

## SETTLEMENT AGREEMENT

1. This Settlement Agreement is between Richard Marcus and Ryoo Dental, Inc. (“**Plaintiffs**” as defined in paragraphs 10.23 and 10.31 below), on behalf of themselves and the class they represent (“**Class**” as defined in paragraph 10.7 below) on one hand, and OCO Biomedical, Inc. (“**OCO**” as defined in paragraph 10.37 below) on the other hand.

### RECITALS

2. WHEREAS, on March 18, 2016, Plaintiff Richard Marcus (“**Marcus**”) filed a complaint in the United States District Court for the District of New Jersey, captioned *Richard Marcus v. OCO Biomedical Inc.*, Case No. 3:16-cv-01519-AET-LHG (the “**Marcus Action**” as defined in paragraph 10.1 below);

3. WHEREAS, on September 2, 2016, Plaintiff Ryoo Dental, Inc. (“**Ryoo**”) filed a complaint in the United States District Court for the Central District of California, captioned *Ryoo Dental, Inc. v. OCO Biomedical Inc.*, Case No. 8:16-cv-01626-DOC-KES (the “**Ryoo Action**” as defined in paragraph 10.1 below);

4. WHEREAS, Plaintiffs Marcus and Ryoo asserted claims on behalf of themselves and similarly situated classes that OCO violated the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 *et seq.* (“**TCPA**” as defined in paragraph 10.39 below), and in response OCO denied the material allegations of Plaintiff Marcus and Ryoo’s complaints, including but not limited to, the allegations that it violated the TCPA;

5. WHEREAS, OCO denies the allegations made in the Marcus Action and Ryoo Action (collectively, the “**Actions**”), and contests all liability with respect to any and all facts and claims alleged in the Action, and further denies that Plaintiffs Marcus and Ryoo or any member of the Class have suffered any damages, but nevertheless desires to settle the Marcus Action and Ryoo Action finally on the terms and conditions herein set forth for the purposes of avoiding the burden, expense, and uncertainty of litigation, and putting to rest the controversies engendered by the Marcus Action and Ryoo Action and the issues within the scope of the releases set forth below. By agreeing to this Agreement and the Settlement, OCO does not admit any liability with respect to the allegations in the complaints of Plaintiff Marcus and Plaintiff Ryoo, retract or surrender any of the factual or legal positions it asserted in the Marcus Action and Ryoo Action, or concede the invalidity of those positions;

6. WHEREAS, contested issues of both law and fact exist concerning the allegations and claims made between the parties in the Marcus Action and Ryoo Action;

7. WHEREAS, Plaintiff Marcus and Plaintiff Ryoo have conducted an investigation into the facts and law and have engaged in settlement negotiations relating to the Marcus Action and Ryoo Action;

8. WHEREAS, Plaintiff Marcus and Plaintiff Ryoo and their counsel have fully analyzed and evaluated the merits of each party's contentions and the terms of this Agreement as it affects all parties, including the individual members of the Class, and, after taking into account the foregoing along with the risks of litigation, and the likelihood that the Marcus and Ryoo Actions, if not settled now, will be protracted and expensive, they are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that a settlement is in the best interest of the Class.

9. NOW THEREFORE, in consideration of the covenants and agreements set forth herein, it is agreed that the Actions shall be settled, subject to judicial approval, under the following terms and conditions:

### DEFINITIONS

#### 10. Definitions

10.1. "**Marcus Action**" means *Richard Marcus v. OCO Biomedical Inc.*, Case No. 3:16-cv-01519-AET-LHG (D. N.J.). "**Ryoo Action**" means *Ryoo Dental, Inc. v. OCO Biomedical Inc.*, Case No. 8:16-cv-01626-DOC-KES (C.D. Cal.).

10.2. "**Agreement**" means this Settlement Agreement.

10.3. "**Benefit Check**" means the check to be sent to those Class Members who submit a Valid Claim Form and who shall receive consideration under paragraph 15.3 below.

