

1 AYTAN Y. BELLIN  
(admitted *pro hac vice*)  
2 AYTAN.BELLIN@BELLINLAW.COM  
BELLIN & ASSOCIATES LLC  
3 85 Miles Avenue  
White Plains, New York 10606  
4 Telephone: (914) 358-5345  
Facsimile: (212) 571-0284  
5

6 JOSEPH R. COMPOLI, JR.  
(admitted *pro hac vice*)  
josephcompoli@sbcglobal.net  
7 612 East 185<sup>th</sup> Street  
Cleveland, Ohio 44119  
8 Telephone: (216) 481-6700  
Facsimile: (216) 481-1047  
9

10 ROGER FURMAN (STATE BAR NO. 149570)  
roger.furman@yahoo.com  
11 7485 Henefer Avenue  
Los Angeles, California 90045  
12 Telephone: (310) 568-0640  
Facsimile: (310) 694-9083  
13

14 Attorneys for Plaintiffs Michael  
Vandervort and U.S. Sample Services, Inc.

15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

17 MICHAEL A. VANDERVORT and )  
U.S. SAMPLE SERVICES, INC., on )  
18 behalf of themselves and all others )  
similarly situated, )

19 Plaintiffs, )

20 vs. )

21 )  
22 BALBOA CAPITAL )  
23 CORPORATION, )

24 Defendant. )  
25 )  
26 )  
27 )  
28 )

Case No.: SACV 11-1578-JST(JPRx)  
Hon. Josephine Staton Tucker

**[PROPOSED] PRELIMINARY  
APPROVAL ORDER**

Date: October 18, 2013  
Time: 2:30 P.M.  
Judge: Hon. Josephine Staton Tucker

1           This action came on for hearing before the Court, Honorable Josephine  
2 Staton Tucker presiding, on the motion of Plaintiffs Michael A. Vandervort and  
3 U.S. Sample Services, Inc., individually and on behalf of a class of all others  
4 similarly situated, for preliminary approval and enforcement of a settlement  
5 reached between the parties. After considering all the papers and argument  
6 presented by the parties, it is hereby ORDERED that:

7           1.     The settlement agreement signed by the two named Plaintiffs (the  
8 “Settlement Agreement”) is incorporated into this Order and is preliminarily  
9 adopted as an Order of this Court.

10          2.     A settlement class (the “Settlement Class”) is provisionally certified,  
11 for settlement purposes only, comprised of all persons in the United States who,  
12 from October 12, 2007 through November 23, 2011, were sent or caused to be  
13 sent one or more facsimile advertisements by Defendant Balboa Capital  
14 Corporation, its employees, agents, vendors or contractors.

15          3.     For settlement purposes only, the Court finds that certification of the  
16 Settlement Class is appropriate under the requirements of Fed. R. Civ. P. 23(a)  
17 and (b)(3) because (a) the class is so numerous that joinder of all members is  
18 impractical, (b) there are common questions of law and fact that predominate over  
19 any questions affecting only individual class members, (c) Plaintiffs will fairly  
20 and adequately protect the interests of the class, and (d) a class action is an  
21 appropriate method for the fair and efficient adjudication of this controversy.

22          4.     For settlement purposes only, and after considering the relevant  
23 factors in Fed. R. Civ. P. 23, Plaintiffs Michael A. Vandervort and U.S. Sample  
24 Services, Inc. are conditionally designated as the representatives of the Settlement  
25 Class, and Plaintiffs’ counsel are conditionally appointed as counsel for the  
26 Settlement Class. The lead attorney and law firm conditionally representing the  
27 Settlement Class are Aytan Y. Bellin, Esq., Bellin & Associates LLC, 85 Miles  
28 Avenue, White Plains, New York 10606, (914) 358-5345, (212) 571-0284 (fax).

1           5. Pursuant to Fed. R. Civ. P. 23, the terms of the Settlement  
2 Agreement are preliminarily approved. The Court finds that the Settlement  
3 Agreement is the product of good faith arm's length negotiation by competent,  
4 experienced counsel. Based on evaluation of the factors set forth in *Eddings v.*  
5 *Health Net, Inc.*, No. 10 CV 1744, 2013 WL 169895, \*2 (C.D. Cal. Jan. 16, 2013)  
6 and *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9<sup>th</sup> Cir. 2003), the Court further  
7 finds that the settlement amount is fair, adequate and reasonable, and that the  
8 terms of the Settlement Agreement are within the range of possible final judicial  
9 approval, subject to further consideration at the Court's subsequent final approval  
10 hearing described below. Accordingly, the Settlement Agreement is sufficient to  
11 warrant notice thereof, in the manner described below, and a subsequent full  
12 hearing relating thereto.

13           6. The Court approves the Short-Form Notice, the Long-Form Notice  
14 and the Claim Form attached as Exhibits 1, 2 and 3, respectively, to the  
15 Settlement Agreement.

16           7. Pursuant to the terms of the Settlement Agreement, Defendant shall  
17 cause the Short-Form Notice to be sent, in the manner described in the Settlement  
18 Agreement and within 21 days after entry of this Order, to all persons and entities  
19 that are members of the Settlement Class. In the event the Short-Form Notice  
20 cannot be transmitted to a given facsimile number, Defendant will make a  
21 reasonable effort to determine whether its records contain a mailing address  
22 associated with such facsimile number. If Defendant determines that it possesses  
23 such a mailing address, then it will cause the Short-Form Notice to be sent via  
24 first class mail to that mailing address. The Short-Form Notice shall direct  
25 recipients to a website on which the Long-Form Notice and Claim Form are  
26 available in PDF format.

