

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GLEN ELLYN PHARMACY, INC.)	
on behalf of plaintiff and)	
the class members defined herein,)	
)	
Plaintiff,)	15-cv-8927
)	
v.)	
)	
FDS, INC.,)	Honorable Judge Blakey
and JOHN DOES 1-10,)	Magistrate Judge Cole
)	
Defendants.)	

SETTLEMENT AGREEMENT

RECITALS AND DEFINITIONS

1. **Parties.** Defendant FDS, Inc. (“Defendant”) and Plaintiff Glen Ellyn Pharmacy, Inc. (“Plaintiff”) individually and as representative of the settlement class of persons defined below in paragraph 5 (the “Settlement Class”), enter into this Settlement Agreement (“Settlement Agreement”). Plaintiff and Defendant are collectively referred to as the Parties.

2. **Nature of Litigation.** In this lawsuit, captioned *Glen Ellyn Pharmacy, Inc., et al. v. FDS, Inc., et al.*, United States District Court, Northern District of Illinois, Eastern Division, docket number 1:15-cv-08927, (the “Litigation”), Plaintiff alleges that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”), by causing unsolicited facsimile advertisements to be transmitted to a nationwide class of individuals and entities.

3. **Denial of Liability.** Defendant denies violating the TCPA and further denies any liability to Plaintiff and the Settlement Class for the claims alleged. Defendant desires to settle the claims solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest

all claims, known or unknown, asserted or unasserted, actual or contingent, that have been or might have been asserted by the Plaintiff or the Settlement Class against Defendant concerning the matters alleged in the complaint in the Litigation.

4. “Settlement Class Counsel” means Edelman, Combs, Lattuner & Goodwin, LLC.

5. “Settlement Class” means all persons and entities with fax numbers who during the period of August 21, 2011 through and including August 21, 2015, were sent faxes by or on behalf of FDS, Inc. or LPS, Inc., as defined in paragraph 7 below, promoting its or their goods or services for which it/they did not obtain prior consent from the fax recipient and which did not contain an opt out notice as described in 47 U.S.C. § 227.

6. “Plaintiff” means Glen Ellyn Pharmacy, Inc. and its heirs, successors, assigns, or any other person acting on its behalf or for its benefit, or any person claiming through them.

7. “Released Parties” means, Defendant and its parents, subsidiaries, affiliates and sister or sibling companies as of the time of the of the actions that gave rise to the claims asserted in this Litigation, specifically including Lagniappe Pharmacy Services, LLC (also referred to as “LPS, Inc.”), any of their predecessors and successors in interest, any of their insurers and any of their past, current and future owners, officers, directors, shareholders, partners, members, employees, affiliates and agents (each solely in their respective capacity as such). The Parties expressly agree that all of these persons and entities that are not signatories to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

8. “Settlement Class Administrator” means the firm retained by Plaintiff with the consent of Defendants and approved by the Court to issue notice to the Settlement Class Members and to administer the settlement.

9. “Settlement Class Member(s)” means Plaintiff and any member of the Settlement Class who does not opt out and is not otherwise excluded from the Settlement Class by the Court.

10. “Released Claims” means any and all causes of action, suits, claims, or demands, in law or in equity, known or unknown, actual or contingent, asserted or unasserted, at this time or at the time the claims asserted in the Litigation arose, which Plaintiff or any other Settlement Class Members now have, did have, or may have in the future against the Released Parties, arising under any legal theory under the TCPA, whether or not alleged, and any similar legal theory. This includes, but is not limited to, all claims that were asserted or could have been asserted against the Released Parties in the Litigation, including TCPA claims.

11. Plaintiff’s Desire to Settle. Plaintiff, individually and on behalf of the Settlement Class (as defined below), desires to settle its claims against Defendant, having taken into account through Plaintiff’s counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that further litigation will be protracted and expensive. Plaintiff represents and warrants that it owned or leased the facsimile machine which received the faxes at issue in the Litigation at the time the faxes were received. The warranties and representations made in this Settlement Agreement survive the execution of this Settlement Agreement.

12. Investigation. Plaintiff’s counsel states that they have investigated the facts and the applicable law. Based on the foregoing, and upon an analysis of the benefits afforded by this Settlement Agreement, Plaintiff’s counsel considers it to be in the best interest of the Settlement Class to enter into this Settlement Agreement.

