

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement,” “Settlement,” or “Settlement Agreement”) is entered into by and among: (i) Pressman, Inc. (“Plaintiff”), on behalf of itself and a settlement class of purportedly similarly situated persons (identified herein as the “Settlement Class”); (ii) Smith Medical Partners, LLC; and (iii) H. D. Smith, LLC (Smith Medical Partners, LLC and H. D. Smith, LLC together referred to as “Defendants”). The parties to this Agreement are collectively referred to as the “Parties.” The Parties intend this Settlement Agreement to fully, finally, and forever resolve, discharge, and settle the Released Claims (as the term is defined below), upon and subject to the terms and conditions of this Settlement Agreement, and subject to the final approval of the Court after notice to the Settlement Class. This Agreement is entered into as of the date it is signed by the last of the Parties to sign it.

I. RECITALS

A. **WHEREAS**, Plaintiff and Defendants are parties to a civil action entitled *Pressman, Inc., et al. v. Smith Medical Partners, LLC and H. D. Smith, LLC*, Case No. 8:19-cv-02410-CEH-AEP, pending in the U.S. District Court for the Middle District of Florida (the “Action”), and consolidated with *Steven Arkin v. Smith Medical Partners, LLC, et al.*, Case No. 8:19-cv-01723.

B. **WHEREAS**, Plaintiff alleges that Defendants violated the federal Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”) and FCC regulations by faxing advertisements to facsimile machines without proper opt-out language and without the prior express invitation or permission of Plaintiff or the putative members of the Settlement Class;

C. **WHEREAS**, Defendants vigorously deny all claims asserted against them in the Action (as defined below), deny all allegations of wrongdoing and liability, deny all

material allegations of the Complaint, and deny that Plaintiff and the putative class members are entitled to any relief from Defendants;

D. **WHEREAS**, Defendants compiled records relating to approximately 3,300 fax campaigns during the class period and subsequently produced over 2,500 fax images, over 2,000 fax lists, over 1,700 exception and detail logs, over 1,800 job summary reports, and numerous invoices related to the 3,300 fax campaigns (the “Fax Records”) to Plaintiff.

E. **WHEREAS**, Plaintiff’s attorneys have investigated the relevant facts, including a thorough review of the Fax Records and well as all other documents and records Defendants produced in *Steven Arkin v. Smith Medical Partners, LLC, et al.*, Case No. 8:17-cv-02233-CEH-AEP (M.D. Fla.) (the “Documents”), and researched the law relating to the Action and allege, among other things, that Defendants faxed advertisements to approximately 45,000 phone numbers during the settlement Class Period of September 26, 2013 through January 25, 2019;

F. **WHEREAS**, counsel for the Parties have engaged in extensive arm’s-length negotiations concerning the settlement of the claims asserted in the Action;

G. **WHEREAS**, Defendants, without admitting or conceding any wrongdoing or liability, and solely to avoid the inconvenience and expense of further litigation, have concluded that further defense of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial to fully and finally settle and terminate the Action in the manner and upon the terms and conditions set forth in this Settlement Agreement, subject to Court approval. This Settlement Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Settlement Agreement and Release (as defined below) provided hereunder, or to establish the affirmative defenses of *res judicata* or

collateral estoppel barring the pursuit of claims released in the Settlement Agreement;

H. **WHEREAS**, Plaintiff and its counsel, on behalf of the Settlement Class (as defined below), after receiving information from Defendants regarding the claims, including data concerning the number of faxes allegedly sent to Plaintiff and all putative class members, have concluded, based upon their investigation, and taking into account the contested issues involved, the legal principles at issue, the expense and time necessary to prosecute the Action through trial, the risks and costs associated with further prosecution of the Action, the uncertainties of complex litigation, and the substantial benefits to be received pursuant to this Settlement Agreement, that a settlement with Defendants on the terms set forth herein is fair, reasonable, adequate, and in the best interest of the Settlement Class;

I. **WHEREAS**, the Parties and their counsel agreed to settle this Action on the terms set forth herein and to have judgment entered pursuant to this Settlement Agreement without trial or adjudication of any issue of fact or law. This Settlement Agreement, and all exhibits hereto, shall not constitute any evidence against, or any admission by, any Party with respect to liability, fault, certifiability of the class or any other issue raised in the Action;

J. **WHEREAS**, Plaintiff's Motion for Preliminary Approval will include a request for leave from the Court to certify the Settlement Class, comporting with the definition agreed-upon by the Parties and mirroring the definition set forth below. This Settlement is expressly conditioned upon and subject to preliminary and final approval by the Court, as set forth herein. Absent such approvals, this Agreement and underlying settlement shall be null, void, and of no further force or effect;

K. **WHEREAS**, Defendants have agreed to pay four and one-half million dollars (\$4.5 million) (the "Settlement Fund"), which shall be distributed to pay Settlement Class

Members who submit valid claims as further defined herein, to pay Class Counsel their fees and reasonable litigation expenses as ordered by the Court, to pay an incentive award to the Class Representative in the Action as ordered by the Court, and to pay all reasonable costs of notifying the Class and administering the settlement; and

L. **WHEREAS**, Plaintiff and its counsel have concluded that the terms and conditions provided in this Agreement are fair, reasonable, adequate, and in the best interests of the Settlement Class as a means of resolving this Action, after considering (1) the benefits the Settlement Class will receive under this Settlement, (2) the fact that Defendants have demonstrated that they will continue to vigorously oppose the claims asserted in the Action if the settlement is not approved, and (3) the attendant risks, costs, uncertainties, and delays of litigation;

M. **NOW THEREFORE**, it is hereby agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to the terms and conditions set forth herein and the approval of the Court, the Action shall be fully and finally settled and dismissed with prejudice.

