

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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: Master File No. 98-1664 (WHW)
In re: :
: This document relates to:
CENDANT CORPORATION : All Actions Except the Prides Action (No. 98-2819)
LITIGATION :
: :
: :
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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement, (the “Stipulation”), is made and entered into by and between the New York State Common Retirement Fund, the California Public Employees’ Retirement System and the New York City Pension Funds (collectively “Lead Plaintiffs”) on behalf of the Class (as defined below) and Heffler Radetich & Saitta, L.L.P. (“Heffler”) the firm retained to administer the settlements achieved in the Action, through their respective undersigned counsel.¹ The Settlement embodied in this Stipulation, subject to approval of the Court, is intended by the Settling Parties to be in full and final disposition of any claims that could be asserted against Heffler in connection with the payment of Fraudulent Claims submitted in the Action.

WHEREAS,

A. Heffler was retained as claims administrator in the Action to, among other things, process claims submitted in connection with the settlements achieved in the Action and determine which claims should be recommended for approval by the Court as valid acceptable claims;

B. Pursuant to Orders of the Court entered on or about March 27, 2003 and February 9, 2004, Heffler made an initial distribution and a second distribution from the settlement funds recovered in the Action to claimants whose claims were recommended for payment by Heffler and then approved by the Court;

¹ All capitalized words or terms, not otherwise defined herein, shall have the meaning as set forth below in Section I, entitled “Definitions”.

C. Subsequent to those distributions, pursuant to a combined criminal investigation conducted by the Internal Revenue Service Criminal Investigation Division and the Federal Bureau of Investigation, it was determined that, as part of a fraudulent scheme, ten fraudulent claims had been filed in the Action. The United States Attorney's Office for the Eastern District of Pennsylvania filed an indictment under seal on September 11, 2008 which was unsealed on or about November 20, 2008. Payments in the amount of \$28,691,193.84 had been made from the Cendant Class Settlement Fund with respect to six of those claims²;

D. Lead Plaintiffs have conducted an investigation into the facts and circumstances surrounding Heffler's approval of the Fraudulent Claims for payment;

E. Based upon such investigation, Lead Plaintiffs and their counsel believe that the Settlement set forth in this Stipulation to resolve all claims that could be asserted against Heffler in connection with the payments on the Fraudulent Claims is fair and reasonable to the Class (as defined below);

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Lead Plaintiffs for themselves and on behalf of the Class (as defined below) and Heffler, through their respective attorneys, that, subject to Court approval, all claims against Heffler relating to the payments on the Fraudulent Claims from the Cendant Class Settlement Fund shall be settled, compromised, released and relinquished with prejudice in the manner and upon the terms and conditions stated below.

I. Definitions

1. The following capitalized terms shall have the following meanings for the purpose of this Stipulation:

² The remaining four claims were submitted after the distributions and thus no payments were made as to those claims.

(a) “Action” means the actions filed in the Court on and after April 16, 1998, which were consolidated by Orders of the Court of May 29 and August 24, 1998 (except for actions brought on behalf of purchasers of PRIDES), and includes the proceedings in this action, Master File No. 98-1664 (WHW).

(b) “BankAmerica Action” or “BankAmerica” means the action styled *In re BankAmerica Corporation Securities Litigation*, MDL No. 1264, which was pending in the United States District Court for the Eastern District of Missouri, Eastern Division.

(c) “Cendant Class Settlement Fund” means the funds recovered by Lead Plaintiffs in the Action for the benefit of the Class.

(d) “Class” means the class certified by the Court in its Order filed January 27, 1999, specifically: all Persons who purchased or otherwise acquired the publicly traded securities of Cendant Corporation or CUC International, Inc., except PRIDES, during the period between May 31, 1995 and August 28, 1998, inclusive, and who were damaged thereby. Excluded from the Class are the defendants, members of the immediate family of each individual defendant, any entity in which any defendant has a controlling interest, officers and directors of Cendant and its subsidiaries and affiliates, and the legal representatives, heirs, predecessors, successors and assigns of any such excluded party. Also excluded from the Class are those persons and entities whose requests for exclusion were approved by the Court as set forth in its Judgment Approving Settlement and Dismissing Action as Against Cendant Corporation and Certain Other Defendants (Docket No. 797) and Judgment Approving Settlement and Dismissing Action Between Lead Plaintiffs and Ernst & Young LLP (Docket No. 798).