13. Agreement. In consideration of the foregoing and other valuable consideration, Plaintiff, Plaintiff’s counsel and Defendant agree to settle the claims of the Plaintiff and the

Settlement Class, the Released Claims, subject to the Court's approval, on the following terms and conditions.

TERMS

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.
2. Effective Date. The Settlement Agreement shall become effective (hereinafter the "Effective Date") upon the occurrence of all of the following: (a) the Court's entry of a Final Approval Order substantially in the form of Exhibit 4, and (b) the expiration of five business (5) days after the date the Final Approval Order becomes final and non-appealable.
3. Certification of Settlement Class. Solely for the purposes of settlement, the parties stipulate to the certification of the Settlement Class. The Parties agree to propose that Plaintiff shall be appointed class representative and that Daniel A. Edelman and Dulijaza Clark of Edelman, Combs, Lattuner & Goodwin, LLC shall be appointed Settlement Class Counsel. The Settlement Class shall be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. Defendant does not consent to certification of the Settlement Class for any purpose other than to effectuate this settlement of the Litigation. If this Settlement Agreement is not approved by the Court or is terminated pursuant to its terms or for any other reason, or is disapproved in a final order by any court of competent jurisdiction, (a) any order certifying the Settlement Class and all preliminary and/or final findings or stipulations regarding certification of the Settlement Class shall be automatically vacated upon notice to the Court of this Settlement Agreement's termination or disapproval; (b) this Litigation will proceed as though the Settlement Class had never been certified and any related findings or stipulations had never been made and neither this Settlement Agreement, nor any of its Exhibits, nor any other associated settlement document may be used in

seeking class certification; and (c) Defendant reserves all procedural or substantive rights as of the date of execution of this Settlement Agreement.

4. Identification of Settlement Class Members. Defendant represents that, based on a review of its records and those of its affiliates, and after conducting a reasonable investigation of available information and records, that approximately 61,615 facsimiles were sent by or on behalf of Defendant and its affiliates, which Plaintiff asserts are unsolicited facsimile advertisements as defined in the TCPA. Defendant shall provide to Settlement Class Counsel and/or the Settlement Class Administrator the list of the approximately 17,000 potential recipients including their facsimile numbers and the addresses, if available, associated with each unique fax number based upon its records (the "Fax List"). Some Settlement Class Members may have been sent more than one fax.

5. Relief to Plaintiff and the Settlement Class. The following relief shall be provided to Plaintiff and the Settlement Class, subject to the Court's approval:

- a. Defendant shall fund a \$337,000.00 Settlement Fund ("Settlement Fund") which shall be distributed as set forth below. The entire Settlement Fund will be paid out and there will be no reverter to Defendant;
- b. Notice and administration expenses will be paid from the Settlement Fund. The Settlement Fund less notice and administrative expenses is the Net Settlement Fund; and
- c. After the notice and administration expenses are deducted from the Settlement Fund, the Net Settlement Fund shall be apportioned as follows:
 - i. \$5,000.00 shall be paid from the Settlement Fund to Plaintiff as an incentive award in recognition of its services as class representative, in addition to its recovery as a class member;
 - ii. Settlement Class Counsel shall request no more than 1/3 of the Net Settlement Fund for attorney's fees;
 - iii. Each member of the Settlement Class who submits a valid claim form will receive a check for a pro rata distribution of the Settlement

Fund per unique fax number, after the amounts set forth in subsections (b), (c)(i) and (c)(ii) are distributed.

- iv. If there is sufficient money remaining in the Net Settlement Fund to pay each Settlement Class Member who cashed his/her/its Initial Settlement Payment a minimum of \$10 each, after the distributions identified in (b) and (c)(i)-(iii), then there shall be a Second Distribution to the Settlement Class Members.
- v. If there is not sufficient money remaining in the Net Settlement Fund to make a Second Distribution as provided in section (c)(iv) above, such fund remaining in the Net Settlement fund shall be distributed to a *cy pres* charity, consistent with paragraph 10 below.

