

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

PODIATRY IN MOTION, INC.,	)	
and JAMES L. ORRINGTON, II D.D.S, P.C.,	)	
on behalf of themselves and the class	)	
members defined herein,	)	
	)	
Plaintiffs,	)	No. 16-cv-2653
	)	
v.	)	Honorable Judge Lee
	)	Magistrate Judge Cole
COVERMYMEDS, LLC,	)	
and JOHN DOES 1-10,	)	
	)	
Defendant.	)	

**AMENDED SETTLEMENT AGREEMENT**

**I. RECITALS**

1. The Parties enter into this Amended Settlement Agreement (the “Amended Settlement Agreement”) dated July 11, 2016 to comply with the June 30, 2016 order of the Court on Podiatry In Motion Inc.’s Motion for Preliminary Approval of the May 27, 2016 Settlement Agreement. Specifically the Court ordered that an additional representative class plaintiff be added which received primarily Transactional Faxes (as defined herein). Plaintiffs have filed an amended complaint which adds James L. Orrington II, D.D.S., P.C. as a representative Plaintiff in this action. The prior Settlement Agreement is rescinded and is void *ab initio*.

2. Parties. Defendant CoverMyMeds, LLC (“Defendant”) and Plaintiffs Podiatry In Motion, Inc. and James L. Orrington II, D.D.S., P.C. (“Plaintiffs”) individually and as representatives of the settlement class of persons defined below in paragraph 12 (the “Settlement Class”), enter into this Settlement Agreement (“Settlement Agreement”). Plaintiffs and Defendant are collectively referred to as the Parties.

3. Nature of Litigation. In this lawsuit, captioned *Podiatry In Motion, Inc. et al., v. CoverMyMeds, LLC*, United States District Court, Northern District of Illinois, Eastern Division, docket number 16-cv-2653, (the “Litigation”), Plaintiffs allege that Defendant violated the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) and state law, by causing unsolicited facsimile advertisements to be transmitted to them and a nationwide class of individuals and entities.

4. Denial of Liability. Defendant denies violating the TCPA and further denies any liability to Plaintiffs 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, that have been or might have been asserted by the Plaintiffs or the Settlement Class against Defendant concerning the matters alleged in the complaint in the Litigation.

5. Plaintiffs’ Desire to Settle. Plaintiffs, individually and on behalf of the Settlement Class (as defined below), desire to settle their claims against Defendant, having taken into account through Plaintiffs’ counsel the risks, delay, and difficulties involved in establishing a right to recovery in excess of that offered by this settlement, the relative strength of the claims of recipients of Transactional Faxes whose claims are much weaker than the claims of recipients of Non-Transactional Faxes and the likelihood that further litigation will be protracted and expensive. Plaintiffs represent and warrant that they each 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.

6. Investigation. Plaintiffs' counsel has investigated the facts and the applicable law including the relative strength of the claims that the Transactional and Non-Transactional faxes, respectively, will be found to be "unsolicited advertisements" subject to the TCPA. Plaintiffs' counsel has requested, and been provided with confirmatory discovery, under oath, detailing the information outlined in this Settlement Agreement identifying the nature and scope of the Settlement Class and the identification of each member of the Settlement Class by: (a) type of facsimiles received i.e. transactional or non-transactional; (b) class member name (c) class member fax number; (d) class member email address; (e) class member mailing address. 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.

## II. DEFINITIONS

7. "CMM User" means any person or entity that utilized CoverMyMeds prior authorization system or software, and thereby caused a fax to be transmitted to a Settlement Class Member, any partner or any entity which is referenced by name, mark, inference or whose logo appears on any Transactional Fax or Non-Transactional Fax or on whose behalf the fax was sent.

8. "Non-Transactional Fax(es)" means the faxes defined in Exhibit 1 as Non-Transactional Faxes.

9. "Plaintiffs" means Podiatry In Motion, Inc. and James L. Orrington II, D.D.S., P.C. and their successors, assigns, or any other person acting on their behalf or for their benefit, or any person claiming through them.