(e) “Class Member” means a member of the Class who was not excluded from the Class pursuant to that person’s or entity’s request by Order of the Court.

(f) "Court" means the United States District Court for the District of New Jersey.

(g) "Effective Date" means the first day following the date on which the Judgment approving this Settlement is finally affirmed on appeal and/or is no longer subject to appeal or certiorari, and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired.

(h) "Final," means the day following the date upon which Heffler makes a cash payment into the Cendant Class Settlement Fund of \$1,100,000.00.

(i) "Fraudulent Claims" means the six fraudulent claims identified pursuant to the investigation conducted by the Internal Revenue Service Criminal Investigation Division and the Federal Bureau of Investigation on which distributions totaling \$28,691,193.84 were paid.

(j) "Heffler" means the firm of Heffler, Radetich & Saitta L.L.P.

(k) "Heffler's Counsel" means the law firm of Conrad O'Brien PC.

(l) "Judgment" means the judgment to be entered by the Court approving the Settlement.

(m) "Lead Counsel" means the law firms of Barrack, Rodos & Bacine and Bernstein Litowitz Berger & Grossmann LLP.

(n) "Lead Plaintiffs" means California Public Employees' Retirement System, the New York State Common Retirement Fund and the New York City Pension Funds.

(o) "NASDAQ Action" or "NASDAQ" means the action styled *In re NASDAQ Market Makers Antitrust Litigation*, 1:94-CV-3996, MDL No. 1023, which was pending in the United States District Court for the Southern District of New York.

(p) "Net Cendant Class Settlement Fund" means the balance remaining in the Cendant Class Settlement Fund after the deduction of all Court-approved fees and expenses, taxes

and tax-related costs, and costs related to the Escrow Accounts.

(q) “Released Claims” means any and all claims, actions and causes of action in law or equity, suits, obligations, debts, demands, agreements, promises, liabilities, controversies, damages, losses, attorneys' fees, costs or expenses of any kind whatsoever, whether based on common law or on any federal or state statute, rule, regulation, or other law or right of action, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, suspected or unsuspected, fixed or contingent, and whether or not concealed or hidden, that Lead Plaintiffs or any Class Member have or may have against Heffler that are based upon, are related to, arise from, or are connected with the recommendation by Heffler for approval of the Fraudulent Claims and/or the payment by Heffler from the Cendant Class Settlement Fund of the Fraudulent Claims as well as all claims arising out of Heffler's role in the review, verification, calculation, tabulation or any other aspect of the processing of the claims in this Action, or other involvement in the administration or taxation of the Cendant Class Settlement Fund or the Net Cendant Class Settlement Fund.

(r) “Released Parties” means Heffler, its parent entities, affiliates, subsidiaries, predecessors, successors or assigns, principles, general or limited partners or partnerships, and each of its past, present or future officers, principles, general or limited partners, directors, associates, stockholders, controlling persons, representatives, employees, attorneys, agents, heirs, executors, trustees, personal representatives, estates or administrators.

(s) “Released Parties' Claims” means any and all claims, actions and causes of action in law or equity, suits, obligations, debts, demands, agreements, promises, liabilities, controversies, damages, losses, attorneys' fees, costs or expenses of any kind whatsoever, whether based on common law or on any federal or state statute, rule, regulation, or other law or right of

action, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, suspected or unsuspected, fixed or contingent, and whether or not concealed or hidden, that Heffler and/or any other Released Party has or may have against Lead Plaintiffs (or any of them), any Class Member, Lead Counsel or any other plaintiff's counsel in the Action that are based upon, are related to, arise from, or are connected in any way with the Action, Heffler's engagement as claims administrator in the Action or the administration of the settlements in the Action, including the review, verification, calculation, tabulation or any other aspect of the processing of the claims in this Action, or other involvement in the administration or taxation of the Cendant Class Settlement Fund or the Net Cendant Class Settlement Fund.

(t) "Settlement" means the settlement contemplated by this Stipulation.