6. Any award of attorneys' fees and costs and an incentive award to Plaintiff which are approved by the Court may be distributed to them within 14 days following the Effective Date, Within 30 days following the Effective Date, Settlement Class Counsel or their agent shall distribute the Net Settlement Fund to the Settlement Class Members who have filed timely and valid claim forms in accordance with this Settlement Agreement. In the event that (i) the Settlement Agreement is terminated pursuant to its terms; (ii) Defendant withdraws from the Settlement Agreement; (iii) the Settlement Agreement does not become effective; or (iv) the Final Approval Order is reversed, vacated, or modified in any material respect which is not mutually acceptable to the Parties, then Settlement Class Counsel or its agent shall return within three (3) business days following the event all funds paid or otherwise received from the Settlement Fund, less any reasonable costs (which shall not exceed \$15,000.00), to Defendant's Counsel Sutherland Asbill & Brennan, that were incurred by Settlement Class Counsel to issue notice to the Settlement Class Members

7. Settlement Class Members shall have at least 30 days to submit a claim form, to opt out, or object to the proposed settlement, after notice is initially sent by facsimile.

8. Costs associated with notice, claims administration and distribution of settlement checks shall be paid from the Settlement Fund and shall not exceed \$15,000.00.

9. The settlement checks issued to the members of the Settlement Class for payment of claims under this Settlement Agreement (both Initial Settlement Payment and Second Distribution, if any) will be void after 60 days from the date of issuance. Any Settlement Class Member who does not negotiate the claim payment check issued to such Settlement Class Member within 60 days of the date of issuance of the settlement claim payment check, agrees that such Settlement Class Member rescinds and withdraws his, her or its claim for monetary compensation under this Settlement Agreement but remains a member of the Settlement Class and is bound by the terms of this Settlement Agreement.

10. Undistributed Settlement Funds. Within thirty (30) days after the last void date of all settlement checks (both Initial Settlement Payment and the Second Distribution, if any) issued to Settlement Class Members, the Settlement Class Administrator will report to the Parties if there are any uncashed checks or unclaimed or undistributed amounts remaining in the Net Settlement Fund. Any such unclaimed or undistributed amounts remaining in the Settlement Fund after all payments required under this Settlement Agreement have been made shall be distributed to one or more *cy pres* charities selected by the court. No undistributed settlement funds shall revert to Defendant.

11. Release. On the Effective Date, Plaintiff and the Settlement Class Members who have not opted out or been otherwise excluded from the Settlement Class shall be deemed to have fully and finally released and discharged the Released Parties from any and all liability for the Released Claims.

12. This Settlement Agreement may be pleaded as a full and complete defense by the Released Parties to any action, suit or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Without admitting that California law or the laws of any other state

apply to this Settlement Agreement or that the release provided by Plaintiff and the Settlement Class is a general release, the Parties agree that upon the Effective Date, the Settlement Class shall be deemed to have waived and shall have expressly waived the provisions and benefits of California Civil Code §1542, which provides that a general release does not extend to claims which the creditor does not know or suspect to exist in his, her or its favor at the time of executing the release, which if known by him, her or it, must have materially affected his, her or its settlement with the debtor. Further, Plaintiff and the Settlement Class, expressly waive any and all provisions and rights or benefits which may be conferred upon them by any law, statute, ordinance or regulation which is similar, comparable or equivalent to California Civil Code §1542.

13. If this Settlement Agreement is not approved by the Court or for any reason does not become effective, it shall be deemed null and void and shall be without prejudice to the rights of the parties hereto and shall not be used in any subsequent proceedings in this or any other litigation, or in any manner whatsoever.

14. Attorneys' Fees, Notice Costs and Related Matters. Settlement Class Counsel or the Settlement Class Administrator will administer the Net Settlement Fund for the benefit of the Settlement Class and will pay the reasonable costs of notice and settlement administration out of the Settlement Fund. Settlement Class Counsel must seek approval from the Court to withdraw from the Settlement Fund any amount greater than \$15,000.00 to cover costs related to issuing notice to the class and administration of the settlement including issuance of settlement checks to Settlement Class Members. Settlement Class Counsel will request approval from the Court for attorneys' fees in an amount not to exceed 1/3 of the Net Settlement Fund as set forth in Section 5.c of this Settlement Agreement. Settlement Class Counsel will not request additional fees or costs from Defendant or the Settlement Class other than the above-referenced sums. Settlement

Class Counsel shall file a fee petition 30 days prior to the deadline set by the Court in the Preliminary Approval Order to submit claims, opt out or object to the Settlement Agreement. Settlement Class Counsel shall file an accounting detailing the disbursement of the Settlement Fund on or before the date ordered by the Court in the Final Approval Order.