II. DEFINITIONS

Unless defined elsewhere in this Settlement Agreement, as used herein and in the documents attached hereto as exhibits, the terms set forth below shall have the meanings set forth below. The singular includes the plural and vice versa.

1. “Action” means the class action entitled *Pressman, Inc. et al. v. Smith Medical Partners, LLC and H. D. Smith, LLC*, Case No. 8:19-cv-02410-CEH and consolidated with *Steven Arkin v. Smith Medical Partners, LLC, et al.*, Case No. 8:19-cv-01723, pending in the U.S. District Court for the Middle District of Florida.

2. “Arkin Settlement” means the class action settlement in the case entitled *Dr. Steven Arkin v. Smith Medical Partners, LLC and H. D. Smith, LLC*, Case No. 18CH00984 (Circuit Court of the 19th Judicial District, Lake County, Illinois) that was preliminarily approved but then withdrawn.

3. “Claims Deadline” means one hundred and four (104) days following the entry of the Preliminary Approval Order.

4. “Claim Form” means the document substantially in the form attached hereto as Exhibit B.

5. “Class Counsel” or “Settlement Class Counsel” means the Bock, Hatch, Lewis & Oppenheim, LLC law firm.

6. “Class List” means the list of certain names, addresses, and/or telephone numbers of Persons who may have received an unsolicited fax advertisement from either Defendant, to be provided to the Settlement Administrator for the purposes of identifying and sending notice to potential Settlement Class Members.

7. “Class Period” means the period from September 26, 2013 to January 25, 2019.

8. “Counsel for the Defendants” or “Defendants’ Counsel” means Martin W. Jaszczuk, Margaret Schuchardt, Tamra Miller, and Seth H. Corthell of Jaszczuk P.C.

9. “Court” means the U.S. District Court of the Middle District of Florida, and U.S. District Judge Charlene E. Honeywell and Magistrate Judge Anthony E. Porcelli.

10. “Effective Date” means the calendar date five (5) days after the settlement becomes Final.

11. “Fee Award” means any award of reasonable attorneys’ fees and for

reimbursement of litigation costs and expenses the Court awards to Class Counsel as set forth in Section VI below.

12. “Final” means that the Final Approval Order and Judgment has been entered on the docket in the Action and that: (a) the time to appeal from such order and judgment has expired and no appeal has been timely filed; (b) if an appeal from such order and judgment has been filed, it has resulted in an affirmance of the Final Approval Order and Judgment without any material change, no other appeal or petition for rehearing or review is pending, the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired, relief from a failure to file the same is not available, and the mandate is filed with the Court; or (c) the Court, following the resolution of any appeal from the Final Approval Order and Judgment, enters a further order or orders approving settlement on the terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s).

13. “Final Approval Hearing” means the hearing at which the Court will be asked to grant final approval to this Settlement Agreement in all material respects as fair, reasonable, and adequate, consider any timely objections to this Settlement Agreement and authorize the entry of the Final Approval Order and Judgment.

14. “Final Approval Order and Judgment” means the order in which the Court certifies the Settlement Class, grants final approval of this Settlement Agreement, authorizes the entry of a final judgment, and dismisses the Action with prejudice.

15. “Incentive Award” means the payment to be made to Plaintiff as set forth in Section VI of this Settlement Agreement, subject to approval of the Court.

16. “Notice” means the direct notice of this proposed Settlement Agreement and

Final Approval Hearing, which is to be provided substantially in the manner set forth in this Agreement and the Notice and Claim Form attached as Exhibit B, and is consistent with the requirements of due process.

17. “Notice Plan” means and refers to the plan to disseminate notice of the Settlement Agreement to the Settlement Class that comports with due process, as set forth below.

18. “Objection Deadline” means seventy-four (74) days following the entry of the Preliminary Approval Order.

19. “Opt-Out” means a request for exclusion from the Settlement Class returned to the Settlement Administrator by means set forth in the Notice.

20. “Opt-Out Deadline” means seventy-four (74) days following the entry of the Preliminary Approval Order.

21. “Parties” means Pressman, Inc. and Defendants.

22. “Person” means, without limitation, any individual, and any entity including without limitation, a corporation, partnership, limited partnership, limited liability partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, and any other business or legal entity and their respective predecessors, successors, representatives, and assigns.

23. “Named Plaintiff” or “Class Representative” means Pressman, Inc. if approved and so designated by the Court.

24. “Preliminary Approval Order” means the order entered in connection with the hearing at which the Court, *inter alia*, preliminarily certifies the Settlement Class, grants its preliminary approval to this Settlement Agreement, authorizes the dissemination of notice to

the Settlement Class, and schedules the Final Approval Hearing. The Preliminary Approval Order shall be substantially consistent with Exhibit A to this Agreement.

25. “Release” means the releases set forth in Section V of this Settlement Agreement.

26. “Requester” means a Person falling within the definition of the Settlement Class who intends to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement.

27. “Settlement Administrator” means an experienced third-party entity in the business of class action settlement claims administration to be agreed upon by the Parties and approved by the Court.

28. “Settlement Agreement,” “Settlement,” “Settlement Agreement and Release,” or “Agreement” means this settlement agreement, including the attached exhibits.

