

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into this 31st day of August, 2004 ("Effective Date") by and between the following parties: Lillian Scaife, Don Brown, Kathy Martinez, Kelly Pierce, the American Council of the Blind and the California Council of the Blind (hereafter "Claimants") and 7-Eleven, Inc. ("7-Eleven") for the purposes and on the terms specified herein.

### **RECITALS**

This Agreement is based on the following facts:

A.

Each of the individual Claimants is an individual who is blind or vision-impaired and who has used, has been deterred from using, or would like to use automated financial service centers currently branded as Vcom kiosks in 7-Eleven retail stores throughout the United States ("Vcoms"). Each of the individual Claimants is an individual with a disability within the meaning of Section 3(2) of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101, 12102(2) ("ADA") and the Title III regulations implementing the ADA contained in 28 C.F.R. §§ 36.101, et seq. Claimants Scaife, Brown and Martinez are residents of the State of California and each is an individual with a disability within the meaning of the laws of the State of California, including the Unruh Civil Rights Act and Disabled Persons Act (Cal. Civil Code §§ 51, 54.1). Claimant Pierce is a resident of the State of Illinois and is an individual with a disability within the meaning of the Illinois Human Rights Act (775 ILCS § 5/5-102).

B.

The American Council of the Blind ("ACB"), a non-profit corporation that provides advocacy services in the United States on behalf of individuals who are blind or have vision impairments, is dedicated to promoting the full integration of persons who are blind or have vision impairments into all aspects of society, and provides information to the general public about the accomplishments, needs and contributions of persons who are blind or vision-impaired. The California Council of the Blind is ACB's California affiliate serving the needs of blind and vision-impaired persons throughout the state. Among ACB and CCB's members, and those on whose behalf it advocates and provides services, are many individuals with disabilities within the meaning of state and federal law who have used, have been deterred from using, or would like to use Vcoms in 7-Eleven stores. ACB is incorporated and has its place of business in Washington, D.C. CCB is incorporated and has its place of business in the State of California.

C.

7-Eleven does business in California, Illinois and other states across the United States. As of the Effective Date, 7-Eleven owns, operates and/or leases Vcoms in California, Maryland and other states across the United States as part of a pilot test of the Vcom concept and of specific products 7-Eleven offers the public via its Vcom tools.

D.

A dispute has arisen between Claimants on one side and 7-Eleven on the other side, concerning whether 7-Eleven provides Claimants and other blind or vision-impaired persons with legally required access to its Vcoms ("the Vcom Dispute").

E.

The parties enter into this Agreement to resolve the Vcom Dispute and to avoid the burden, expense, and risk of potential litigation. In entering into this Agreement, 7-Eleven does not admit, and specifically denies, that it has violated or failed to comply with any provisions of the ADA, any applicable laws of any state relating to accessibility for persons with disabilities to public accommodations, any regulations or guidelines promulgated pursuant to those statutes, or any other applicable laws, regulations, or legal requirements. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by 7-Eleven of any such violation or failure to comply with any applicable law. This Agreement and its terms and provisions shall not be offered or received as evidence for any purpose whatsoever against 7-Eleven in any action or proceeding, other than a proceeding to enforce the terms of this Agreement.

**NOW, THEREFORE**, the parties hereby agree to the following provisions:

## **1. Definitions.**

As used in this Agreement, the following terms shall be as defined below:

1.1.

Vcom Kiosk or Vcom means a self-service, card accessed electronic information processing device that dispenses cash and offers financial and other services, is owned, leased or operated by 7-Eleven, and is installed in 7-Eleven stores for the primary purpose of allowing customers to conduct certain financial and/or other transactions directly through the device. The terms "Vcom Kiosk" and "Vcom" include such devices regardless of the brand name by which the device is identified. The terms "Vcom Kiosk" and "Vcom" do not include automated teller machines including those currently owned by American Express, which, as of the Effective Date, are branded with the "Axis" logo and located in 7-Eleven stores.

1.2.