15. Notice. Within 5 days of entry of the Preliminary Approval Order, Defendant shall provide the Settlement Class Administrator with the Fax List in MS Word or Excel format. Within 35 days of entry of the Preliminary Approval Order, the Settlement Class Administrator shall cause the Notice and Claim Form in the form of Exhibit 1 to be sent to the facsimile numbers identified on the Fax List. The Settlement Class Administrator shall make at least two additional attempts to transmit the notice by facsimile to those numbers where the initial transmission failed. After a total of three unsuccessful attempts to transmit the notice to a Settlement Class Member, the Claims Administrator shall mail the Notice and Claim Form to the Settlement Class Member via first class mail to the address, if any, for the Settlement Class Member contained in the Fax List. The Claims Administrator shall take reasonable steps to attempt to forward any notices it mails to Settlement Class members which are returned with a forwarding address.

Settlement Class Counsel will also post the notice in the form of Exhibit 2, and this Settlement Agreement (excluding exhibits) on its website. Settlement Class Counsel or the Settlement Class Administrator shall provide any Settlement Class Member who contacts either of them and requests a copy of the Notices and/or the Claim Form (Exhibits 1-2) with the notice.

The Settlement Class Administrator may create a website that allows for electronic submission of claim forms. Any website created by the Settlement Class Administrator may also post the notice, claim form, the Preliminary Approval Order, and this Settlement Agreement (excluding exhibits).

Settlement Class Counsel and/or the Settlement Class Administrator shall retain all documents and records generated during the administration of the settlement including records of notice given to Settlement Class Members, confirmations of transmittals of such notices by facsimile, unconfirmed facsimile transmissions, records of undelivered mail, claim forms, and payment to Settlement Class Members for a period of one year following the issuance of the Final Approval Order, and the expiration of all deadlines for appeal therefrom. Defendant may inspect such documents, upon reasonable request by its counsel. The Fax List and all other documents and records generated during the administration of the settlement shall be used solely for purposes consistent with notice and administration of this settlement and for no other purpose.

16. Claim Validation. The Settlement Class Administrator shall match the fax number provided by the Settlement Class Member on a returned claim form to a fax number on the Fax List. The Settlement Claims Administrator shall also determine whether the claim is a duplicate, whether the claim form is signed and examine the claim form for completeness and validity. If the fax number does not match, then Settlement Class Counsel or the Settlement Class Administrator shall follow-up with the Settlement Class Member and inquire if such Settlement Class Member employed other fax numbers during the Class Period (to ascertain if any different fax number is a number on the Fax List), in an effort to determine whether the claim is a valid claim.

If the fax number or fax numbers provided on a claim form do not match a fax number on the Fax List, and the follow-up with the Settlement Class Member has not resolved the issue, Settlement Class Counsel or the Settlement Class Administrator shall disallow the claim. If a claim is deemed disallowed by the Settlement Class Administrator, the Settlement Class Administrator must communicate that disallowance of the claim to the Settlement Class Member and Settlement Class Counsel and allow Settlement Class Counsel an opportunity to investigate the basis for

disallowing the claim. In the event the Parties disagree as to the validity of any claim form or whether to disallow a claim, then Settlement Class Counsel will present the disputed claim to the Court for resolution.

a. Initial Settlement Payment. Settlement Class Members submitting valid claim forms shall be paid a pro rata share of the Net Settlement Fund in accordance with this Settlement Agreement for each unique facsimile number (“Initial Settlement Payment”).

b. Second Distribution. If there is sufficient money remaining in the Net Settlement Fund to pay each Settlement Class Member who cashed his/her/its Initial Settlement Payment \$10 each, after payment of the costs of notice and administration, incentive awards, and payments to the Settlement Class Members who submit valid claims, then such remaining Settlement Funds will be distributed on a pro rata basis to those Settlement Class Members (“Second Distribution”).

c. W-9 Collection. There is a possibility Settlement Class Members will recover more than \$599.99, and such Settlement Class Members will be required to submit a W-9 form. The W-9 forms will be issued to Settlement Class Members as required within 21 days after entry of the Final Approval Order and before any settlement checks are issued. Settlement Class Members will have 30 days to respond to a request to complete a W-9 form. If a Settlement Class Member does not submit a W-9 form their recovery will be limited to \$599.99. . If W-9 forms need to be collected, certain dates set forth in paragraphs 6, 9, and 10 are reset and calculated as follows: within 30 days following the expiration of time for Settlement Class Members to complete a W-9 form, Settlement Class Counsel or the Settlement Class Administrator shall distribute the Settlement Fund to the Settlement Class Members who have submitted valid claims in accordance with paragraph 16; settlement checks to the Settlement Class Members will be void 60 days from

date of issuance; and within 30 days following the void date on the Settlement Class Members' checks, any uncashed checks or unclaimed or undistributed funds, the disposition of which will be determined by the Court, will be disbursed.