29. “Settlement Check” means the negotiable checks to be sent to those Settlement Class Members who submit Valid Claim Forms.

30. “Settlement Class” means “All persons who were sent, by or on behalf of H. D. Smith, LLC or Smith Medical Partners, LLC, one or more advertisements by facsimile from September 26, 2013 through January 25, 2019.” Excluded from the Settlement Class are Defendants, any parent, subsidiary, affiliate or controlled person of Defendants, as well as the members, managers, officers, directors, agents, servants or employees of Defendants, the immediate family members of such persons, and this Court.

31. “Settlement Class Member” means a Person who falls within the definition of the Settlement Class and who has not submitted a valid request to be excluded/opt out of the Settlement.

32. “Settlement Fund” means the total aggregate common fund that Defendants will establish by operation of this Settlement Agreement if the Settlement receives final approval from the Court and the Judgment becomes Final. The Settlement Fund equals four and one-half million dollars (\$4,500,000.00) and constitutes Defendants’ maximum and exclusive payment obligation under this Settlement Agreement to settle the Action in full. The Settlement Fund will be used to pay: (a) the Settlement Checks to Settlement Class Members who submit Valid Claim Forms; (b) the Fee Award awarded by the Court; (c) the Incentive Award awarded by the Court; and (d) all Settlement Administration Costs.

33. “TCPA” means the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* together with its implementing regulations, 47 C.F.R. § 64.1200, *et seq.*

34. “Valid Claim Form” shall mean a Claim Form that:

- a. is filled out truthfully and completely by the Settlement Class Member or a Person authorized to act on behalf of the Settlement Class Member;
- b. is timely, as judged by the fact that it is postmarked (if mailed to the Settlement Administrator) or time-stamped (if submitted to the Settlement Administrator by fax or via the Settlement Website) by the Claims Deadline; and
- c. is not determined by the Claims Administrator to be invalid.

35. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

36. All references to “his,” “her,” and similar terms are intended to be gender-neutral and apply equally to Persons who are businesses, organizations, or other non-natural

Persons.

37. Other terms are defined in the rest of this Settlement Agreement and shall have the meaning given to those terms in the text. It shall be the intent of the Parties in connection with all documents related to the Settlement that defined terms as used in other documents shall have the meaning given to them in this Settlement Agreement, unless otherwise specified.

III. SETTLEMENT CONSIDERATION AND CLAIMS PROCEDURE

In consideration of a full, complete, and final settlement of the Action, Defendants' payments of the monies due under this Settlement, dismissal of the Action with prejudice, and the Release, and subject to the Court's preliminary and final approval, the Parties agree to the following relief:

1. Relief to Settlement Class Members.

a. Defendants will establish the Settlement Fund for payment to Settlement Class Members who return Valid Claim Forms. Defendants shall not be responsible for any payments or obligations other than those specified in this Agreement. Under no circumstances will Defendants be obligated to pay any amounts outside of the Settlement Fund. In the event that this Settlement Agreement terminates for any reason or is not approved, Plaintiff agrees that any advances paid to the Settlement Administrator by Defendants that have not been spent, and are not required for amounts that are due and payable for reasonable and identified notice and administration costs already incurred, shall, within ten (10) business days, be returned by the Settlement Administrator to Defendants.

b. To facilitate the notice and claims administration process, the Parties will provide to the Settlement Administrator the Class List. Any information on the Class

List shall be provided solely for the purpose of providing notice to the Settlement Class and informing them about their rights further to this Settlement, shall be kept in strict confidence and, subject to a stipulated protective order, shall not be disclosed by the Settlement Administrator to any third party other than the Parties to this Agreement and their counsel if necessary to effectuate the terms of the Agreement or the administration process, shall be used for no other cases, and shall be used for no other purpose.

c. Subject to the terms and conditions of this Agreement, Settlement Class Members shall qualify for payment from the Settlement Fund if they submit a Valid Claim Form before the Claims Deadline and the facsimile number(s) they identify on their Valid Claim Form is/are on the Class List.

d. Each Settlement Class Member who submits a timely and Valid Claim Form shall receive one pro rata share of the Settlement Fund, for each facsimile number in the Class List, irrespective of the number of faxes received, after payment of the Fee Award awarded by the Court, the Incentive Award awarded by the Court, all Settlement Administration Costs and any other sums awarded by the Court consistent with this Agreement. If a Settlement Class Member entitled to receive \$600 or more fails to deliver a signed and completed Form W-9 to the Settlement Administrator, the Settlement Class Member's payment will be subject to appropriate treatment as required by then-existing rules and regulations of the Internal Revenue Service. Any Settlement Class Member who does not submit a Valid Claim Form by the Claims Deadline, as shown by postmark or other identifiable date of transmission, shall receive no monetary payment from the Settlement Fund. All Settlement Class Members will be informed that checks containing payments must be cashed within ninety (90) days of issuance or else the check will be void and they will have

no further right or entitlement to any payment under the terms of this settlement.

e. The Settlement Administrator will treat as a Valid Claim Form each “Valid Claim Form” submitted in the Arkin Settlement, unless the claimant submits an opt-out request in this Settlement.

f. Settlement Checks for payment on Valid Claim Forms shall be valid for ninety (90) days after issuance. Notwithstanding any judgment, principle, or statute, there shall be no interest accrued, owing, or paid by Defendants on the payments to Settlement Class Members, or on the Settlement Fund, or on any other benefit available (or potentially available) under this Agreement.

