

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9	R.L. O’CONNOR & ASSOCIATES, INC., on behalf of itself and all others similarly situated,	)	Case No. C10-734 RSM
10	Plaintiffs,	)	ORDER GRANTING PRELIMINARY
11	v.	)	APPROVAL OF CLASS
12	JOBFOX, INC.,	)	SETTLEMENT, CONDITIONALLY
13	Defendant.	)	CERTIFYING SETTLEMENT CLASS,
14		)	AND APPROVING FORM AND
15		)	MANNER OF NOTICE

Plaintiff’s unopposed Motion for Preliminary Approval of Proposed Class Action

Settlement has come before this Court. The Court determines and orders as follows:

1. Counsel have advised the Court that the parties have agreed, subject to final approval by this Court following notice to the Plaintiff Settlement Class (as described in Paragraph 5, below) and a hearing, to settle this action upon the terms and conditions set forth in the Settlement Agreement (the “Settlement Agreement”), which has been filed with the Court.

2. The Court has reviewed the Settlement Agreement, as well as the files, records, and proceedings to date in this matter. The terms of the Settlement Agreement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Settlement Agreement or as defined herein.

3. Based upon preliminary examination, it appears to the Court that the Settlement Agreement is fair, reasonable, and adequate, that the Plaintiff Settlement Class should be

1 certified for settlement purposes, subject to Paragraph 11, below, and that a hearing should be  
2 held after notice to the Plaintiff Settlement Class to determine whether the Settlement Agreement  
3 is fair, reasonable and adequate, and whether a settlement approval order and final judgment  
4 should be entered in this action, based upon that Settlement Agreement.

5 Based upon the foregoing, IT IS HEREBY ORDERED:

6 1. ***Preliminary Approval of Proposed Settlement.*** The Settlement Agreement,  
7 including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate. The  
8 Court finds that (a) the Settlement Agreement resulted from extensive arm's-length negotiations;  
9 and (b) the Settlement Agreement is sufficient to warrant notice thereof to members of the  
10 Plaintiff Settlement Class and the Settlement Hearing described below.

11 2. ***Class Certification for Settlement Purposes Only.*** Pursuant to FRCP 23(b)(3),  
12 the Court, for settlement purposes only, conditionally certifies a class (the "Class") consisting of  
13 all persons and entities who received an unsolicited advertisement from or on behalf of JobFox.

14 (a) In connection with the certification, the Court makes the following  
15 preliminary findings:

16 (1) FRCP 23(a)(1) is satisfied because the Class appears to be so  
17 numerous that joinder of all members is impracticable;

18 (2) FRCP 23(a)(2) is satisfied because there appear to be questions of  
19 law or fact common to the above-described Class;

20 (3) FRCP 23(a)(3) is satisfied because the claims of the named  
21 plaintiffs appear to be typical of the claims being resolved through the proposed Settlement;

22 (4) FRCP 23(a)(4) is satisfied because Class Representative R.L.  
23 O'Connor & Associates, Inc., appears to be capable of fairly and adequately protecting the  
24 interests of the above-described Class in connection with the proposed Settlement and because  
25 Counsel representing the Class, Kim Williams and Rob Williamson of Williamson & Williams,  
26 are qualified, competent and capable of prosecuting this action on behalf of the Class. Adequacy  
27 of representation therefore is satisfied.

1 (5) For purposes of determining whether the Settlement is fair,  
2 adequate and reasonable, the Court preliminarily finds the requirements of FRCP 23(b)(3) have  
3 been satisfied because common questions of law and fact appear to predominate over questions  
4 affecting only individual Class Members and because settlement with the above-described  
5 Plaintiff Settlement Class appears to be superior to other available methods for the fair and  
6 efficient resolution of the claims of the Class. Accordingly, the Class appears to be sufficiently  
7 cohesive to warrant adjudication through settlement by representation.

8 (b) In making the foregoing findings, the Court has exercised its discretion in  
9 conditionally certifying a settlement class.

10 (c) Named plaintiff R.L. O'Connor & Associates, Inc. is designated as  
11 Representative Plaintiff.

12 3. *Class Counsel.* The Court appoints Kim Williams and Rob Williamson of  
13 Williamson & Williams as counsel for the Class. For purposes of these settlement approval  
14 proceedings, the Court finds that these counsel are competent and capable of exercising their  
15 responsibilities as Class Counsel.

16 4. *Settlement Hearing.* A final approval hearing (the "Settlement Hearing") shall be  
17 held before this Court on **October 19, 2012, at 9:30 a.m.**, as set forth in the Notice (described in  
18 Paragraph 5 below), to determine whether the Settlement Agreement is fair, reasonable and  
19 adequate and should be approved. Papers in support of final approval of the Settlement  
20 Agreement shall be filed with the Court no later than **September 26, 2012**. Papers in support of  
21 final approval of Class Counsel's application for an award of attorneys' fees, costs and expenses  
22 (the "Fee Application") shall be filed no later than **August 17, 2012**. The Settlement Hearing  
23 may be postponed, adjourned, or continued by order of the Court without further notice to the  
24 Class. After the Settlement Hearing, the Court may enter a Settlement Order and Final Judgment  
25 in accordance with the Settlement Agreement (the "Final Judgment") that will adjudicate the  
26 rights of the Class Members with respect to the claims being settled.

1           5.     **Notice.** JobFox shall comply with the notice requirements of Paragraph 3.03 of  
2 the Settlement Agreement. In compliance with that Paragraph, within thirty (30) days of entry of  
3 this Order, JobFox shall arrange for FaxVantage to generate the Class Notice List and for ProFax  
4 to fax to the businesses on that list the Notice of Settlement in the form attached as Exhibit B to  
5 the Settlement Agreement.