17. Right to Object. Any Settlement Class Member may object to the Settlement Agreement and appear in person or through counsel, at his, her or its own expense. The deadline to object shall be set by the Court in the Preliminary Approval Order and the Parties shall propose that it be at least 60 days after the entry of such order. Any Settlement Class Member may object to the Settlement Agreement by filing with the Court and mailing a copy of the objection to Settlement Class Counsel and Defendants' Counsel. Any objection must include: (a) the name, address, and facsimile phone number of the person(s) or entity objecting to the Settlement Agreement; (b) a statement of the objection to the Settlement Agreement; (c) an explanation of the legal and factual basis for the objection; and (d) documentation, if any, to support the objection.

18. Right of Exclusion. All Settlement Class members who properly file a timely written request for exclusion from the Settlement Class shall be excluded from the Settlement Class and shall have no rights as Settlement Class members pursuant to this Settlement Agreement. A request for exclusion must be in writing and state the name, address, and facsimile phone number (to which fax was sent) of the person(s) or entity seeking exclusion. Each request must also contain a signed statement providing that: "I/we hereby request that I/we be excluded from the proposed Settlement Class in the Litigation." The request must be mailed to Settlement Class Counsel or the Settlement Class Administrator at the address provided in the notice and postmarked or received by Settlement Class Counsel or the Settlement Class Administrator on such date as set by the Court. A request for exclusion that does not include all of the foregoing information, or that is sent to an address other than the one designated in the notice, or that is not postmarked or received by

Settlement Class Counsel or the Settlement Class Administrator within the time specified, shall be invalid and the person(s) serving such a request shall remain a Settlement Class member and shall be bound by the terms of the Settlement Agreement, if approved. Settlement Class members shall have at least 60 days from the date of entry of the Preliminary Approval Order to opt out of the Settlement.

19. Preliminary Approval. As soon as practicable after execution of this Settlement Agreement, Settlement Class Counsel shall file a Motion for Preliminary Approval of this Settlement Agreement and shall present such motion to the Court requesting the entry of a Preliminary Approval Order substantially in the form of Exhibit 3 or in such other form which is mutually acceptable to the Parties.

20. Final Approval. Settlement Class Counsel shall file a memorandum in support of final approval of the settlement, which shall include Settlement Class Counsel's request for an award of attorneys' fees and costs, at least 7 days prior to the date the Court sets for the final approval hearing. The Parties shall request the Court to enter a Final Approval Order substantially in the form of Exhibit 4, or in another form which is mutually acceptable to the Parties. Pursuant to the Class Action Fairness Act, the Final Approval Order shall not be entered until the expiration of at least 90 days from the date the Preliminary Approval Order was entered. Entry of a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is a condition precedent to this Settlement Agreement becoming fully effective. In the event a Final Approval Order substantially in the form of Exhibit 4 or in another form which is mutually acceptable to the Parties is not entered then this Settlement Agreement shall be null and void and is rescinded and the Preliminary Approval Order and any other orders entered by the Court in connection with the settlement of this Litigation shall be vacated and the

Parties shall be returned to the position they were in prior to the execution of this Settlement Agreement and this Litigation shall proceed as though this Settlement Agreement was never executed.

21. The fact that the Court may require non-material changes to documents attached as Exhibits 1 through 4 does not invalidate this Settlement Agreement.

22. Release of Attorneys' Lien. In consideration of this Settlement Agreement, Settlement Class Counsel hereby waives, discharges and releases the "Released Parties," as defined in paragraph 7 of the Recitals and Definitions above, of and from any and all claims for attorneys' fees, by lien or otherwise, for legal services rendered by Settlement Class Counsel in connection with this Litigation, other than the amount awarded by the Court as specified above.