2. **Administration of Claims**

a. Subject to the Court’s approval, the Settlement Administrator will issue Notice by both facsimile and by U.S. mail (if a mailing address can be located through the records produced in the litigation or a reverse look-up service), receive the Claim Forms, assist Settlement Class Members in completing and submitting forms, propose a list of accepted and rejected claims to counsel for the Parties, interact with claimants regarding any necessary W-9s, create a Qualified Settlement Fund to receive the Settlement Fund from Defendants, issue Settlement Checks to claimants and make the other payments approved or required by the Court in the Final Approval Order, and prepare and submit any and all required tax filings. The Settlement Administrator shall examine each Claim Form and determine if the Claim Form constitutes a Valid Claim Form eligible to receive a Settlement Check. The Settlement Administrator will reject any claim where there is evidence of fraud and will advise the Parties. If competing claims are submitted for any given telephone facsimile number, then the Settlement Administrator shall seek further evidence from those

claimants and decide which one should receive the Settlement Check; the Settlement Administrator shall have the authority to allocate a Settlement Check among such claimants as it deems appropriate under the facts and circumstances. The decision of the Settlement Administrator regarding the validity of a Claim Form is final and binding on the parties. Upon request, the Settlement Administrator will provide copies of all Claim Forms to counsel for the parties.

3. **Payment of the Claims Administration Costs**

a. All Settlement Administration Costs, including the Settlement Administrator's fees and expenses, shall be paid out of the Settlement Fund. If this Settlement Agreement is terminated or fails to become effective, Defendants shall be responsible for payment to the Settlement Administrator of any claims administration costs and fees necessarily incurred by the Settlement Administrator prior to being notified that administration services are no longer required.

4. **Payment of Benefits**

a. Subject to the terms and conditions of this Settlement Agreement, after the Effective Date, the Settlement Administrator shall make the following disbursements from the Settlement Fund in this order:

i. Pay all taxes and tax-related expenses associated with Settlement Checks paid to the Settlement Class Members, if any; or, at the Settlement Administrator's discretion, it shall reserve the amount of the Settlement Fund sufficient to pay taxes and tax-related expenses related to the same;

ii. Pay the quoted amount for Settlement Administration

iii. Pay to the Settlement Class Representative any Incentive Award ordered by the Court;

iv. Pay to Class Counsel any Fee Award ordered by the Court;

v. Mail or otherwise provide to each Settlement Class Member who has returned or submitted a Valid Claim Form and qualifies for payment by having a number on the Class List, and who has not opted out of the Settlement or had their claim rejected, a Settlement Check; and

b. The Settlement Checks shall be mailed to the address provided by the Settlement Class Member on his or her Valid Claim Form.

c. All Settlement Checks issued under this section shall be void if not negotiated within ninety (90) days of their date of issue and shall contain a disclosure to that effect.

IV. SETTLEMENT PROCEDURES

1. Settlement Class Certification

a. Defendants do not object to the certification of the Settlement Class strictly and solely for settlement purposes. Certification of the Settlement Class will be effective only with respect to the Settlement of this Action and is without prejudice to the rights of Defendants to oppose class certification and/or to contest issues of fact, law, or liability should this Settlement Agreement be terminated or the Effective Date not occur for any reason. This Settlement Agreement shall be inadmissible in any other action against Defendants, and shall not be construed as an admission by Defendants except to enforce the terms of the Settlement Agreement and the Release provided hereunder, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims

released in the Settlement Agreement. In the event that this Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, then certification of the Settlement Class, which is strictly and solely for settlement purposes only, will be vacated and of no further force or effect, and the Action will proceed as it existed before execution of this Settlement Agreement.

2. **Preliminary and Final Approval Orders**

a. Plaintiff will file an unopposed motion for entry of an order preliminarily approving this settlement. Plaintiff will request that the Court enter an “Order Preliminarily Approving Class Action Settlement and Approving Class Notice” in the form attached hereto as Exhibit A. Additionally, Plaintiff will request that the Court approve a “Notice of Class Action and Proposed Settlement” including a Claim Form, attached hereto as Exhibit B, and request that the Court permit the parties to send that notice to the Class both by facsimile transmission and by postcard with direct mailing by U.S. mail if a mailing address can be located in the records produced in this Action or through a reverse look-up service selected by the Settlement Administrator.

b. The Preliminary Approval Order will set a date for a Final Approval Hearing. At the time Plaintiff moves for the Preliminary Approval Order as described above, Class Counsel and Defendants’ Counsel shall request that, after Notice is given, the Court hold a Final Approval Hearing and approve the settlement of the Action as set forth herein.

c. After Notice is provided, Plaintiff shall request and obtain from the Court a Final Approval Order in the form attached hereto as Exhibit C. The fact that the Court may require non-substantive changes in the Final Approval Order will not invalidate this Agreement or the settlement. If the Court does not enter a Final Approval Order

substantially in the form of Exhibit C or a modified version thereof that is acceptable to all Parties, which becomes Final, then this Agreement shall be null and void.