6           6.     **Findings Concerning Notice.** The Court finds that the Notice and the manner of  
7 its dissemination described in the previous Paragraph and in Paragraph 3.03 of the Settlement  
8 Agreement is the best practicable notice under the circumstances and is reasonably calculated,  
9 under all the circumstances, to apprise Class Members of the pendency of this action and their  
10 right to object to or exclude themselves from the Class. The Court further finds that the notice is  
11 reasonable, that it constitutes due, adequate and sufficient notice to all persons entitled to receive  
12 notice, and that it meets the requirements of due process.

13           7.     **Exclusion from Class.** Each Class Member who wishes to exclude himself or  
14 herself from the Class and follows the procedures set forth in this Paragraph shall be excluded.  
15 Any potential member of the Class may mail a written request for exclusion, in the form  
16 specified in the Notice, to JobFox's counsel at the address set forth in the Notice. All such  
17 written requests must be postmarked by **September 6, 2012**. All persons who properly make  
18 requests for exclusion from the Class shall not be Class Members and shall have no rights with  
19 respect to, nor be bound by, the Settlement Agreement, should it be approved. The names of all  
20 such excluded individuals shall be attached as an exhibit to any Final Judgment.

21           8.     **Objections and Appearances.**

22           (a)    **Written Objections.** Any Class Member who has not timely submitted a  
23 written request for exclusion from the Class, and thus is a Class Member, may object to the  
24 fairness, reasonableness or adequacy of the Agreement, or the Fee Application. Any Class  
25 Member who wishes to object to the Settlement, must submit his or her objection in writing to  
26 Class Counsel, Attention: Kim Williams, Williamson & Williams, 17253 Agate Street NE,  
27 Bainbridge Island, WA 98110, postmarked no later than **September 6, 2012**. Any Class

1 Member who files an objection and wishes it to be considered, must also appear at the Settlement  
2 Hearing.

3 (b) Class Members intending to appear at the Settlement Hearing must deliver  
4 to Class Counsel no later than **September 6, 2012**, a notice of intention to appear, setting forth  
5 (1) the name and address of the Class Member, (2) the name and number of the case, (3) the  
6 objection, including any papers in support thereof, and (4) whether the objecting Class Member  
7 wishes to address the Court at the Hearing. Upon receipt of any such notice, Class Counsel shall  
8 immediately serve the notice on counsel for JobFox and file the notice with the Court.

9 (c) Any Class Member who does not timely deliver written objection and the  
10 notice of intention to appear **September 6, 2012**, in accordance with the requirements of this  
11 Order, shall not be permitted to object or appear at the Settlement Hearing, except for good cause  
12 shown, and shall be bound by all proceedings, orders and judgments of the Court. Any objection  
13 that is not timely and properly made shall be forever barred.

14 (d) ***Responses to Objections and Further Papers in Support of Fee Request.***  
15 Any responses to objections to the Settlement Agreement or the fee request, and any further  
16 papers in support of the fee request, shall be filed with the Court no later than ten (10) days  
17 before the Settlement Hearing.

18 9. ***Claims.*** To be eligible for a distribution pursuant to the Settlement Agreement, a  
19 Class Member must submit a claim form postmarked no later **September 6, 2012** in accordance  
20 with the requirements of Paragraph 4.03 of the Settlement Agreement.

21 10. ***Dates of Performance.*** In summary, the dates of performance are as follows:

22 (a) JobFox shall complete sending the Notice to potential Class Members on  
23 or before **July 8, 2012**, as provided in Paragraph 3.03 of the Settlement Agreement;

24 (b) Class Members who desire to be excluded shall mail requests for  
25 exclusion to JobFox's counsel postmarked by **September 6, 2012**;

26 (c) All objections to the Settlement Agreement or Fee Application shall be  
27 mailed to Class Counsel postmarked by **September 6, 2012**;

1 (d) Papers in support of final approval of the Settlement Agreement shall be  
2 filed with the Court no later than **September 26, 2012** and the Fee Application shall be filed with  
3 the Court no later than **August 17, 2012**.

4 (e) All responses to objections shall be filed with the Court no later than ten  
5 (10) days before the Settlement Hearing;

6 (f) The Settlement Hearing shall be held **October 19, 2012, at 9:30 a.m.**; and

7 (g) Class Members who desire to receive a distribution from the Settlement  
8 shall do so by submitting a Claim Form with all required information postmarked by **September**  
9 **6, 2012**.

10 11. *Effect of Failure to Approve the Settlement Agreement.* In the event the  
11 Settlement Agreement is not approved by the Court, or for any reason the parties fail to obtain a  
12 Final Judgment as contemplated in the Settlement Agreement, or the Settlement Agreement is  
13 terminated pursuant to its terms for any reason, then the following shall apply:

14 (a) All orders and findings entered in connection with the Settlement  
15 Agreement shall become null and void and have no further force and effect, shall not be used or  
16 referred to for any purposes whatsoever, and shall not be admissible or discoverable in any other  
17 proceeding;

18 (b) The conditional certification of the Class pursuant to this Order shall be  
19 vacated automatically, and the case shall return to its status as it existed prior to entry of this  
20 Order;

21 (c) Nothing contained in this Order is, or may be construed as, any admission  
22 or concession by or against the Defendant or Plaintiff on any point of fact or law, including, but  
23 not limited to, factual or legal matters relating to any effort to certify this case as a class action;  
24 and

25 (d) Nothing in this Order or pertaining to the Settlement Agreement shall be  
26 used as evidence in any further proceeding in this case, including, but not limited to, motions or  
27 proceedings pertaining to treatment of this case as a class action.