23. Delivery of Settlement Fund. Defendant or persons acting on its behalf shall, no less than five (5) business days prior to the date set by the Court for the final approval hearing, issue a check or wire the amount of the Settlement Fund less the amount advanced for notice and administration costs to the Client Trust Account of Settlement Class Counsel. Settlement Class Counsel agrees to hold such funds in trust for the benefit of the Settlement Class and shall not disburse any funds from the Settlement Fund prior to the Effective Date unless in accordance with this Settlement Agreement or as ordered by the Court. Once the payment is made in accordance with this paragraph, Defendant shall have no further payment obligation to Plaintiff or the Settlement Class, and Defendant shall have no obligation or duty to monitor, supervise or control disbursements from the Settlement Fund.

24. Dismissal Order. The Final Approval Order shall provide that the Litigation against Defendant is dismissed with prejudice and further order that the Parties take the actions required to fulfill their obligations under the Settlement Agreement. In the event that Defendant fails or

refuses to make the payment, Defendant agrees, that at the option of Settlement Class Counsel, the Final Approval Order may be vacated pursuant to Fed. R. of Civ. Procedure 60(b), this Agreement shall be rescinded and this action shall be reinstated as if this Agreement never existed.

25. Right to Set Aside Settlement Agreement. Defendant, in its sole and absolute discretion, shall have the right, but not the obligation, to set aside or rescind this Settlement Agreement, if more than 100 Settlement Class Members submit non-duplicative, timely and valid requests for exclusion from the Settlement Class. Defendant must timely exercise its right to rescind this Settlement Agreement by filing a Notice of Rescission with the Clerk of the Court prior to the entry of a Final Approval Order by the Court.

26. Applicable Law. This Settlement Agreement shall be governed by and interpreted in accordance with the state law of the State of Illinois.

27. Miscellaneous Provisions. The Parties and their attorneys agree to cooperate fully with one another in seeking approval of this Settlement Agreement, and to use their best efforts to effect the consummation of this Settlement Agreement and the settlement provided for herein. Whether or not this Settlement Agreement and the settlement contemplated hereunder are consummated, this Settlement Agreement and the proceedings had in connection herewith shall in no event be construed as, or be deemed to be, evidence of an admission or concession on the part of Defendants of any liability or wrongdoing whatsoever.

28. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Released Parties and Settlement Class Members, and each of their respective successors and personal representatives, predecessors, affiliates, heirs, executors and assigns. It is expressly understood by the Parties that the individuals or entities of



the Released Parties that are not signatories to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

29. Authority. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder.

30. Entire Agreement. Any and all prior understandings and agreements between the Parties with respect to the subject matter of this Settlement Agreement are merged into and with this Settlement Agreement, which fully and completely expresses the entire agreement and understanding of the Parties with respect to the subject matter hereof. This Settlement Agreement may be amended, modified or changed only by a written instrument or instruments executed by duly authorized officers or other representatives of the Parties expressly amending, modifying or changing this Settlement Agreement and may not be amended, modified or changed orally.

31. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. Signatures provided by facsimile or e-mail shall be deemed legal and binding for all purposes.

32. Headings. The headings in this Settlement Agreement are for convenience of reference only and are not to be taken to be a part of the provisions of this Settlement Agreement, nor to control, or affect meanings, constructions or the effect of the same.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF

Glen Ellyn Pharmacy, Inc.
By: *Robert E. Listocki*
Its: *President* R.E. Listocki
Dated: *4/25/2015*

DEFENDANT

FDS, Inc.
By: _____
Its: _____
Dated: _____

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IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed and delivered by their duly authorized representatives on the date last written below.

PLAINTIFF

Glen Ellyn Pharmacy, Inc.

By: _____

Its: _____

Dated: _____

DEFENDANT


FDS, Inc.

By:  _____

Its: ATTORNEY-IN-FACT

Dated: APRIL 20, 2016

SETTLEMENT CLASS COUNSEL (for its obligations hereunder)



Daniel A. Edelman
Dulijaza Clark
EDELMAN, COMBS, LATTURNER
& GOODWIN, LLC
20 S. Clark Street, Suite 1500
Chicago, IL 60603
(312) 739-4200
(312) 419-0379 (FAX)
Counsel for Plaintiff and the Settlement Class

Dated: 4/20/16_____