10.4. "**Claim Form**" means a claim form substantially in the form included in the Class Notice attached as Exhibit A (or in a form agreed to by all of the Parties).

10.5. "**Claim Period**" means the period of sixty (60) days from the initial mailing of Class Notice to the Class by the Settlement Administrator, or as otherwise set by the Court.

10.6. Claims-related terms – the following terms are defined in paragraph 15.1 below: "**Claim Distribution List**" and "**Claim Eligible Member**".

10.7. "**Class**" means all persons or business entities who were sent a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of OCO Biomedical, Inc. on or after March 18, 2012.

10.8. "**Class Counsel**" means Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.; Todd M. Friedman, P.C., Schultz & Associates LLP; and DeNittis, Osefchen Prince, P.C.

10.9. "**Class Member**" means a member of the Class.

10.10. "**Class Member List**" has the meaning specified in paragraph 12.1 below.

10.11. "**Class Notice**" means the mailed notice of the Settlement that is contemplated by this Agreement. Such notice shall consist of a long-form notice and claim form substantially the form attached as **Exhibit A** (or in a form agreed to by all of the Parties).

10.12. “**Class Representative Award**” means the incentive award to the Representative Plaintiffs under paragraph 13.6 below.

10.13. “**Court**” means the Honorable David O. Carter, United States District Judge, Central District of California, or such other United States Judge for the Central District of California to whom the Marcus Action and Ryoo Action may hereafter be assigned.

10.14. “**Disputed Claim**” has the meaning specified in paragraph 12.8 below.

10.15. “**Fairness Hearing**” means the Final Approval Hearing.

10.16. “**Final Approval**” means the last date on which all of the following have occurred:

10.16.1. The Court has issued all necessary orders under

Rule 23 of the Federal Rules of Civil Procedure approving of the Settlement in a manner consistent with the terms and intent of this Agreement (or in a manner agreed to by all of the Parties).

10.16.2. The Court has entered a judgment finally approving the Settlement of the Action in a manner consistent with the terms and intent of the Agreement (“**Judgment**”) (or in a manner agreed to by all of the Parties).

10.16.3. Either: (i) thirty-five (35) days have passed after entry of the Judgment and within such time, no appeal is taken, or (ii) the date after all appellate remedies are exhausted and the Judgment is upheld, or not altered in a manner that is substantially inconsistent with the Settlement and Judgment, provided that any change or modification that may increase any of OCO’s liability or reduce the scope of the Releases or alter the definition of the Class shall be considered as preventing the occurrence of Final Approval, unless OCO waives this condition.

10.17. “**Final Approval Date**” means the date upon which Final Approval occurs.

10.18. “**Final Approval Hearing**” means the hearing scheduled by the Court in accordance with paragraph 11.1 below to complete the tasks identified in paragraph 13 below.

10.19. “**Final Approval Order**” means an order in the same form as the proposed order attached hereto as **Exhibit C** (or in a form agreed to by all of the Parties).

10.20. “**Judgment**” has the meaning specified in paragraph 10.16.2 above.

10.21. “**Parties**” means Representative Plaintiffs, the Class and OCO.

10.22. “**per-Class Member Settlement Benefit**” has the meaning specified in paragraph 10.35.1 below.

10.23. “**Marcus**” means Plaintiff Richard Marcus. “**Ryoo**” means Plaintiff Ryoo Dental, Inc.

10.24. “**Plaintiffs’ Counsel**” means Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.; Todd M. Friedman, P.C.; Schultz & Associates, LLP; and DeNittis, Osefchen Prince, P.C.

10.25. “**Preliminary Approval**” means the order or orders of the Court preliminarily approving the terms and conditions of this Agreement in the same form as the proposed order attached hereto as **Exhibit B** (or in a form agreed to by all of the Parties).

10.26. “**Preliminary Approval Order**” means an order in the same form as the proposed order attached hereto as **Exhibit B** (or in a form agreed to by all of the Parties).

10.27. “**Preliminary Approval Date**” means the date on which the order or orders constituting Preliminary Approval are entered by the Court.