(u) "Settlement Amount" means \$1,100,000 to be paid by Heffler into the Cendant Settlement Fund on the terms set forth in this Stipulation.

(v) "Settling Parties" means Lead Plaintiffs and Heffler.

(w) "Unknown Claims" means any and all Released Claims that any Lead Plaintiff or Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, and any and all Released Parties' Claims that Heffler or any other Released Party does not know or suspect to exist in his, her, or its favor, which, if known by him, her or it, might have affected his, her, or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Released Parties' Claims, the Settling Parties stipulate and agree that, upon the day on which the Settlement becomes Final, Lead Plaintiffs and Heffler shall expressly, and each Class Member and each of the other Released Parties shall be deemed to have waived, and by operation of the Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law,

which is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties, Class Members or the Released Parties may hereafter discover facts in addition to or different from those that any of them now knows or believes to be true with respect to the subject matter of the Released Claims or the Released Parties' Claims, but each Lead Plaintiff and Heffler shall expressly, and each Class Member and each other Released Party, upon the day on which the Settlement becomes Final, shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever settled and released any and all Released Claims and Released Parties' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Lead Plaintiffs and Heffler acknowledge, and the Class Members and the other Released Parties shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key and fundamental element of the Settlement of which this release is a part.

II. Settlement Consideration

2. In consideration of the Settlement and the Released Claims, Heffler shall pay \$1.1 million into the Cendant Class Settlement Fund on the following terms and conditions:

(a) Plaintiffs' Counsel shall have submitted to the Court for approval, after review and approval by Heffler's counsel, an Order that

- i. Awards payment of Heffler's past fees in the amount of \$445,338.75 ("Current Payment"), payment of which is subject to the occurrence of the Effective Date;
- ii. Awards Heffler payment for past costs incurred in the amount of \$31,190.64, which payment shall be made from the Settlement Fund upon approval by the Court;
- iii. Directs Heffler to perform the next scheduled distribution from the Cendant Class Settlement Fund (the "Third Distribution");
- iv. Awards Heffler the amount of fees and expenses, as audited and approved by Lead Plaintiffs (*see* ¶ (b) below), associated with the Third Distribution, which amount is estimated to be \$318,500. Payment of fees shall be subject to the occurrence of the Effective Date. Expenses incurred in connection with the Third Distribution shall be paid from the Cendant Class Settlement Fund upon completion of Lead Plaintiffs' audit in the amount approved;
- v. Acknowledges that the parties anticipate that there will be a distribution subsequent to the Third Distribution (the "Fourth Distribution") and directs Heffler to perform the Fourth Distribution; and
- vi. Awards Heffler the amount of fees and expenses, as audited and approved by Lead Plaintiffs (*see* ¶(b) below), associated with the Fourth Distribution, which amount is estimated to be \$175,000. Payment of fees shall be subject to the occurrence of the Effective Date. Expenses incurred in connection with the Fourth Distribution shall be paid from the Cendant Class Settlement Fund upon completion of Lead Plaintiffs' audit in the amount approved.

(b) Lead Plaintiffs shall audit Heffler's fees and expenses for the Third and Fourth Distributions after the fees and expenses for each of the respective distributions have been incurred. Following such audits, Heffler shall be paid the approved amount of expenses from the Cendant Class Settlement Fund and, subject to the Effective Date having occurred, Heffler shall be paid from the Cendant Class Settlement Fund the Current Payment and the amount of the audited approved fees for the Third Distribution and the Fourth Distribution.

(c) After the performance of all of the audits and payments described in paragraph (b), above, Heffler shall make a cash payment into the Cendant Class Settlement Fund of \$1.1 million, at which time this settlement becomes Final.

(d) Before Heffler makes payment pursuant to paragraph (c) above, Lead Plaintiffs' Counsel shall submit, after review and approval by Heffler's counsel, a Judgment to be entered by the Court substantially in the form submitted, approving the settlement between Lead Plaintiffs on behalf of the Class and Heffler in the total amount of \$1,100,000 on the terms and conditions set forth in this Stipulation.