3. **Notice Plan and Claim Form**

a. The Parties agree to provide the best notice that is practicable under the circumstances, and includes individual notice to Persons in the Settlement Class who may be identified through reasonable efforts as set forth below.

b. Within 14 days of entry of the Preliminary Approval Order, the Settlement Administrator will cause the Notice and Claim Form to be sent by facsimile to the facsimile numbers of the members of the Settlement Class identified in the Class List and by postcard via U.S. mail to the last known address of any members of the Settlement Class if a mailing address can be located through the records produced in this litigation or through a reverse look-up service. The Settlement Administrator will be authorized to take reasonable steps to locate addresses of individuals to whom postcards are not successfully delivered.

c. Claim Forms shall be returned or transmitted to the Settlement Administrator via U.S. Mail, fax, or through the settlement website by the Claims Deadline or be forever barred.

d. Defendants and the Class Administrator shall be responsible for timely compliance with any notice required by the Class Action Fairness Act (“CAFA”) 28 U.S.C. § 1715. Defendants shall provide proof of such compliance by filing a declaration with the Court at least fourteen (14) days before the Final Approval Hearing.

4. **Right and Effect of Members of the Class to Opt-Out**

a. Each Person who falls within the definition of the Settlement Class shall have the right to opt-out and not participate in the Settlement Agreement as provided for

in the Preliminary Approval Order.

b. The Notice shall explain the right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, before the deadline, the Requester returns a valid Opt-Out.

c. For an Opt-Out request to be valid and treated as a successful Opt-Out, it must include:

(i) the Requester's full name, and the name of the Action and telephone number;

(ii) the facsimile number at which the Requester allegedly received an unsolicited fax advertisement that is the subject of this Settlement Agreement;

(iii) the Requester's personal and original signature, or the original signature of a person previously authorized by law, such as a trustee, guardian, or person acting under a power of attorney, to act on behalf of the Requester with respect to a claim or right such as those in the Action; and

(iv) state unequivocally that the Requester desires to be excluded from the Settlement Class, to be excluded from the Settlement, not to participate in the Settlement, and/or to waive all rights to the benefits of the Settlement. The Settlement Administrator shall promptly inform Defendants and Class Counsel of any Opt-Out requests it receives.

d. Persons who submit complete Opt-Outs that are postmarked before the Opt-Out Deadline shall receive no benefit or compensation under this Settlement Agreement, shall have no right to object to the proposed Settlement Agreement or participate at the Final Approval Hearing, and shall not be bound by any order or judgment entered in this Action.

e. A request to Opt-Out that does not comply with all of the foregoing, or that is not timely submitted or postmarked by the Opt-Out Deadline, or that is sent to an address other than that set forth in the Claim Form, shall be invalid and the person serving such request shall be treated as a Settlement Class Member and be bound by this Settlement Agreement and the Release contained herein if finally approved.

f. No Person shall purport to exercise any exclusion rights of any other Person, or purport:

(i) to Opt-Out Persons who fall within the definition of the Settlement Class as a group, aggregate, or class involving more than one Person; or

(ii) to Opt-Out more than one Person who falls within the definition of the Settlement Class on a single paper, or as an agent or representative. Any such purported Opt-Outs shall be void, and any Person(s) who are the subject of such purported Opt-Outs shall be treated as a Settlement Class Members.

g. Before the Final Approval Hearing, Class Counsel, Counsel for the Defendant and the Settlement Administrator shall create a comprehensive list of valid Opt-Outs. The Parties shall, if possible, agree as to whether a communication from or on behalf of a Person who falls within the definition of the Settlement Class is a request to Opt-Out. Defendants and Class Counsel may dispute an Opt-Out or purported Opt-Out, and if the Parties are unable to resolve such dispute, they shall present the issue to the Court for resolution.

5. **Inquiries to the Settlement Administrator**

a. It shall be the responsibility of the Settlement Administrator to respond to all inquiries from or on behalf of potential Settlement Class Members with respect to this

Settlement except to the extent that inquiries are directed to Class Counsel. Class Counsel and Counsel for Defendant must both approve any FAQs or other material the Settlement Administrator may use to answer inquiries and shall confer and assist the Settlement Administrator as it requests.

6. **Objections to the Settlement and Appearance at Final Approval Hearing**

a. Any Settlement Class Member may comment in support of, or in opposition to, the Settlement at his or her own expense; provided however, that all comments and/or objections must be in writing and mailed or hand-delivered to the Clerk of the Court and the Settlement Administrator and postmarked or delivered by no later than the Objection Deadline. Objections may be filed by counsel for a Settlement Class Member, but any such counsel must file an appearance in the Action.

b. Each objection must:

(i) set forth the Settlement Class Member's full name, current address, and telephone number;

(ii) identify the facsimile number of the Settlement Class member at which the Settlement Class Member claims to have received a fax subject to the Settlement;

(iii) contain the Settlement Class Member's original signature or the signature of counsel for the Settlement Class Member;

(iv) state that the Settlement Class Member objects to the Settlement, in whole or in part;

(v) set forth the complete legal and factual bases for the objection, including citations to relevant authorities;

(vi) provide copies of any documents that the Settlement Class

Member wishes to submit in support of his/her position;

(vii) state whether the objecting Settlement Class Member intends on appearing at the Final Approval Hearing *pro se* or through counsel and whether the objecting Settlement Class Member plans on offering testimony at the Final Approval Hearing.