Talking Vcom means a Vcom that enables Persons with Vision Impairments to independently access those Functions on the Vcom that are required to be accessible pursuant to the terms of this Agreement. A Talking Vcom has the following features: (1) speech output with volume control; (2) Tactilely Discernible Controls; (3) ensures the privacy of the audible output of information as long as the customer does not unplug the earphone mid-transaction; (4) provides the same degree of privacy of user input as is provided to sighted users; (5) allows the user to review and correct entries without canceling the entire transaction to the same extent that sighted users of the Vcom can so review and correct entries for the particular transaction; (6) provides audible transaction

- prompts to enable completion of each Function required to be accessible pursuant to this Agreement; (7) provides audible operating instructions and orientation to machine layout; (8) allows the user to interrupt audible instructions; (9) repeats audible instructions, and (10) provides audible verifications for all inputs, except that entry of the personal identification number need not be verified audibly with numbers. When the method for ensuring privacy is an earphone, the earphone jack will be placed in an easily locatable position and will be a standard, 3.5 millimeter size.
- 1.3. Americans with Disabilities Act or ADA means the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq., and the Title III implementing regulations, 28 C.F.R., Part 36, including Appendix A, the Standards for Accessible Design.
- 1.4. Counsel means Goldstein, Demchak, Baller, Borgen & Dardarian and The Law Office of Elaine B. Feingold, and the attorneys practicing law therein.
- 1.5. Function means a task or transaction that a Vcom is capable of performing. Examples of Vcom Functions as of the Effective Date include the ability to dispense cash.
- 1.6. Persons with Vision Impairments means individuals who are blind or have central visual acuity not to exceed 20/200 in the better eye, with corrected lenses, as measured by the Snellen test, or visual acuity greater than 20/200, but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle not greater than 2 degrees.
- 1.7. Tactilely Discernible Controls means operating mechanisms used in conjunction with speech output that can be located and operated by feel. When a numeric keypad is part of the Tactilely Discernible Controls used on a Talking Vcom, all Function keys will be mapped to the numeric keyboard and the keyboard will have an “echo” effect such that the user’s numeric entries are repeated in voice form, except for the entry of personal identification numbers. Additionally, all Tactilely Discernible Controls will otherwise comply with applicable regulations.

## **2. Duration and Geographic Scope of Agreement.**

This agreement shall apply to all Vcoms in the United States of America, Puerto Rico, Guam and the Virgin Islands (“Geographic Area”). The terms of this Agreement shall remain in effect from the Effective Date to six months after the completion of the National Rollout described in section 3, below or in any Addendum hereto.

## **3. Talking Vcoms.**

### **3.1. Development and Testing Phase.**

7-Eleven, with its Vcom partners, has already begun developing and testing Talking Vcoms. 7-Eleven will consider in good faith all Claimants' comments and suggestions regarding the Talking Vcom provided Counsel communicate comments in writing on behalf of all parties and representative. Within thirty (30) business days after receipt of any such comments, 7-Eleven shall provide Counsel with a specific response in writing regarding its position on each such comment.

### 3.2. Installation of Talking Vcoms.

**3.2(a) Functionality:** The following Functions shall be available to persons using the audio program on each Talking Vcom installed pursuant to this Agreement, to the extent such Functions are available to sighted persons using the Vcom: cash withdrawal from multiple accounts, transfers of money between multiple accounts, account balance from multiple accounts and stamp purchases.

**3.2(b) Talking Vcom Installation Schedule:** 7-Eleven will ensure that all its Vcoms are Talking Vcoms, as defined herein, as soon as possible but no later than December 31, 2005. Claimants recognize that 7-Eleven expects this rollout to be simultaneous in all 7-Eleven stores in which it has installed Vcoms. Claimants specifically acknowledge and agree 7-Eleven may cease using all or any Functions on Vcom, or the Vcom itself, at any time, unilaterally and without prior notice, consent, or consideration, provided that 7-Eleven may not eliminate audio functionality on the Functions listed in subpart (a) above if those Functions remain available to sighted persons. Additionally, nothing in this Agreement shall require 7-Eleven to continue to make Vcoms available to the public.

**3.2(c) Vcoms Purchased During the Term of this Agreement:** Any Vcom that 7-Eleven installs in a public place after the date of the rollout described in Section 3.2(b) will be installed as a Talking Vcom.

**3.2(d) Notice Requirements:** 7-Eleven will notify Counsel in writing once every ninety (90) days, beginning September 15, 2004, regarding the status of any possible software change and its potential impact on the timing of the Talking Vcom rollout.

### 3.3. Repair of the Talking Vcom Product.

Repair of the Talking Vcom will occur on a common schedule, irrespective of whether the problem occurs to functionality provided to the sighted customers or to the product made available to blind and vision-impaired customers.