27           8. The Court finds that the form and method of notice described in the  
28 Settlement Agreement constitute the best notice practicable under the

1 circumstances, and comply fully with the requirements of Federal Rule 23 and all  
2 applicable laws, Federal Rules and the United States Constitution. The Court  
3 further finds that no notice other than that identified in the Settlement Agreement  
4 is reasonably necessary in this action.

5 9. Counsel for Defendant shall, on or before the date of the Court's  
6 final approval hearing, file a proof of faxing (and mailing, if necessary) of the  
7 Short-Form Notice with the Clerk of Court.

8 10. Any Settlement Class member who wishes to be excluded from the  
9 class must so state in writing in the manner specified in the Long-Form Notice no  
10 later than 45 days after the date of the Short-Form Notice. Any person who does  
11 not timely and validly request exclusion shall be included in the Settlement Class  
12 and bound by the Court's final Judgment in this action. On or before the date of  
13 the Court's final approval hearing, Plaintiffs' counsel shall file with the Court a  
14 list of all persons who have validly requested exclusion from the class.

15 11. Any Settlement Class member who does not validly exclude himself  
16 or herself from the Settlement Class but who wishes to appear at the Court's final  
17 approval hearing and/or object to the terms of the Settlement Agreement must  
18 send a written statement of the basis for the objection, within 45 day after the date  
19 of the Short-Form Notice, that includes the information required by the Long-  
20 Form Notice, to: (a) Clerk of the Court, United States District Court for the  
21 Central District of California, Southern Division, 411 West Fourth Street, Santa  
22 Ana, CA 92701-4516; (b) Aytan Y. Bellin, Bellin & Associates, 85 Miles  
23 Avenue, White Plains, NY 10606; and (c) Nancy M. Barnes, Thompson Hine  
24 LLP, 3900 Key Center, 127 Public Square, Cleveland, OH 44114-1291. Any  
25 Settlement Class member who does not submit a timely and valid objection in  
26 accordance with this Order, the Short-Form Notice, the Long-Form Notice, and  
27 the Settlement Agreement shall not be treated as having filed a valid Objection to  
28 the Settlement. The Court will not consider objections that are untimely and/or

1 otherwise invalid unless the Court, in its discretion, otherwise directs, upon  
2 application of such person and for good cause shown.

3 12. The Court will hold a hearing for final approval of the Settlement  
4 Agreement on \_\_\_\_\_, 2013, at 2:30 p.m. in Courtroom 10A of the  
5 United States District Court, Central District of California, Southern Division,  
6 411 West Fourth Street, Santa Ana, California 92701. At that final approval  
7 hearing, the Court will hear argument regarding its final determination as to  
8 whether the proposed settlement is fair, reasonable and adequate and should be  
9 finally approved; to consider any objections of Settlement Class members; and to  
10 make a final determination as to Class Counsels' request for attorneys' fees and  
11 costs, and as to the Incentive Award to be paid the two named Plaintiffs. The  
12 Court may postpone, adjourn, or continue the hearing by Order without further  
13 notice to the Settlement Class. Any Settlement Class member who follows the  
14 procedures set forth in the Long-Form Notice may appear and be heard at this  
15 hearing.

16 13. Class Counsel shall file a motion for attorneys' fees no later than 30  
17 days after the Short-Form Notice is sent to the Class.

18 14. Pending the final approval hearing, Settlement Class members who  
19 do not request exclusion are enjoined from bringing or asserting any claim or  
20 action that was or could have been asserted in this action or that arise out of any  
21 matters released in the Settlement Agreement.

22 15. All proceedings in this action, other than those that may be necessary  
23 to carry out the terms and conditions of the Settlement Agreement or the  
24 responsibilities related or incidental thereto, are stayed until further order of this  
25 Court.

26 16. If the Court does not finally approve the Settlement Agreement, the  
27 Settlement Agreement and all proceedings had in connection therewith shall be  
28 without prejudice to the status quo ante rights of the parties to this action, and all

1 Orders issued pursuant to the Settlement Agreement shall be vacated. In such  
2 event, the Settlement Agreement, all negotiations concerning it, and all  
3 submissions made in connection with it shall not be used or referred to in this  
4 action for any purpose whatsoever. This Order shall be of no force or effect if  
5 final approval does not occur for any reason, and nothing in this Order shall be  
6 construed or used as an admission, concession, or declaration by or against the  
7 Defendant of any fault, wrongdoing or liability. Nor shall this Order be construed  
8 by or against Plaintiffs or the Settlement Class members that their claims lack  
9 merit or that the relief requested in this action is inappropriate, improper, or  
10 unavailable, or as a waiver by any party of any defenses it may have.

11 17. Neither the Settlement Agreement nor the terms of it constitute an  
12 admission, concession, or indication by the parties of the validity of any claims or  
13 defenses in this action, or of any wrongdoing, liability, or violation of law by  
14 Defendant or Plaintiffs.

15 18. The Court reserves the right to approve the Settlement Agreement  
16 with modifications, if any, as may be agreed to by Class Counsel and Defendant's  
17 counsel, and without future notice to the Settlement Class members.

18 Dated: October \_\_, 2013

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

\_\_\_\_\_  
United States District Judge