(viii) Provide a witness and exhibit list; and

(ix) identify all prior objections either he/she or his/her attorney has made to other class action settlements.

c. All objections must be mailed or hand-delivered to the Court before the Objection Deadline. Any Settlement Class Member who objects must appear at the Final Approval Hearing, either in person or through an attorney hired at his or her own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the underlying settlement. A Settlement Class Member or his or her attorney who wishes to speak at the Final Approval Hearing must so state in his or her written objection or submit a separate notice of intention to appear to the Clerk of Court no later than the Objection Deadline. No Settlement Class Member shall be permitted to raise matters at the Final Approval Hearing that the Settlement Class Member could have raised in a written objection but failed to do so.

d. Any Settlement Class Member who fails to timely submit a written objection with the Court shall not be permitted to object to this Settlement Agreement at the Final Approval Hearing, shall be foreclosed from seeking any review of this Agreement by the court, appeal or other means, and shall be deemed to have waived his or her objections and be forever barred from making any such objections in the Action or any other related action or proceeding.

7. **Final Approval Hearing**

a. The Parties will recommend that the Final Approval Hearing be scheduled for a date at least one hundred and twenty (120) days after the entry of the Preliminary Approval Order.

b. No later than seven (7) days prior to the Final Approval Hearing, the Settlement Administrator shall file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

c. If the Settlement Agreement is preliminarily approved by the Court, and Notice has been sent pursuant to the Agreement, then Plaintiff shall file a Motion for Final Approval asking, *inter alia*, that the Court enter a Final Approval Order and Judgment. Either Party may file a memorandum addressing any objection to the Settlement that has been submitted. Any request by Defendants for entry of the Final Approval Order and Judgment, or failure to object to Plaintiff's request for entry of the Final Approval Order and Judgment, shall not be an admission or concession by Defendants as to any matter pertaining to Plaintiff's claims.

d. At the Final Approval Hearing, the Court will consider and determine whether the provisions of this Agreement should be finally approved as fair, reasonable, and adequate, whether any objections to the Agreement should be overruled, whether the requested Fee Award to Settlement Class Counsel and the requested Incentive Payment to the Named Plaintiff should be approved, and whether a judgment finally approving the Settlement Agreement should be entered.

e. This Settlement Agreement is subject to and conditioned upon the

issuance by the Court of a Final Approval Order that grants final approval of this Agreement and:

(i.) finds that the Notice provided satisfies the requirements of Federal Rule of Civil Procedure 23 and due process under the Constitution of the United States;

(ii.) finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;

(iii.) finds that the Settlement Agreement is fair, reasonable, and adequate to the Settlement Class, that each Settlement Class Member shall be bound by this Agreement, including the Release, and that this Settlement Agreement should be and is approved;

(iv.) dismisses on the merits and with prejudice all claims of the Settlement Class Members asserted against Defendants in this Action, without fees or costs to any Party except as provided in this Agreement; and

(v.) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement.

8. **Litigation Stay**

a. Except as necessary to secure approval of this Settlement Agreement or as otherwise provided herein, the Parties shall take no further steps to prosecute the Action in this Court or in any other court and shall jointly seek a stay of all litigation against the Defendants related to the sending of facsimile advertisements in this Court or in any other court.

9. **Conditions of Settlement; Effect of Disapproval, Cancellation, Termination or Nullification of Settlement**

a. The Effective Date of this Settlement Agreement shall not occur unless and until each and every one of the following events occurs, and shall be the date five (5) calendar days after the last (in time) of the following events occurs:

(i) This Agreement has been signed by the Parties, Settlement Class Counsel, and Defendants' Counsel;

(ii) The Court has entered the Preliminary Approval Order;

(iii) The Court has entered the Final Approval Order and Judgment substantially consistent with the Order attached hereto as Exhibit C, following notice to the Settlement Class, and has entered the Final Judgment, or a judgment substantially consistent with this Agreement; and

(iv) The settlement and Final Approval Order and Judgment has become Final.

b. If some or all of the conditions specified in Section 9(a) are not met, or in the event that this Settlement Agreement is not approved by the Court, or the settlement set forth in this Agreement is terminated or fails to become effective in accordance with its terms, then this Settlement Agreement shall be cancelled and terminated, unless Class Counsel and Defendants' Counsel mutually agree in writing to proceed with this Agreement.

c. The Defendants shall have the right to void, rescind and terminate the settlement, at any time prior to the Court's Final Approval Hearing, if more than one hundred (100) class members validly Opt-Out of the Settlement Class.

d. If this Agreement is terminated or fails to become effective for any reason, the Parties—to the fullest extent possible—shall be restored to their respective

positions as of the date of the signing of this Settlement Agreement. In such event, any Judgment or other order entered by any court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*, and the Parties shall be returned to the status quo ante as if this Agreement had never been entered into.

10. **No Admission of Liability**

a. Defendants have agreed to the terms of this Agreement to end all controversy with Plaintiff and the Settlement Class Members and to avoid the burden and expense of litigation, without in any way acknowledging fault or liability. Defendants have denied and continue to deny each and every material factual allegation and alleged claim asserted in this Action. Nothing herein shall constitute an admission by Defendants of wrongdoing or liability or of the truth of any factual allegations made by Plaintiff in the Action. Nothing herein shall constitute an admission by Defendants that the Action was properly brought on a class or representative basis other than for settlement purposes. Likewise, nothing herein shall constitute an admission by Plaintiff that any of the defenses, factual assertions or claims made by Defendants are true or factual. To this end, the settlement of the Action, the negotiation and execution of this Agreement, and all acts performed, or documents executed pursuant to or in furtherance of the Settlement:

(i) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of either party or of the truth of any of the factual allegations made by the opposing party in the Action;

(ii) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of either party in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal;

and

(iii) are not, shall not be deemed to be and may not be used as, an admission of the appropriateness of these or similar claims for class certification.

b. Nonetheless, Defendants have concluded that further litigation would be protracted and expensive, and would also divert management and employee time. Defendants have taken into account the uncertainty and risks inherent in litigation. Defendants have therefore concluded that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Agreement.

c. Pursuant to Federal Rule of Evidence 408 and any applicable state or local rules of evidence, this Agreement, any related documents filed or created in connection with it, and any negotiations made in connection therewith shall be inadmissible in evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement and the Release, or to establish the affirmative defenses of *res judicata* or collateral estoppel barring the pursuit of claims released in the Settlement Agreement.

