, the plan of distribution, and the  
6 application by Class Counsel for attorneys' fees and expenses shall be filed and served  
7 ten (10) calendar days before the Fairness Hearing.

8 16. At or after the Fairness Hearing, the Court shall determine whether the  
9 plan of distribution or any application for attorneys' fees and expenses shall be  
10 approved, and such matters will be considered separately from the fairness,  
11 reasonableness or adequacy of the settlement.

12 17. All reasonable expenses incurred in identifying and notifying Members of  
13 the Settlement Classes, as well as administering Common Funds, shall be paid for as  
14 set forth in the Settlement Agreement. In the event the settlement is not approved by  
15 the Court, or otherwise fails to become effective, neither the Representative Plaintiffs  
16 nor Class Counsel shall have any obligation to repay any amounts actually and  
17 properly disbursed from Common Funds.

18 18. Neither the Settlement Agreement, nor any of its terms or provisions, nor  
19 any of the negotiations or proceedings connected with it, shall be construed as an  
20 admission or concession by Plaintiffs, Defendants or their Related Parties,  
21 respectively, of the truth or falsity of any of the allegations in the Litigation, or of any  
22 liability, fault or wrongdoing of any kind.

23 19. The Court reserves the right to adjourn the date of the Fairness Hearing  
24 without further notice to the Members of the Settlement Classes, and retains  
25 jurisdiction to consider all further application arising out of or connected with the  
26 proposed settlement. The Court may approve the settlement, with such modifications  
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1 as may be agreed to by the Settling Parties, if appropriate, without further notice to the  
2 Settlement Classes.

3 IT IS SO ORDERED

4 DATED: \_\_\_\_\_

5 THE HONORABLE FLORENCE-MARIE COOPER  
6 UNITED STATES DISTRICT JUDGE

6 Submitted by:

7 DATED: June 6, 2008

8 HAGENS BERMAN SOBOL SHAPIRO LLP

9 \_\_\_\_\_  
10 /s/ Jeff D. Friedman

JEFF D. FRIEDMAN

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19 NASSIRI & JUNG LLP  
20 Kassra P. Nassiri (215405)  
21 Charles H. Jung (217909)  
22 251 Kearny Street, Suite 501  
23 San Francisco, CA 94108  
24 Telephone: (415) 373-5699  
25 Facsimile: (415) 534-3200  
26 knassiri@nassiri-jung.com  
27 cjung@nassiri-jung.com

28 Attorneys for Plaintiffs



# 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).