10. "Released Claims" means any and all actual, potential or filed causes of action, suits, claims, or demands, in law or in equity, known or unknown at this time (including Unknown Claims), which Plaintiffs or any other Settlement Class Members now have, did have, or may have in the future against the Released Parties, under any legal theory, including any and all claims under federal, state or local statutes, regulations, or ordinances, whether or not alleged in the Litigation, which are related in any way to or arise from the transmission of Transactional or Non-Transactional Faxes sent during the Class Period to Settlement Class Members by or on behalf of Defendant or a CMM User.

11. "Released Parties" means, Defendant, its parents, subsidiaries, parents subsidiaries, affiliates, predecessors and successors in interest, any CMM User, heirs, predecessors, successors, assigns, executors, administrators, and all of those entities' past and current owners, officers, directors, shareholders, partners, members, employees and agents, in such capacities as they relate to the actions that are the subject of the Released Claims. The Parties expressly agree that all of these persons and entities that are not parties to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

12. "Settlement Class" means all persons and entities with fax numbers who during the period February 29, 2012 through June 26, 2016, were sent Transactional or Non-Transactional faxes by or on behalf of CoverMyMeds, LLC or any CMM User.

13. "Settlement Class Administrator" means the firm retained by Plaintiffs with the consent of Defendant and approved by the Court to issue notice to the Settlement Class Members and to administer the settlement.

14. "Settlement Class Counsel" means Edelman, Combs, Lattuner & Goodwin, LLC.

15. “Settlement Class Member(s)” means Plaintiffs and any member of the Settlement Class who is not excluded from the Settlement Class by the Court.

16. “Transactional Fax(es)” means the faxes defined in Exhibit 1 as Transactional Faxes.

17. Agreement. In consideration of the foregoing and other valuable consideration, Plaintiffs, Plaintiffs’ counsel and Defendant agree to settle the claims of the Plaintiffs and the Settlement Class, subject to the Court’s approval, on the following terms and conditions.

### **III. TERMS**

1. Incorporation of Recitals and Definitions. The recitals and definitions set forth above are incorporated into this Settlement Agreement.

2. Effective Date. If there is no objection to the Court approving this Settlement, then 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 5, and (b) the expiration of five (5) business days from the time that the Final Approval Order becomes final and non-appealable. If there is an appeal from the Final Approval Order, Plaintiffs’ and Defendant’s obligations under this Settlement Agreement, including, without limitation, payments to Settlement Class Members and payment of any award of attorney’s fees, costs, and expenses shall not commence unless and until all appellate proceedings are fully and finally resolved in a manner that upholds the Final Approval Order and this Settlement Agreement becomes effective.

3. Certification of Settlement Class. Solely for the purposes of settlement, the Parties stipulate to the certification of the Settlement Class pursuant to Rule 23(b)(3) of the

Federal Rules of Civil Procedure. Plaintiffs shall be appointed class representatives, and Daniel A. Edelman and Julie Clark of Edelman, Combs, Lattuner & Goodwin, LLC shall be appointed Settlement Class Counsel. 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 after conducting a reasonable investigation, the Settlement Class consists of the subscribers of a total of 624,137 unique fax numbers and that the subscribers of 275,236 of the fax numbers received (only) Transactional Facsimiles; the subscribers of 35,776 of the fax numbers received only Non-Transactional Faxes and that the subscribers of 348,901 of the fax numbers received both Transactional and Non-Transactional Faxes..