V. RELEASE

1. Releases; Binding and Exclusive Nature of Settlement Agreement

a. In connection with the Settlement, the Final Approval Order and Judgment shall provide that the Action is dismissed with prejudice. As of the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally, and forever released, resolved, relinquished and discharged each and all of the Released Parties from each of the Released Claims and Unknown Claims. The Releasing Parties further agree that they will not institute any action or cause of action (in law, in equity, or administratively), suits, debts, liens, or claims, known

or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims and Unknown Claims. The Release does not apply to Persons who fall within the definition of the Settlement Class who timely Opt-Out of the Settlement in accordance with the term of this Agreement.

b. For purposes of this Settlement Agreement, “Released Parties” means Defendants, all of their acquired entities, predecessors, successors, affiliates, parent companies, and subsidiaries (collectively, “Affiliates”), any other entities that may have been involved in the process by which class members received faxes by or on behalf of Defendants, and any and all of Defendants’ and their Affiliates’ past or present predecessors, successors, heirs, executors, estates, administrators, direct or indirect parents, subsidiaries, associates, affiliates, assigns, employers, employees, principals, agents, consultants, independent contractors, insurers, directors, managing directors, officers, partners, attorneys, accountants, financial and other advisors, investment bankers, underwriters, shareholders, lenders, auditors, investment advisors, legal representatives, successors in interest, assigns, franchisees and persons, firms, trusts, corporations, and any other individuals or entities in which Defendants and their Affiliates have or had a controlling interest, to which they are related, or with which they are affiliated and any other representatives of any of these individuals or entities.

c. For purposes of this Settlement Agreement, “Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary or multiplied

damages, expenses, costs, attorneys' fees and/or obligations (including Unknown Claims), whether in law or in equity, accrued or unaccrued, direct individual or representative, of every nature and description whatsoever, arising out of any Defendant's violation of the TCPA or any other fax-marketing related federal, state, or local law, rule, regulation, or ordinance, through January 25, 2019.

d. For purposes of this Settlement Agreement, "Releasing Parties" means the Named Plaintiff, all plaintiffs in the Action, all Settlement Class Members and: (1) with respect to any Settlement Class Member that is not an individual, all of its present, former, and future direct and indirect parent companies, affiliates, subsidiaries, divisions, agents, franchisees, successors, predecessors-in-interest, and all of the aforementioned's present former, and future officers, directors, employees, shareholders, attorneys, agents, independent contractors and any other representatives; and, (b) with respect to any Settlement Class Member who is an individual, any present, former, and future spouses, dependents, children, parents, relatives, and any other Person who may have used or had access to the telephone and fax numbers at which facsimiles sent by or on behalf of Defendants were received, as well as the present, former, and future estates, heirs, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, assigns and any other representatives of each of them.

e. For purposes of this Settlement Agreement, "Unknown Claims" means claims about any action or omission through January 25, 2019, which could have been raised in the Action and that the Plaintiff or any Releasing Party, or any of them, do not know or suspect to exist, which, if known by him, her or, it, might affect his, her, or its agreement to release the Released Parties or the Released Claims or might affect his, her, or its decision to

agree, object, or not to object to the Settlement. Upon the Effective Date, Plaintiff and all other Releasing Parties shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of § 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, the Plaintiff and all other Releasing Parties shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiff acknowledges that he and class members may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have, as that term is defined in this Paragraph. Defendants agree and acknowledge that the Release is of no effect and shall be void if Defendants do not pay all the monies due under this Agreement.

VI. ATTORNEYS' FEES AND INCENTIVE AWARD

1. **Attorneys' Fees and Incentive Award**

a. Class Counsel may make written application to the Court for a Fee Award plus litigation expenses incurred in this matter. The Parties agree that the Court (and only the Court) shall determine the final amount of the Fee Award in this Action. The Notice (Exhibit B) shall disclose that Class Counsel seeks one-fourth of the Settlement Fund (\$1,125,000.00) plus its out-of-pocket litigation expenses.

b. Class Counsel may make written application to the Court for an Incentive Award for Plaintiff for representing the Settlement Class, subject to the Court's approval. The Notice (Exhibit B) shall disclose that Class Counsel intends to request a \$15,000.00 award for Plaintiff.

c. Defendants shall fund the Settlement Fund five (5) days after the Effective Date. Checks issued to the Settlement Class Members will be void ninety (90) days after issuance. The funds from any uncashed Settlement Checks and any other remaining amounts shall be paid to a *cy pres* recipient agreed upon by the Parties and approved by the Court.

VII. MISCELLANEOUS PROVISIONS

1. **Court Submission**

a. Class Counsel will submit this Agreement and the exhibits hereto, along with such other supporting papers as may be appropriate, to the Court for preliminary approval of this Agreement. If the Court declines to grant preliminary approval of this Agreement and settlement and to order notice of hearing with respect to the proposed Class, or if the Court declines to grant final approval to the foregoing after such notice and hearing,

this Agreement will terminate as soon as the Court enters an order unconditionally and finally adjudicating that this Agreement and settlement will not be approved.