### 3.4. Visual and Tactile Signage and Labels.

Each Talking Vcom installed pursuant to this Agreement shall have a sign that identifies the machine as a Talking Vcom. Any text in that sign shall be in large print, raised letters and Braille. Any non-text symbol on the sign shall be tactile. Each Talking Vcom shall also have Braille labels identifying the following components: the earphone jack, card slot, cash dispenser and receipt dispenser. Braille and large print on the signage shall comply with all relevant ADA specifications.

### 3.5. Availability of Private Listening Devices.

Any private listening devices necessary to use a Talking Vcom or any Talking ATM in any 7-11 store shall be readily available and provided free of charge to Persons with Vision Impairments. At a minimum, such devices shall be available at all 7-Eleven stores which contain a Talking Vcom or a Talking ATM.

## **4. Information Regarding Talking Vcoms.**

### **4.1. Provision of Information to Claimants and Counsel.**

7-Eleven will notify Claimants' Counsel in writing or electronically within seven (7) calendar days of the date 7-Eleven renders its Vcoms as Talking Vcoms.

### **4.2. Provision of Information to the Public.**

**4.2(a) Information Available on the 7-Eleven Website.** By no later than 30 calendar days after the date 7-Eleven renders its Vcoms Talking, the 7-Eleven website (currently located at [www.7-eleven.com](http://www.7-eleven.com)) shall inform users about the locations of Talking Vcoms and Talking ATMs at 7-Eleven Stores. Talking ATM and Talking Vcom location information will be updated in the same manner and on the same schedule as other ATM and Vcom information on the 7-Eleven Store Locator page (currently located at <http://go.vicinity.com/7eleven/prxStart.dsp>). In addition, the website shall advise Persons with Vision Impairments that they may activate the Talking ATM Vcom audio program by inserting an earphone plug into the earphone jack on the Vcom machine and that Persons with Vision Impairments may report problems with the audio program or seek further assistance from 7-Eleven's counter assistants inside 7-Eleven stores.

**4.2(b) Information Available on 7-Eleven's Toll-Free Telephone Line.** By no later than 30 calendar days after the date 7-Eleven renders its Vcoms Talking, 7-Eleven shall make the following information regarding Talking ATMs and Talking Vcoms available through its toll-free customer service line (which as of the Effective Date has the number 1(800) 255-0711): (i) the address (street name and number) of all 7-Eleven stores with a Talking ATM or a Talking Vcom; and (ii) how to report problems with, or provide other comments regarding Talking ATMs and Talking Vcoms. Talking Vcom address information available on the toll-free customer service line will be updated with the same frequency that 7-Eleven or its vendors update ATM and Vcom information provided on the toll-free line.

**4.2(c) Information Provided by 7-Eleven Store Employees.** 7-Eleven will advise its 7-Eleven store employees in stores where Talking ATMs and Talking Vcoms are located that there is a Talking ATM and/or a Talking Vcom in their assigned store. To ensure that such employees are familiar with the Talking ATM and/or Talking Vcom, 7-Eleven will require each employee to perform at least one Function using the Talking ATM and/or Talking Vcom with an earphone.

## **5. Procedures in the Event of Disputes.**

### **5.1. Notice of Non-Compliance.**

If at any time a party believes that the other party has not complied with any provision of this Agreement, that party shall provide the other party with Notice of Non-compliance containing the following information:

**5.1(a)** the alleged act of non-compliance;

**5.1(b)** a reference to the specific provision(s) of the Agreement that is (are) involved;

**5.1(c)** a statement of the remedial action sought by the initiating party;

**5.1(d)** a brief statement of the specific facts, circumstances and legal argument supporting the position of the initiating party.

**5.2. Meet and Confer.**

Within sixty (60) calendar days of receipt of a Notice provided pursuant to section 5.1, Claimants and 7-Eleven shall informally meet and confer and attempt to resolve the issues raised in the Notice.

**5.2(a)** 7-Eleven shall have a reasonable time to cure and undertake any remedial action once agreed upon.

**5.3. Submission to Binding Arbitration.**

**5.3(a)** If the matters raised in a Notice provided pursuant to section 5.1 herein are not resolved within sixty (60) days of the initial meet and confer required by section 5.2, either party may submit the unresolved matters to binding arbitration as set forth herein.

**5.3(b)** Arbitration shall be held before a single arbitrator in good standing of the American Arbitration Association ("AAA") provided that s/he is available to schedule a hearing on the matter within sixty (60) days of the submission to binding arbitration and to render a written decision on the matter within sixty (60) days of the first hearing date. Either party may conduct discovery relevant to the disputed issue, in accordance with AAA rules.