10.28. “**Releases**” shall mean the releases contained in paragraph 18 below.

10.29. “**Released Parties**” has the meaning specified in paragraph 18.1 below.

10.30. “**Releasing Parties**” has the meaning specified in paragraph 18.1 below.

10.31. “**Representative Plaintiffs**” means Plaintiff Richard Marcus and Plaintiff Ryoo Dental, Inc. and any other person who shall be appointed as such.

10.32. “**Settlement**” means the resolution of the matters within the scope of the Releases set forth herein, as embodied in this Agreement.

10.33. “**Settlement Administration Costs**” means the costs for administering the Settlement provided for herein to be paid exclusively from the Settlement Benefits, including but not limited to the costs of providing notice to the Class Members and providing Benefit Checks to Class Members who submit a Valid Claim Form.

10.34. “**Settlement Administrator**” means Kurtzman Carson Consultants (“KCC”).

10.35. “**Settlement Benefits**” means a maximum of two hundred seventy five thousand dollars (\$275,000) that OCO may become obligated to pay by operation of the Settlement, if it gains Final Approval. This is a “common fund” settlement. The Settlement Benefits shall pay for: (1) first, Settlement Administration Costs, (2) second, attorneys’ fees, costs, and expenses to Class Counsel, as approved by the Court, (3) third, incentive awards, if any, to the Representative Plaintiffs, and (4) fourth, a Class recovery on a *pro rata* basis to Class Members who submit a Valid Claim Form, as follows:

10.35.1. Each Class Member who submits a Valid Claim Form will be paid a *pro rata* share of the Class recovery (the “**per-Class Member Settlement Benefit**”).

10.35.2. There will not be a *cy pres* award except as to uncashed checks and similar leftover funds. Provided that there is no increase in the amount of the Settlement Benefits required to be paid by OCO, OCO will not oppose a request for a *cy pres* distribution to Medical Aid for Children of Latin America, Inc. (“MACLA”).

10.36. “**Successful Opt Out**” means any person or persons who timely and validly exercise their right to opt out of the Settlement and Releases, under paragraph 12.6 below and Federal Rule of Civil Procedure 23, but shall not include (a) persons whose opt outs are challenged by OCO, and the challenge is not overruled by the Court or withdrawn by Defendant, and (b) persons whose communication is not treated as an opt out, as provided in paragraph 12.6 below.

10.37. “**OCO**” means OCO Biomedical, Inc.

10.38. “**OCO’s Counsel**” means Mintz Levin Cohn Ferris Glovsky and Popeo PC.

10.39. “**TCPA**” means the Telephone Consumer Protection Act, 47 U.S.C. § 227.

10.40. “**Valid Claim Form**” means a complete submission of a Claim

Form that:

10.40.1. is substantially filled out, meaning that there is a response to every question that the Parties identify as needing to be answered;

10.40.2. is timely – a Claim Form shall be timely if it is postmarked by the date set for return of Claim Forms as specified in the Class Notice;

10.40.3. is correct – a Claim Form shall be treated as incorrect if the statements contained thereon are false, or if the Class Member otherwise is not entitled or authorized to be treated as claimed;

10.40.4. is not successfully challenged under paragraph 12.8 below; and

10.40.5. is submitted by a person or entity on the Class Member List.

10.41. As used herein, the plural of any defined term includes the singular thereof and vice versa, except where the context requires otherwise.

10.42. Other terms defined in the text of the Agreement shall have the meaning given those terms in the text.

## SETTLEMENT PROCEDURES

### 11. Preliminary Approval

11.1. Within sixty (60) days of the execution of this Agreement by all Parties, Plaintiffs and Plaintiffs’ Counsel shall move the Court for entry of a Preliminary Approval Order substantially in the form of **Exhibit B** hereto (a) preliminarily approving the Settlement