3. Additionally, it is agreed that, whereas Heffler has been sued in the BankAmerica Action by Supplemental Complaint relating to losses from the BankAmerica Settlement Fund arising out of the same fraud scheme from which the claims of the Cendant Class arise, if Heffler and the plaintiffs in the BankAmerica Action settle their claims prior to the commencement of trial, the following conditions will apply to this Settlement:

(a) If Heffler itself makes a cash contribution of more than \$300,000 toward a settlement in the BankAmerica Action, then Heffler shall pay additional cash to the Cendant Class Settlement Fund, above and beyond the agreed upon \$1.1 million as follows:

i. Heffler shall pay one dollar to the Cendant Class Settlement Fund for

every dollar paid to plaintiffs in the BankAmerica Action in excess of \$300,000. The value of the waiver of Heffler's claims administration fees or costs in the BankAmerica Action shall not be included in any determination of the value of Heffler's cash contribution in the BankAmerica Action up to the \$300,000 limit.

ii. The additional dollar-for-dollar payment to be made by Heffler to the Cendant Class Settlement Fund shall not exceed \$250,000, regardless of the amount paid in the BankAmerica Action settlement.

iii. If the BankAmerica Action proceeds to trial, regardless of how the matter is ultimately resolved, whether by settlement or verdict, then Heffler shall not pay any additional monies to the Cendant Class Settlement Fund above and beyond the agreed upon \$1.1 million.

4. Additionally, although Heffler can make no guarantees as to the amount of funds available from restitution through the criminal proceedings, Heffler will make every effort to apportion any available restitution funds to the Cendant and BankAmerica classes in proportion to the classes' respective losses. On June 16, 2010, NASDAQ Class Counsel submitted to the District Court for the Southern District of New York a report on the status of the restitution funds. In the report, NASDAQ Class Counsel wrote that "Lead Counsel are prepared to allow the U.S. to distribute the recovered funds to the claimants in [Cendant and BankAmerica], so long as the Court agrees." On June 25, 2010, the Court approved Class Counsel's recommendation. Accordingly, NASDAQ Class Counsel, with Court approval, has decided to forego any claims it may have on the recovery of restitution funds.

III. Releases

5. Upon the Settlement becoming Final, Lead Plaintiffs and the Class, on behalf of

themselves, their heirs, executors, administrators, successors and assigns, shall be deemed to have, and by operation of law and the Judgment shall have, fully, finally, and forever released, relinquished and discharged, and shall forever be enjoined from prosecution of each and every Released Claim against any and all of the Released Parties.

6. Upon the Settlement becoming Final, Heffler and each of the other Released Parties on behalf of themselves, their heirs, executors, administrators, successors and assigns, shall be deemed to have, and by operation of law and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, discharged, and dismissed and shall forever be enjoined from prosecuting any or all of the Released Parties' Claims against any and all of the Lead Plaintiffs, the Class Members and all of their past, present, or future officers, directors, associates, stockholders, controlling persons, representatives, employees, attorneys, agents, heirs, executors, trustees, general or limited partners or partnerships, representatives, estates or administrators.

IV. Additional Terms

7. It is understood and agreed that, Lead Plaintiffs will, in conjunction with the motion for approval of this Settlement, inform the Court of the investigation undertaken by them regarding Heffler's actions in connection with the approval and payment of the Fraudulent Claims, and, as set forth above, that, based upon such investigation, Lead Plaintiffs' Counsel and Lead Plaintiffs believe the Settlement is fair and reasonable to the Class. Should the Court request further detail regarding such investigation, Lead Plaintiffs will, in the first instance, ask the Court to review their investigative materials in camera.

8. In the event that the Stipulation is not approved by the Court, the Effective Date does not occur or the Settlement does not become Final in accordance with its terms, the Settling Parties shall be restored to their respective positions as of November 20, 2008. In such event, the terms and

provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgments or orders entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. If the Effective Date does not occur, or the Settlement does not become Final, Heffler shall repay to the Cendant Settlement Class Action Settlement Fund any payments made to it with respect to the Current Payment, or fees with respect to the Third and/or Fourth Distributions.