**5.3(c)** Law Governing Interpretation and Application of Agreement. The terms of this Agreement, and the provisions thereof, shall be interpreted and applied pursuant to the ADA.

## **6. Notice or Communication To Parties.**

Any notice or communication required or permitted to be given to the parties hereunder shall be given in writing by facsimile or e-mail and United States mail, addressed as follows:

**To Claimants:**

Linda M. Dardarian  
c/o Goldstein, Demchak, Baller, Borgen & Dardarian  
300 Lakeside Drive, Suite 1000  
Oakland, CA 94612  
Fax No.: (510) 835-1417  
[email address omitted]

Elaine B. Feingold  
Law Office of Elaine B. Feingold  
1524 Scenic Avenue  
Berkeley, CA 94708  
Fax No.: (510) 548-5508  
[email address omitted]

**To 7-Eleven:**

Rankin Gasaway

7-Eleven, Inc.  
2711 N. Haskell Avenue  
Box 711  
Dallas, TX 75221  
Fax No.: (214.) 828-7119  
[email address omitted]

John C. Fox  
Fenwick & West LLP  
801 California Street  
Mountain View, CA 94041  
Fax No.: (650) 938-5200  
[email address omitted]

## **7. Modification in Writing.**

No modification of this Agreement by the parties shall be effective unless it is in writing and signed by authorized representatives of all the parties hereto.

## **8. Agreement Binding on Assigns and Successors.**

This Agreement shall bind any assigns and successors of 7-Eleven. Within sixty (60) days of assignment or succession, counsel shall be notified in writing of the existence, name, address and telephone number of any assigns or successors of 7-Eleven.

## **9. Force Majeure**

The performance of 7-Eleven under this Agreement shall be excused during the period and to the extent that such performance is rendered impossible, impracticable or unduly burdensome due to acts of God; riots; civil commotions; wars; hostilities between nations; acts of terrorism; government laws, orders or regulations; actions by the government or any agency thereof; storms; fires; strikes or lockouts; unavailability of technology or parts, equipment or materials through normal supply sources; or any other contingencies beyond the reasonable control of 7-Eleven. If 7-Eleven seeks to invoke this Section, it shall notify the Claimants in writing as soon as reasonably possible, specifying the particular action that could not be performed and the specific reason for the non-performance. The Claimants and 7-Eleven will thereafter meet and confer regarding an alternative schedule for completion of the action that could not be performed, or an alternative action. Any dispute regarding the applicability of this Section, or any future action to be taken, that remains after the meet and confer process will be handled as a dispute pursuant to Section 5 of this Understanding.

## **9. Integrated Agreement.**

This Agreement constitutes the entire Agreement relating to the subject matters addressed herein.

## **10. Rules of Construction.**

Each party and its legal counsel have reviewed and participated in the drafting of this Agreement and any rule of construction to the effect that ambiguities are construed against the drafting party shall not apply in the interpretation or construction of this Agreement. Section titles used herein are intended for reference purposes only and are not to be construed as part of the Agreement. The Recitals are integral to the construction and interpretation of this Agreement and are therefore incorporated into this Agreement in their entirety.

## **11. Quadruplicate Originals/Execution In Counterparts.**

All parties and their counsel shall sign four copies of this document and each such copy shall be considered an original. This document may be executed in counterparts.

## **12. Joint Press Release**

The parties will negotiate a joint press release to be issued as soon as practicable after installation of the first Talking Vcom after the Effective Date. If the parties cannot agree on the content of the joint press release, either party may send their own press release provided that (i) the content of the press release is consistent with this Agreement; and (ii) a copy of the release is communicated to all parties and their counsel at least forty-eight (48) hours before it is released to the press.

## **PARTIES:**

- **7-ELEVEN, INC.**
- **AMERICAN COUNCIL OF THE BLIND**  
By: Melanie Brunson
- **CALIFORNIA COUNCIL OF THE BLIND**  
By: Jeff Thom  
By: Lillian Scaife  
By: Kathy Martinez  
By: Don Brown  
By: Kelly Pierce

## **APPROVED AS TO FORM:**

- **FOR 7-ELEVEN, INC.**  
By: Rankin Gasaway, Esq.
- **FENWICK & WEST, LLP**  
By: John C. Fox, Esq.



- **GOLDSTEIN, DEMCHAK, BALLER, BORGEN & DARDARIAN**  
By: Linda M. Dardarian, Esq.
- **LAW OFFICE OF ELAINE B. FEINGOLD**  
By: Elaine B. Feingold, Esq.