memorialized in this Agreement as fair, reasonable, and adequate; (b) certifying the Class for settlement purposes only; (c) setting a date for the Final Approval Hearing; (d) approving and authorizing the dissemination of the proposed Class Notice that is attached as **Exhibit A**; (e) approving the requirement that Class Members may submit a Claim Form, and the form of Claim Form included in the Class Notice attached as **Exhibit A**; (f) setting deadlines for providing the Class Notices, submission of Claim Forms, filing of objections, filing of motions to intervene, opting out of the Settlement, and filing papers in connection with the Final Approval Hearing and the consideration of the approval or disapproval of the Settlement; (g) appointing the Plaintiffs as Class Representatives and Class Counsel as counsel for the settlement Class; (h) appointing the Settlement Administrator; and (i) entering a stay of the Action.

11.2. OCO will not oppose the entry of a Preliminary Approval Order in the form of **Exhibit B** hereto (or in a form otherwise agreed to by all of the Parties), and Plaintiffs will file an unopposed motion in support of Preliminary Approval.

## 12. Administration

12.1. In the event of Preliminary Approval, OCO shall create a list of Class Members (“**Class Member List**”) and, as soon as practicable but in no event more than fifteen (15) business days after Preliminary Approval, deliver it to the Settlement Administrator and to Class Counsel in Microsoft Excel, or similar, format.

12.2. Within twenty (20) business days thereafter, the Settlement Administrator shall email, mail, or cause to be emailed or mailed, the Class Notice together with the Claim Form to the Class Member List.

12.3. The Settlement Administrator shall update the Class Member List through the National Change of Address database. The Class Notice then shall be mailed to the updated address, and, if returned, re-mailed once to the forwarding address on the returned Class Notice, if any.

12.4. There shall be no further duty to take any further steps to provide notice or to attempt to locate Class Members. Nothing herein shall restrict Class Counsel’s ability to respond to Class Member inquiries regarding the settlement.

12.5. The Settlement Administrator shall maintain a copy of the Class Member List for a period of seven (7) years.

12.6. The Class Notice shall permit each Class Member to elect not to be a part of the Class and not to be bound by this Agreement, if, within such time as is ordered by the Court and contained in the Class Notice, the Class Member mails the request in written form, by first class mail, postage prepaid, and postmarked no later than **seventy-five days from the entry of the Preliminary Approval Order**, to the Claims Administrator at the address specified in the Notice, states their full name, address, fax number, and includes a statement in the written request for exclusion that they wish to be excluded from the Settlement. ). The Parties shall attempt to agree as to whether a communication from a Class Member is a request to opt out, and shall inform the Court of their position at the Fairness Hearing. OCO or Class Counsel may



dispute an opt out or purported opt out and the presentation and resolution of such disputes shall be governed by the identical procedure set forth herein with respect to Disputed Claims in paragraph 12.8 below.

12.7. Unless the Court directs otherwise, the Class Notice shall provide that the Claim Forms shall be returned to the Settlement Administrator postmarked within sixty (60) days of the mailing of the Class Notice; that objections and motions to intervene filed by any Class Member shall be filed in Court no later than fifty-five (55) days after mailing of the Class Notices, or shall be forever barred; and that requests by any Class Member to opt out of the Settlement be mailed to the Settlement Administrator postmarked no later than fifty-five (55) days after mailing of the Class Notices, or shall be forever barred.

12.8. Within fourteen (14) days of the final date for postmarking of completed Claim Forms, OCO may challenge any claims (whenever submitted) by any form of written notice to Class Counsel (“**Disputed Claims**”). Such Disputed Claim shall be deemed a Valid Claim Form unless OCOs Counsel, within twenty (20) business days of the sending of notice of the objection by OCO, seeks a ruling by the Court as to whether the objection is valid or whether the objection should be rejected or overruled and the Claim allowed. The Court shall retain jurisdiction to resolve Disputed Claims. Any decision by OCO not to dispute a Claim Form shall not be a waiver, determination, or preclusive finding against OCO as to the truth of any fact in any proceeding.

