

The Honorable Michael J. Fox

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

KAVU, INC. on behalf of itself and all others)	CLASS ACTION No. 06-2-12997-1 SEA [PROPOSED] SETTLEMENT ORDER AND FINAL JUDGMENT
similarly situated,)	
Plaintiff,)	
v.)	
BUSINESS PAYMENT SYSTEMS, L.L.C.,)	
Defendant.)	

THIS MATTER came before the Court for final approval of the proposed class settlement (the "Settlement Agreement"). The Court has considered all papers filed and proceedings in this matter and is fully informed regarding the facts surrounding the proposed Settlement. Based upon this information, the Court has determined that the proposed Settlement should be approved as fair and reasonable. The Court hereby enters this Final Judgment, which constitutes a final adjudication on the merits of all claims of the Plaintiff Settlement Class described below with respect to alleged unsolicited facsimile advertisements sent by Defendant. It is therefore

ORDERED, ADJUDGED AND DECREED that:

- The definitions and provisions of the Release and Settlement Agreement are hereby incorporated as though fully set forth herein.

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1 2. This Court has jurisdiction over the subject matter of the Settlement Agreement
2 with respect to and over all parties to the Settlement Agreement, including all members of the
3 Plaintiff Settlement Class.

4 3. The Court hereby approves the Settlement and finds that the Settlement is, in all
5 respects, fair, reasonable, and adequate to the Plaintiff Settlement Class, within the authority of
6 the parties, and the result of extensive arms' length negotiations.

7 4. Pursuant to CR 23(a), (b)(2), and (b)(3) the Court has previously conditionally
8 certified the following class: "All persons and entities in the United States or its Territories to
9 whom an unsolicited fax was sent by or on behalf of Business Payment Systems, L.L.C.
10 ("BPS") or any of the Released Parties, as defined in the Settlement Agreement at ¶7, during
11 the period five years prior to the date of filing of the KAVU complaint to the date of settlement,
12 who have not previously compromised or settled with any of the Released Parties any claims
13 against the Released Parties arising from or related to the transmission of unsolicited facsimiles
14 (the "Settlement Class"). The Court hereby certifies the Settlement Class.

15 5. This Final Judgment does not constitute an expression by the Court of any
16 opinion, position, or determination as to the merit or lack of merit of any of the claims or
17 defenses of the Class, the Class Representative, or BPS. Neither this Final Judgment nor the
18 Settlement Agreement is an admission or indication by BPS of the validity of any claims in this
19 action or of any liability or wrongdoing or of any violation of law. This Final Judgment and
20 the Settlement Agreement do not constitute a concession and shall not be used as an admission
21 or indication of any wrongdoing, fault or omission by BPS or any other person in connection
22 with any transaction, event or occurrence, and neither this Final Judgment nor the Settlement
23 Agreement nor any related documents in this proceeding nor any reports or accounts thereof
24 shall be offered or received in evidence in any civil, criminal, or administrative action or
25 proceeding, other than such proceedings as may be necessary to consummate or enforce this
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1 Final Judgment, the Settlement Agreement, and all releases given thereunder, or to establish the
2 affirmative defenses of *res judicata* or collateral estoppel.

3 6. The Court hereby dismisses with prejudice all claims with respect to allegedly
4 unsolicited facsimile advertisements sent by Defendant, as against all persons and entities who
5 are members of the Plaintiff Settlement Class, except those who have executed valid
6 exclusions. Exhibit B to the Second Declaration of Christine Danielson sets forth those class
7 members who have excluded themselves from the Class.

8 7. All Class members except those who have requested exclusion and the Class
9 Representative shall be deemed to have released and forever discharged BPS and the Released
10 Parties, as defined in the Settlement Agreement at ¶7, for all claims released under the
11 Settlement Agreement.

12 8. Members of the Plaintiff Settlement Class who have not timely excluded
13 themselves shall be deemed to (a) be forever barred from instituting, maintaining, or
14 prosecuting any claim arising from or concerning unsolicited facsimile advertisements sent by
15 or on behalf of Business Payment Systems or any Released Party as defined in the Settlement
16 Agreement at ¶7, including but not limited to any alleged violations of the Washington
17 Unsolicited Telefacsimile Statute, the Telephone Consumer Protection Act, and/or any other
18 applicable state and federal statutes, laws, rules or regulations; and (b) have released and
19 discharged Business Payment Systems LLC, and the Released Parties as defined in the
20 Settlement Agreement at ¶7 from any and all liability with respect to all claims described in
21 the Settlement Agreement.

22 9. The Notice of Class Action Settlement and Claim Form faxed to those Class
23 Members for whom fax number were available, and the Notice published in USA Today were
24 the best practicable notices under the circumstances, providing due and adequate notice of these
25 proceedings and of the matters set forth therein, including the Settlement Agreement, to all
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1 parties entitled to such notice, and the Notice satisfied the requirements of Civil Rule 23 and
2 the requirements of constitutional due process.

3 10. Based on the foregoing, Plaintiff's action is dismissed with prejudice. Either
4 party may seek to reopen this case, without affecting the finality of this judgment in any way,
5 to resolve disputes over (a) implementation of the Settlement Agreement, (b) distribution of the
6 settlement payments contemplated by the Settlement Agreement, (c) processing of the claims
7 permitted by the Settlement Agreement, and (d) otherwise enforcing and administering the
8 Settlement Agreement.

9 11. The Court authorizes payment of the sum of up to \$1,500 to each Claimant who
10 has filed a valid claim, as determined by the Claims Administrator, Epiq Systems.

11 12. The Court hereby awards \$5,000 to KAVU, Inc. as the Class Representative as
12 an incentive fee in compensation for the time, effort, and risk it undertook as representative of
13 the Class and in settlement of any individual claims it has against BPS arising from or relating
14 to the matters that are the subject of this Settlement.

15 13. The Court hereby awards \$5,000 to Candida Corporation in settlement of any
16 individual claims it has against BPS arising from or relating to the matters that are the subject
17 of this Settlement.

18 14. The Court finds that Class Counsel is entitled to recover \$159,175.64 in costs in
19 this litigation and that an award of \$625,000 in attorney fees to Class Counsel is fair and
20 reasonable. No member of the Class has made any objection to the proposed award of
21 attorney's fees.

22 DONE IN OPEN COURT this 15 day of July, 2008.

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24 

25 The Honorable Michael J. Fox
26 King County Superior Court Judge

1 Presented By:

2 KELLER ROHRBACK L.L.P.

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4 By Mark A. Griffin
Mark A. Griffin, WSBA #16296

5
6 WILLIAMSON & WILLIAMS
Rob Williamson, WSBA #11387

7 EDELMAN, COMBS, LATTURNER & GOODWIN, LLC
8 James O. Lattuner

9 *Attorneys for Plaintiff and the Proposed Class*

10 Approved as to Form:

11
12 BULLIVANT HOUSER BAILEY PC

13
14 By _____
Pamela Salgado, WSBA #22741

15 *Attorney for Defendant Business Payment Systems, L.L.C.*