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

- a. Defendant shall fund a \$9,600,000 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 reversion to Defendant;
- b. Notice and administration expenses will be paid from the Settlement Fund and reasonable notice expenses up to a maximum of \$300,000 shall be advanced by Defendant to Settlement Class Counsel seven (7) days after entry of the Preliminary Approval Order for which Defendant shall be given a credit on the payment of the Settlement Fund in an amount equal to the amount advanced by it. 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. Up to \$10,000.00 shall be paid from the Settlement Fund to each Plaintiff as an incentive award in recognition of its services as class representative, in addition to any other amounts it may be entitled to recover as a Settlement Class member;
  - ii. Settlement Class Counsel shall request no more than 1/3 of the Net Settlement Fund for attorney’s fees and the amount awarded by the Court shall be paid from the Settlement Fund;
  - iii. If the deductions described in subparagraphs 5(b); 5(c)(i); and 5(c)(ii) are approved by the Court, the remaining money in the Settlement Fund (the “Claim Payment Amount”) will be divided pro rata, based on the number of Transactional and Non-Transactional Faxes received by each Settlement Class member. Based on the relative strength of the claims that the Transactional Faxes and Non-Transactional Faxes are “unsolicited advertisements” subject to the TCPA, each Settlement Class Member who submits a timely and valid claim will receive one share for each Transactional Fax they received in the Class Period and five shares for each Non-Transactional Fax they received in the Class Period. The amount to be paid per share shall be determined by dividing the Claim Payment Amount by the total number of shares from all timely and valid claims submitted by Settlement Class Members.
  - iv. If after payment of the amounts due under subsections (i) through (iv) above, there is sufficient money remaining in the Claim Payment Amount to pay each Settlement Class Member who cashed his/her/its Initial Settlement Payment, an additional payment of no less than \$10 to those

Settlement Class Members who are identified as receiving Transactional Faxes and no less than \$50 to those Settlement Class Members who are identified as receiving Non-Transactional Faxes, then there shall be a Second Distribution to the Settlement Class members.

6. Any award of attorneys' fees and costs and an incentive award to Plaintiffs may be distributed within 14 days following the Effective Date. Within 30 days following the Effective Date, Settlement Class Counsel or their agent shall distribute the Settlement Fund 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 \$9,600,000, less any reasonable costs (which shall not exceed \$500,000), that were incurred by Settlement Class Counsel to issue notice to the Settlement Class Members of the Settlement Agreement, to Defendant's Counsel, Ice Miller LLP, within three business days of that event.

7. Settlement Class Members shall have at least 60 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.

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) 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 Second Distribution) 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 agreement of the Parties, subject to court approval, and the right of the Court to select another alternative *cy pres* recipient without effecting the enforceability of this Agreement. No Undistributed Funds shall revert to Defendant.

11. Release. Upon the Effective Date, Plaintiffs and the Settlement Class Members who have not been 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. This Settlement Agreement may be pleaded as a full and complete defense to any action, suit or other proceeding that may be instituted or prosecuted with respect to the Released Claims. Upon the Effective Date, the Settlement Class Members understand and acknowledge that they shall be deemed to have waived and shall have expressly waived and relinquished to the fullest extent permitted by law, the provisions rights and benefits of California Civil Code §1542, which provides as follows: "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”. Further, upon the Effective Date Plaintiffs and the Settlement Class, understand and acknowledge that they shall be deemed to have, and shall have waived any and all provisions and rights and benefits conferred upon them by any law of any state or territory of the United States or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to California Civil Code §1542.

12. 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.

13. Attorneys’ Fees, Notice Costs and Related Matters. Settlement Class Counsel or the Settlement Class Administrator will administer the 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. Defendant will advance the costs of notice and administration of the settlement within 7 days of the entry of the Preliminary Approval Order up to a maximum of \$500,000. Defendant shall be given a credit towards payment of the Settlement Fund in an amount equal to the amount advanced by it for costs of notice and administration of the settlement. Any amount advanced from the Settlement Fund to pay for notice and administrative expenses shall not be included in calculating the amount of any request by Settlement Class Counsel for reimbursement for costs at Final Approval of the Settlement Agreement. Settlement Class Counsel must seek approval from the Court to withdraw from the Settlement Fund any amount greater than \$500,000 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 any of the Released Parties other than the above-referenced sums. Defendant agrees not to oppose reimbursement from the Settlement Fund of reasonable expenses incurred in sending notice to the Settlement Class and in administering the Settlement Fund except as set forth above. Settlement Class Counsel shall file a petition for an award of attorney's fees and costs no less than 28 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.

14. Settlement Class Notice Program. The Parties believe that the following notice program provides notice to the Settlement Class members in the best practicable manner. Within 5 days of entry of the Preliminary Approval Order, Defendant shall provide the Settlement Class Administrator and Settlement Class Counsel with the Class List in electronic format specifically identifying the Settlement Class members by fax number and indicating the number of Transactional Faxes and Non-Transaction Faxes successfully sent to the fax number during the Class Period and providing, where available in the records of Defendant, the Settlement Class member's name; fax number; email address; and mailing address which are associated or linked to the fax number.