12.9. The Settlement Administrator shall create a Settlement Website no later than 14 days after entry of the Preliminary Approval Order. The website shall contain downloadable copies of the Preliminary Approval Order, Long Form Notice, Settlement Agreement, Claim Form, and when filed, Class Counsel’s motion for an award of attorneys’ fees and expenses and for an incentive fee for the Class Representative. The Settlement Website shall allow for online claims submissions. The Settlement Website shall contain any subsequent notices agreed to by the Parties.

### 13. Final Approval

13.1. At the time appointed by the Court, Representative Plaintiffs shall move the Court for entry of a Final Approval Order substantially in the form of **Exhibit C** hereto (a) finally approving the Settlement and the Agreement as fair, reasonable, and adequate; (b) giving the terms of the Settlement, including the Releases, final and complete effect; (c) finding that all requirements of statute, rule, and Constitution necessary to effectuate this Settlement have been met and satisfied; and (d) otherwise directing the entry by the clerk of final judgment of dismissal on the merits and with prejudice in the Action.

13.2. OCO agrees not to oppose the entry of a Final Approval Order in the form of **Exhibit C** hereto (or in a form otherwise agreed to by all of the Parties).

13.3. The Final Approval Order, or a separate order, shall be entered as of the Final Approval Date providing that all Class Members, including Representative Plaintiffs, shall be enjoined from commencing, prosecuting, or assisting in any suit against the Released Parties with respect to the fees, charges, conduct, services, acts, or omissions of the Released Parties relating to all matters within the scope of the Releases.

13.4. At the Fairness Hearing, Representative Plaintiffs and Class Counsel shall present sufficient evidence to support the approval of the Settlement as fair, reasonable, and adequate and the entry of the Final Approval Order, and shall present such evidence as they deem appropriate to support any proposed award of attorneys' fees, costs and incentive awards. Representative Plaintiffs and Class Counsel shall make application for any awards to them, including awards of attorneys' fees, costs, and incentive awards to be paid from the Settlement Benefits, in writing prior to the Fairness Hearing, at the time that the motion is filed requesting final approval. Defendant shall not object to these applications and shall support them to the extent necessary to effectuate the settlement. Such awards shall be included in the Final Approval Order unless the Court directs it by separate order.

13.5. Class Counsel agrees not to move for or seek an award of attorneys' fees, up to 25% of the Settlement Fund, and costs and expenses to Class Counsel, up to \$12,000, as approved by the Court; and OCO will not oppose or object to awards consistent with those amounts. OCO will pay from the Settlement Benefits such attorneys' fees and litigation costs and expenses as may be awarded to Class Counsel by the Court upon application under paragraph 13.4 above.

13.6. Representatives Plaintiffs agree not to move for or seek an amount in excess of \$5,000.00 as an incentive award to be paid to each Representative Plaintiff exclusively from, and not in addition to, the Settlement Benefits for their services as class representatives. OCO shall not oppose such a request so long as it does not exceed \$5,000.00 per Representative Plaintiff. OCO will pay from the Settlement Benefits such incentive award approved by the Court upon application under paragraph 13.4 above.

### SETTLEMENT BENEFITS

14. Subject to the other terms and conditions of this Agreement, if the Settlement achieves Final Approval, the Settlement Administrator shall provide to each "**Claim Eligible Member,**" as defined in paragraph 15.1 below, who timely submits a Valid Claim Form a Benefit Check for Settlement Benefits.

15. In order to effectuate the provision of Settlement Benefits:

15.1. At least twenty-five (25) days before the Final Approval Hearing, the Settlement Administrator shall prepare: (i) a "**Claim Distribution List**" consisting of the Class Members who (a) submitted a Valid Claim Form, and (b) were not Successful Opt Outs, and (c) were not finally rejected as a Disputed Claim under paragraph 12.8 above. The Class Members on the Claim Distribution List shall be the "**Claim Eligible Members.**" The distribution lists shall be amended by the Settlement Administrator from time to time as information becomes available. All Claim Eligible Members will be eligible to receive the Settlement Benefits in accordance with the terms of the Settlement, unless otherwise ordered by the Court or agreed by the Parties or unless amended as required herein.

