

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

RICHARD MACLEAN and GLOBAL
EDUCATION SERVICES, INC., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

vs.

STELLAR CONCEPTS & DESIGN, INC.
and VOICE MARKETING.

Defendants

CLASS ACTION

Case No. 10-2-04301-2 SEA

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 2012, by and among RICHARD MACLEAN and GLOBAL EDUCATION SERVICES, INC., on behalf of themselves and all others similarly situated (“Plaintiffs”), STELLAR CONCEPTS & DESIGN, INC. (Stellar”) and OLD DOMINION INSURANCE COMPANY (“Old Dominion”). Plaintiffs, Stellar and Old Dominion are collectively referred to as the “Parties.”

RECITALS

- A. On or about January 25, 2010, Plaintiffs filed this action alleging violations of: 1) the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. §227; 2) the Washington Anti-ADAD statute (“WADAD”), RCW §80.36.400, and the Washington Consumer Protection Act (“WCPA”), RCW §19.86. They also seek declaratory relief under the Washington Declaratory Judgment Act, RCW §7.24.010.
- B. In this action, Plaintiffs alleges that they received an unsolicited “robo-call”, i.e. a telephone call using an automatic dialing and announcing device (“ADAD”) from Stellar on or about September 17, 2009. They seek certification of a class made up of

Washington businesses or individuals who received similar calls from Stellar after January 25, 2006. Plaintiffs seek to recover from Stellar statutory damages, costs and attorney fees, pre-judgment and post-judgment interest, and extraordinary, equitable and/or injunctive relief as permitted by law. On December 17, 2010, the complaint was amended to add Voice Marketing who, it was alleged, actually made the complained of calls.

- C. Old Dominion issued a primary general liability insurance policy, Policy Number BPG 34981, to Stellar for the policy year from February 9, 2008 to February 9, 2009.
- D. Old Dominion issued an umbrella liability insurance policy, Policy Number CUG 84401 to Stellar for the same policy year.
- E. On May 27, 2011, a mediation was conducted in Seattle, Washington, with John Cooper of Washington Arbitration and Mediation Service. Attending were counsel for the three parties. During the mediation and thereafter, negotiations were conducted between Plaintiffs and Old Dominion that have resulted in this Agreement, in which Stellar joins.
- F. On or about July 14, 2011 Old Dominion commenced a declaratory judgment action against Stellar and Plaintiffs in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, Case No. 11016302 03 (the "Coverage Suit").
- G. The Parties have reached an agreement to settle this action as set forth in this Agreement.

AGREEMENT

In consideration of the mutual promises contained below, it is hereby agreed:

1. The Coverage Action

Plaintiffs and Old Dominion agree that the Coverage Action shall be litigated to conclusion, and pending resolution of the Coverage Action, this action shall be stayed. Old Dominion acknowledges that, were Plaintiffs to prevail in the Coverage Action, including through appeals, if any, it would then pay \$4,000,000, representing the maximum aggregate limits under the two aforementioned policies, into the trust account of Williamson and Williams for distribution to the Class, payment of notice and distribution costs, attorney fees and costs and a class representative fee, after motion is made to the Court for approval of same. This motion will include a statement that a necessary component of this settlement is a complete and full release of Stellar, Old Dominion, and their officers, directors, shareholders, employees and

attorneys for all claims asserted in this action. No sums will be paid by Stellar as consideration for its release by Plaintiffs. After approval of this Settlement Agreement by the Washington court, Stellar will execute a separate release in favor of Old Dominion. Each party to this agreement agrees to bear its own attorneys fees and costs incurred in the coverage action.

Plaintiffs acknowledge that should Old Dominion prevail in the Coverage Action, including through appeals, if any, then this matter would be terminated and Plaintiffs would dismiss, with prejudice, this action.

2. Stay of this Action

Plaintiffs and Stellar agree to make a joint motion to the Court requesting approval of this Settlement Agreement and a stay of all proceedings in this action pending resolution of the Coverage Action.

3. Stipulation re Class Certification, Class Representatives, and Class Counsel.

Plaintiffs and Stellar hereby stipulate to the certification of the following Settlement Class pursuant to CR 23(a), (b)(2), and (b)(3) of the Rules for Superior Court:

All Washington telephone customers who received an unsolicited prerecorded telephone message from or on behalf of Stellar Concepts and Design, Inc. made by an automatic dialing and announcing device during the period from January 25, 2006 through the date on which the Court enters an order granting preliminary class certification (the "Settlement Class").