9. Heffler denies that it has violated any laws or applicable standards of care, and this Stipulation, and any of its terms, any agreement or order relating thereto, and any payment or consideration provided for herein, is not and shall not be construed as an admission by Heffler or any other Released Party of any fault, wrongdoing, or liability whatsoever, or an admission by Lead Plaintiffs of any lack of merit to their potential claims against Heffler with respect to its approval of and payments made with respect to the Fraudulent Claims.

10. This Stipulation, and any of its terms, and any agreement or order relating thereto, shall not be deemed to be, or offered by any Settling Party to be received in evidence in any civil, criminal, administrative, or other proceeding, or utilized in any manner whatsoever as, a presumption, a concession, or an admission of any fault, wrongdoing, or liability whatsoever on the part of Heffler or other Released Party; provided, however, that nothing contained in this section shall prevent this Stipulation (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Settlement (or any agreement or order relating thereto) or the Judgment. This Stipulation may, however, be filed and used in other proceedings, where relevant, to demonstrate the fact of its existence and of this Settlement, including but not limited to Heffler's filing the Stipulation and/or the Judgment in

any other action that may be brought against it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

11. All counsel who execute this Stipulation represent and warrant that they have authority to do so on behalf of their respective clients.

12. The Settling Parties agree to undertake and to use their best efforts, including all steps contemplated by this Stipulation, and any other steps and efforts that may become necessary by order of the Court or otherwise, to effectuate this Stipulation and the Settlement.

13. This Stipulation contains the entire agreement among the Settling Parties with respect to the subject matter hereof and supersedes any prior written or oral agreements, representations, warranties, or statements. No representation, warranty, or inducement has been made to any Settling Party concerning this Stipulation other than the representations, warranties, and covenants expressly contained herein.

14. This Stipulation may not be altered, modified or amended, or any of its provisions waived, unless by a writing, executed by counsel for all the Settling Parties.

15. This Stipulation may be executed in counterparts, all of which shall be considered the same as if a single document shall have been executed, and shall become effective when such counterparts have been signed by each of the Settling Parties and delivered to each of the other signatories to this Stipulation.

16. The failure of any Settling Party to enforce at any time any provision of this Stipulation shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Stipulation or any part hereof or the right of any Settling Party thereafter to enforce

each and every such provision. No waiver of any breach of this Stipulation shall be held to constitute a waiver of any other breach.

17. The section headings used throughout this Stipulation are for convenience only and shall not affect the interpretation or construction of this Stipulation.

18. In the event that the Court or any other court is called upon to interpret this Stipulation, no one party shall be deemed to have drafted this Stipulation.

19. Nothing in this Stipulation, Settlement, or the negotiations or proceedings relating to the foregoing is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege or work product immunity.

20. This Stipulation and the Settlement contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of New Jersey relating to contracts made and wholly to be performed in that state without regard to New Jersey's rules regarding conflicts of law, and also shall be construed in accordance with the laws of the United States of America, to the extent applicable.

21. This Stipulation and the Settlement contemplated hereby shall be binding upon, and inure to the benefit of, the successors, assigns and heirs of the Settling Parties.

22. Any written notice required pursuant to or in connection with this Stipulation shall be addressed to the parties' counsel as follows:

For the Lead Plaintiffs:

Edward A. Grossmann, Esq.
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1285 Avenue of the Americas, 38th Floor
New York, New York 10019
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

For Heffler:

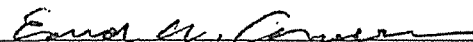
Patricia M. Hamill, Esq.
CONRAD O'BRIEN PC
1515 Market Street, 16th Floor
Philadelphia, PA 19102-1921
Telephone: (215) 864-9600
Facsimile: (215) 864-9620

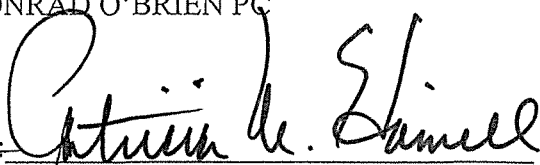
23. The Court shall retain jurisdiction with respect to the enforcement of the terms of this Stipulation and the Settlement embodied herein.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated as of November 19, 2010.

BERNSTEIN LITOWIWTZ BERGER
& GROSSMANN LLP

CONRAD O'BRIEN PC

By: 

By: 

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