15.2. As part of the Settlement Benefits, all amounts for attorney's fees and costs and the Class Representative Award shall be delivered from OCO or OCO's Counsel directly to Todd M. Friedman, P.C., as follows:



- \$91,666.67 by the later of November 30, 2017 or 30 days after final approval;
- \$91,666.67 by the later of November 30, 2018 or 12 months after final approval;
- \$91,666.66 by the later of May 31, 2019 or 18 months after final approval.

15.3. As soon as practicable after the date of receipt of the final installment payment above, the Settlement Administrator shall mail to every Claim Eligible Member a check in the amount of the per-Class Member Settlement Benefit to which the Claim Eligible Member is entitled hereunder. The per-Class Member Settlement Benefits shall be mailed to the address given by the Claim Eligible Member on the Valid Claim Form.

16. All Benefit Checks issued pursuant to this Agreement shall bear the legend that they expire if not negotiated within ninety (90) days of their date of their issue. Checks that are not negotiated within ninety (90) days of their date of issue shall be re-issued for good cause and on an individual basis only, but in no event shall a check be re-issued more than one hundred eighty days (180) of its original date of issue.

17. OCO shall be entitled to all interest on the funds available to pay the Benefit Checks until any such amounts are paid to the Settlement Administrator. Notwithstanding the foregoing, OCO shall be entitled to create a settlement account (or funds) to pay its obligations hereunder, in whole or in part; such accounts or funds are for administrative or legal convenience or requirements of OCO and/or the Settlement Administrator only and do not create any vested or ownership interest on the part of the Plaintiffs or any Class Member or any state or other governmental entity. The Parties agree that nothing in this paragraph will prevent the Parties from treating the Settlement Benefits as a “common fund” under Federal Rule of Civil Procedure 23 for purposes of any recovery under the Settlement, including attorneys’ fees.

## RELEASES & REPRESENTATIONS

18. Releases

18.1. Upon Final Approval, and in consideration of the promises and covenants set forth in this Agreement, the Representative Plaintiffs and each Class Member who is not a Successful Opt Out, each of their respective spouses, children, executors, representatives, guardians, wards, heirs, estates, bankruptcy estates, bankruptcy trustees, successors, predecessors, guardians, wards, joint tenants, tenants in common, tenants by the entirety, co-borrowers, co-obligors, co-debtors, agents and assigns, and all those who claim through them or who assert claims (or could assert claims) on their behalf (including bankruptcy trustees in the capacity as *parens patriae* or on behalf of creditors or estates of the Representative Plaintiffs or Class Members) (“**Releasing Parties**”), will be deemed to have completely released and forever discharged OCO and each of its past and present officers, directors, shareholders, trustees, beneficiaries, members, partners, employees, predecessors, successors in interest, attorneys, agents, assigns, subsidiaries, parent companies, affiliates, accountants and representatives (“**Released Parties**”) from any claim arising out of the faxes that are the subject of the Action.

18.2. As part of the Final Approval Order, the Action shall be dismissed with prejudice. The Court shall enter a Judgment to that effect.

18.3. As of the Final Approval Date, Class Counsel shall be deemed to have released and discharged OCO and the Released Parties from all claims for fees, costs, or compensation for the Action, other than those approved in connection with this Settlement.

18.4. As of the Final Approval Date, OCO and the Released Parties shall be deemed to have released the Representative Plaintiffs, each Class Member who is not a Successful Opt Out, and Class Counsel from all claims arising out of maintenance of the Action including, without limitation, all claims for attorneys' fees and costs.