Plaintiffs shall be appointed by the Court, subject to its approval, as the Class Representatives of this Settlement Class. The law firm Williamson and Williams shall be appointed by the Court as Class Counsel. This stipulation is for settlement purposes only and is not binding upon any party in the event the Settlement does not receive final approval or is somehow otherwise vacated.

If any putative members of the class, upon receiving notice of the class action, opt out of the class, Class Counsel will hold sufficient funds in trust to satisfy any potential award to those claimants based upon the number of unsolicited prerecorded telephone messages they received from or on behalf of Stellar Concepts and Design, Inc. made by an automatic dialing and announcing device during the period from January 25, 2006 through the date on which the Court enters an order granting preliminary class certification (the "Settlement Class").

4. **Washington Law.** This Agreement shall be interpreted in accordance with the law of the State of Washington.

5. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts and delivered by facsimile to counsel. All executed counterparts, including those delivered to counsel by facsimile, and each of them shall be deemed to be one and the same instrument. A facsimile copy shall be considered an original for all purposes.

6. **No Admission.** The Parties specifically understand that the promises made in accordance with this Agreement are not to be construed as an admission by any of the Parties for any purpose and understand that the Parties all deny liability for the allegations made in this action and the Coverage Action. Nothing in this Agreement is to be construed as Stellar agreeing that this action is or was appropriate for class action status or certification. Stellar has defenses to the claims made in this action which will be asserted in the event this settlement agreement does not result in the termination of this action.

7. The parties to this Settlement Agreement acknowledge and agree that the settlement agreement memorialized by this General Release is fully valid and enforceable under Florida law.

8. It is understood and accepted by the parties to this Agreement that the potential payments to the Plaintiffs by OLD DOMINION, contemplated by this Agreement, and the promises contained herein are intended to be, and are, a commercial accommodation among the parties and shall not be deemed to be, nor construed as, any admission, determination, or interpretation of liability, coverage, or responsibility of OLD DOMINION INSURANCE COMPANY; nor shall such payment be construed as a waiver, modification, or retraction of OLD DOMINION INSURANCE COMPANY's position with respect to the interpretation and application of any insurance policy. In particular, nothing contained herein and no actions taken pursuant to this Agreement shall constitute an admission by OLD DOMINION INSURANCE COMPANY that STELLAR CONCEPTS & DESIGN, INC. was or is entitled to any insurance coverage for the claims alleged in this lawsuit under any policy of insurance which was or may have been issued by OLD DOMINION INSURANCE COMPANY to STELLAR CONCEPTS & DESIGN, INC.

9. **Merger and Integration.** This Agreement reflects the entire agreement among the Parties relative to the subject matter hereof and supersedes all prior or contemporaneous oral or written understandings, statements representations, or promises.

10. Modifications Only in Writing and Authorization of Class Counsel. This Agreement may be amended or modified only by a written instrument signed by all of the undersigned Parties or their successors-in-interest.

11. Legal Representation. The Parties to this Agreement acknowledge that they are represented by qualified legal counsel both in connection with this and the Coverage Action and in connection with the negotiation, drafting, and execution of this Agreement. Accordingly, the language used in this Agreement will be deemed to be language chosen by all Parties hereto to express their mutual intent, and no rule of strict construction against any of the Parties will apply to any term or condition of this Agreement.

12. Best Efforts. The Parties agree to cooperate in the execution of such documents and pleadings as are reasonably necessary and appropriate to obtain approval of and implementation of this Agreement, and to use their best efforts to perform all terms of this Agreement.

13. Should any portion of this Settlement Agreement not be approved by the Washington court, the parties hereto retain the right to declare this agreement void and unenforceable.

14. The persons executing this Agreement for Plaintiff, Global Education Services, Inc., Defendant Stellar Concepts & Design, Inc., and Old Dominion Insurance Company represent and warrant that the execution and delivery of this Agreement has been approved by all requisite corporate action.

Dated: _____

GLOBAL EDUCATION SERVICES, INC.

By _____
Richard Maclean

Richard Maclean

Dated: _____

STELLAR CONCEPTS & DESIGN, INC.

By: _____

Its: _____

Dated: _____

OLD DOMINION INSURANCE COMPANY

By: _____

Its: _

Approved as to Form:

Dated: _____

By _____
Rob Williamson, WSBA #11387

Attorney for Plaintiff ----- and the
Settlement Class