2. **Integration Clause**

a. This Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose. This Agreement shall not be orally modified in any respect and can be modified only by the written agreement of the Parties supported by acknowledged written consideration.

3. **Headings**

a. Headings contained in this Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Agreement.

4. **Binding and Benefiting Others**

a. This Agreement shall be binding upon and inure to the benefit or detriment of the Parties and the Settlement Class Members who do not Opt-Out, and to their respective agents, employees, representatives, trustees, members, managers, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, executors, assigns, and successors in interest.

5. **Representations and Warranties**

a. The Parties each further represent, warrant, and agree that, in executing this Agreement, they do so with full knowledge of any and all rights that they may have with respect to the claims released in this Agreement and that they have received independent legal counsel from their attorneys with regard to the facts involved and the controversy herein

compromised and with regard to their rights arising out of such facts. Each of the individuals executing this Agreement warrants that he or she has the authority to enter into this Agreement and to legally bind the party for which he or she is signing.

6. **Governing Law**

a. The contractual terms of this Agreement shall be interpreted and enforced in accordance with the substantive law of the State of Florida without regard to conflict of laws and/or choice of law principles.

7. **Mutual Interpretation**

a. The Parties agree and stipulate that this Agreement was negotiated on an arm's-length basis between Parties of equal bargaining power. Also, the Agreement has been drafted jointly by Plaintiff's counsel and counsel for Defendants. Accordingly, no ambiguity shall be construed in favor of or against any of the Parties. Plaintiff acknowledges, but does not concede or agree with, Defendants' statements regarding the merits of the claims, and Defendants acknowledge, but do not concede or agree with, Plaintiff's statements regarding the merits of the claims.

8. **Incorporation of Recitals**

a. Each of the Recitals stated above are hereby incorporated into this Settlement Agreement as if stated fully herein.

9. **Counterparts**

a. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument. Facsimile and electronic signatures shall bind the Parties to this Agreement as though they are original signatures.

10. **Severability**

a. In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions if the Parties and their counsel mutually elect by written stipulation to be filed with the Court within twenty (20) days to proceed as if such invalid, illegal, or unenforceable provisions had never been included in this Agreement.

11. **Claims Against Settlement Benefits**

a. In the event a third party, such as a bankruptcy trustee, former spouse, creditor, or any other third party has or purports to have a claim against any payment made to a Settlement Class Member, it is the responsibility of the Settlement Class Member to resolve such a claim.

b. The Parties understand and agree that this Settlement Agreement and any terms herein shall not affect in any regard any debt or obligation owed by any Settlement Class Member.

12. **Execution of Documents**

a. The Parties shall execute all documents and perform all acts necessary and proper to effectuate the terms of this Settlement Agreement.

13. **Exhibits**

a. The exhibits to this Settlement Agreement are an integral and material part of this Settlement Agreement and are hereby incorporated and made a part of this Settlement Agreement.

14. **No Assignments: Binding on Assigns**

a. Each Party represents, covenants, and warrants that he, she, or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that he, she, or it herein releases. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

15. **Terms and Conditions Not Superseded**

a. Nothing in this Settlement Agreement abrogates supersedes, modifies, or qualifies in any way any of the contractual terms and conditions applicable in the ordinary course to the relationship between Defendants and their customers, or to the services provided by Defendants to their customers and used by consumers, except as expressly set forth herein.

16. **Waiver of Compliance**

a. Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived or excused in writing, to the extent permitted under applicable law, by the Party entitled to the benefit of such obligation, covenant, agreement, or condition, and such party's counsel. A waiver or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

17. **No Collateral Attack**

a. This Settlement Agreement shall not be subject to collateral attack by any Releasing Party or their representatives any time on or after the Effective Date. Such prohibited collateral attacks shall include, but shall not be limited to, claims that a Releasing Party's claim should have been heard or decided by another court or in another suit, that a

Settlement Class Member's claim was improperly denied, that the payment to a Settlement Class Member was improperly calculated, and/or that a Settlement Class Member failed to receive timely notice of the Settlement.

18. **Authorization**

a. The signatories hereto represent that they are fully authorized to enter into the Settlement Agreement and bind the Parties to the terms and conditions hereof.

19. **Drafter of Agreement**

a. None of the Parties will be considered to be the drafter of this Settlement Agreement or any of its provisions for purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement.

20. **Mutual Non-Disparagement**

a. The Parties, the Releasing Parties, Class Counsel, and Counsel for Defendants shall refrain from make any oral or written statement about any Party which is intended or reasonably likely to disparage the other party, or otherwise degrade the Party's reputation.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date set forth beside their respective signatures.

DATED: _____ PRESSMAN, INC., on behalf of itself and the Class

By: _____

Its: _____

DATED: _____ Reviewed and approved by Class Counsel, and agreement to be bound to all provisions in the Agreement that apply to Class Counsel

By: _____
On Behalf of Class Counsel

DATED: _____ SMITH MEDICAL PARTNERS, LLC

By: _____

Its: _____

DATED: _____ H. D. SMITH, LLC

By: _____

Its: _____

DATED: _____ Reviewed and approved by Defendants' Counsel

By: _____
On Behalf of Defendants' Counsel