- a. Facsimile Notice. 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 2 to be sent to the facsimile numbers of the Settlement Class members identified on the Class List. Within 21 days of the date that the notice was first sent by facsimile, the Settlement Class Administrator shall send Exhibit 2 by facsimile a second time to each

Settlement Class Member identified on the Class List who did not submit a claim form or otherwise respond to the class notice by that date. The Settlement Class Administrator shall make at least three attempts to transmit the notice by facsimile to those numbers where the initial transmission failed.

- b. Mail Notice. If the Notice is not successfully transmitted to a Settlement Class Member via facsimile as described above, then the Settlement Class Administrator shall cause the Notice to be transmitted to such Settlement Class Member via U.S. Mail to the most recent address contained in the records of Defendant for the Settlement Class member. If no address is available in the records of Defendant, the Settlement Class Administrator shall perform a search utilizing the name and fax number of Settlement Class Member and may deliver Notice to any address reasonably identified as a Settlement Class Member entitled to receive Notice. A National Change of Address update shall be performed before mailing the Mail Notice. For mailed Notices which are returned as undeliverable without a forwarding address, reasonable skip tracing efforts to ascertain the addresses of such Settlement Class members shall be performed by the Settlement Class Administrator. All costs of skip tracing will be considered Settlement Costs and paid from the Settlement Fund. The form of E-mail Notice and Mail Notice shall be substantially similar to Exhibit 2 and the format of the Notice may be modified to facilitate mailing.
- c. Website Notice. In addition to the Settlement Class Notice Program set forth above, the Claims Administrator will establish and maintain a Settlement Website dedicated to the Settlement, on which will be posted the Notice, Claim Form, the Complaint, a copy of this Agreement, Preliminary Approval Order, the Website Notice, in the form attached hereto as Exhibit 3, and any other materials the Parties agree to include. The Settlement Website shall also provide for online submission of Claim Forms. These documents shall be available on the Settlement Website on the date of Preliminary Approval. The Settlement Class Administrator shall secure a URL for the Settlement Website agreeable to Settlement Class Counsel and Defendant. The Settlement Website URL shall be terminated and removed from the internet within 30 days after the Effective Date.

Settlement Class Counsel will also post the notice in the form of Exhibit 3, and this Settlement Agreement (excluding exhibits) on its website. Settlement Class Counsel and the Settlement Class Administrator shall provide any Settlement Class Member who contacts either of them and requests a copy of the notice and/or the Claim Form with the Facsimile Notice, Email Notice or Mail Notice in the form of Exhibit 3 and/or Claim Form as requested.

- d. Class Action Fairness Act (“CAFA”) Notice. Defendant shall be responsible for timely compliance with all CAFA notice requirements.
- e. Retention of Documents. 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 Class List and all other documents and records provided to Settlement Class Counsel or the Settlement Class Administrator or which are generated during the administration of the settlement shall be treated as confidential and used solely for purposes consistent with notice and administration of this settlement and for no other purpose.

15. Claim Validation. The Settlement Class Administrator shall match the information provided by the Settlement Class Member on a returned claim form to a corresponding fax number on the Class 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, validity and accuracy. If the information on the Claim Form does not appear in the judgment of the claims administrator to be valid, then the Settlement Class Administrator shall issue a claim denial letter or notice via fax (to the fax number indicated on the claim) or via mail or email (to the addresses indicated on the claim form) to the person or entity who submitted the claim advising them that the claim has been rejected and that they may contact the Settlement Class Administrator if they wish to dispute the rejection of the claim.

If the follow-up with the Settlement Class Member has not resolved the issue, Settlement Class Counsel or the Settlement Class Administrator may disallow the claim. If a claim is deemed disallowed by the Settlement Class Administrator, then Settlement Class Counsel shall be allowed an opportunity to investigate the basis for disallowing the claim. In the event the

Parties disagree as to the validity of any submitted Claim Form or whether to disallow a claim, Settlement Class Counsel will present (or allow the Settlement Class Member to present) the disputed claim to the Court for resolution.

In the event that the recovery under this Agreement for a Settlement Class Member is more than \$599.99, such Settlement Class Members will be required to submit a W-9 form. The W-9 forms will be issued by the Settlement Class Administrator to Settlement Class members who will receive a recovery in excess of \$599.99 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 issued by the Settlement Class Administrator. If a Settlement Class Member who is issued a notice requesting submission of a W-9 form does not submit a W-9 form, their recovery may be adjusted for tax withholding or 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 make payment to the Settlement Class members who have submitted valid claims in accordance with paragraph 16. Settlement checks issued to the Settlement Class members will be void 60 days from date of issuance. Within 30 days following the void date on the Settlement Class members' checks, any uncashed checks or unclaimed or undistributed funds, shall be disbursed to one or more *cy pres* charities selected by agreement of the Parties, subject to court approval, and the right of the Court to select another alternative *cy pres* recipient without affecting the enforceability of this Agreement.

16. Right to Object. Any Settlement Class Member may object to the Settlement Agreement and appear in person or through counsel in the Litigation, 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 Defendant's 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.

17. 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. The settlement website shall also provide a means to allow a

Settlement Class Member to opt out of the settlement. 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.

18. 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 4 or in such other form which is mutually acceptable to the Parties.

19. 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 5, 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 5 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 5 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.

20. The fact that the Court may require non-substantive changes to documents attached as Exhibits 1 through 5 does not invalidate this Settlement Agreement.

21. Release of Attorneys' Lien. In consideration of this Settlement Agreement, Settlement Class Counsel hereby waives, discharges and releases the Released Parties, 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.

22. 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 Final Approval of the Settlement, issue a check or wire the amount of the Settlement Fund, less any amounts advanced by Defendant for class notice and administration costs, to the Client Trust Account of Settlement Class Counsel and 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 unless in accordance with this Settlement Agreement or as ordered by the Court. Upon making complete payment of the amount of the Settlement Fund, Defendant shall have no further payment obligation regarding this Agreement.

23. 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 200 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.

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

25. 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 Defendant of any liability or wrongdoing whatsoever. Settlement Class Counsel shall supervise the activities of the Settlement Class Administrator to ensure they are in conformance with the requirements of this Agreement and shall ensure that the Settlement Class Administrator provides adequate security for any Settlement Funds turned over to the Settlement Class Administrator.

26. Benefit of this Settlement Agreement. This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, the Released Parties and Settlement Class members, as these terms are defined in this Agreement, 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 who are Released Parties that are not a Party to this Settlement Agreement are intended third-party beneficiaries of this Settlement Agreement.

27. 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.

28. 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.

29. 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.

30. 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.

AGREED:

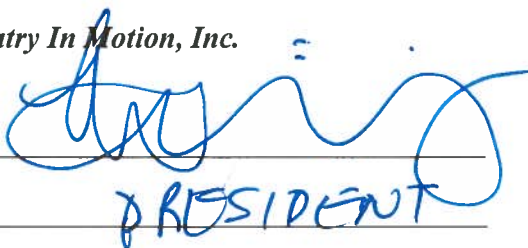
**PLAINTIFFS**

**DEFENDANT**

*Podiatry In Motion, Inc.*

*CoverMyMeds, LLC*

By: \_\_\_\_\_



**PRESIDENT**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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AGREED:

**PLAINTIFFS**

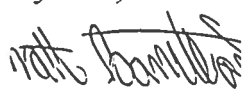
*Podiatry In Motion, Inc.*

By: \_\_\_\_\_

Its: \_\_\_\_\_

**DEFENDANT**

*CoverMyMeds, LLC*

By:  \_\_\_\_\_ Matt Scantland

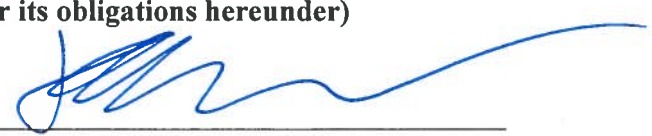
Its: Chief Executive Officer

*James L. Orrington II, D.D.S., P.C.*

By: 

Its: \_\_\_\_\_

**SETTLEMENT CLASS COUNSEL**  
**(for its obligations hereunder)**

  
\_\_\_\_\_  
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