## 19. Representations

19.1. In addition to the provisions hereof, this Agreement and the Settlement shall be subject to the ordinary and customary judicial approval procedures under Federal Rule of Civil Procedure 23(e). Until and unless this Agreement is dissolved or becomes null and void by its own terms or unless otherwise ordered by the Court or if Final Approval is not achieved on terms consistent with the Settlement, Representative Plaintiffs, the Class, and Class Counsel represent and acknowledge to each other that they shall in good faith take all appropriate steps in the Actions necessary to acquire and preserve the jurisdiction of the Court, use their best efforts to cause the Court to grant Preliminary Approval and Final Approval of this Agreement as promptly as possible, use their best efforts to resist and oppose any or all objections to the Settlement and any or all attempts to opt out of the Settlement on any basis other than an individual basis, and take or join in such other steps as may be necessary to implement this Agreement and to effectuate the Settlement. This includes (a) the obligation to oppose objections and to defend, protect, and seek enforcement of the Agreement and the Settlement before the Court or before any other court or on appeal, if any; (b) to amend the pleadings and/or seek and obtain the participation of additional plaintiffs, if necessary; (c) to seek approval of this Agreement and of the Settlement by the Court; (d) to move for the entry of the Preliminary Approval Order, Final Approval Order and Judgment, as well as the order contemplated by paragraph 13.3 above; and (e) to join in the entry of such other orders or revisions of orders or notices, including the orders and notices attached hereto, as are required by OCO, subject to the Representative Plaintiffs' consent, not to be unreasonably withheld.

19.2. Representative Plaintiffs and OCO, subject to the last sentence of this paragraph, represent that they or it are fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each person executing this Agreement on behalf of a Party covenants, warrants, and represents that he or she is and has been fully authorized to do so by such Party. Each Party hereto further represents that he, she, or it intends to be bound fully by the terms of this Agreement.

19.3. Representative Plaintiffs, Class Counsel and OCO represent that they have not, nor will they, (a) attempt to void this Agreement in any way; (b) opt out of the Settlement under this Agreement; (c) solicit or encourage Class Members to opt out; or (d) solicit or encourage any effort by any person (natural or legal) to object to the Settlement under this Agreement.

However, nothing herein shall restrict Class Counsel's duty or ability to provide whatever advice Class Counsel, in its sole discretion, feels appropriate, if contacted by Class Members.

### MISCELLANEOUS PROVISIONS

20. This Agreement reflects, among other things, the compromise and settlement of disputed claims among the Parties hereto, and nothing in this Agreement nor any action taken to effectuate this Agreement is intended to be an admission or concession of liability of any party or third party or of the validity of any claim. OCO denies the allegations in the Actions and contends that its conduct has been lawful and proper.

21. This Agreement is entered into only for purposes of settlement. In the event that Final Approval of this Agreement and this Settlement does not occur for any reason or the Agreement and/or Settlement is terminated as provided herein, this Agreement shall become null and void. In the event the Agreement shall become null and void, the Parties shall be absolved from all obligations under this Agreement, and this Agreement, any draft thereof, and any discussion, negotiation, documentation, or other part or aspect of the Parties' settlement discussions leading to the execution of this Agreement shall have no effect and shall not be admissible evidence for any purpose. Any classes certified or orders entered pursuant to the Settlement shall be null and void, shall not be an adjudication of any fact or issue for any purpose other than the attempted effectuation of this Agreement, and shall not be considered as law of the case, *res judicata*, or collateral estoppel in this or any other proceeding. In addition, the status of the Action shall revert to the state they were in prior to the Settlement, and the agreements contained herein (including the agreement not to oppose the certification of a class) shall be null and void, shall not be cited or relied upon as an admission as to the Court's jurisdiction or the propriety of certification, and the Parties shall have all rights, claims, and defenses that they had or were asserting.

22. This Agreement shall be terminable at the option of any of the Parties (a) in the event the Court fails to enter the Preliminary Approval Order, Final Approval Order or order contemplated by paragraph 13.3 above, or does so in a form different from the forms contemplated by this Agreement (and the entered form is not otherwise agreed to by all of the Parties); (b) if this Agreement becomes null and void in accordance with paragraph 21 above; or (c) as otherwise provided in this Agreement. This Agreement also shall be terminable upon the mutual agreement of the Representative Plaintiffs and OCO.

23. The obligations of OCO with respect to the provision of the Settlement Benefits, its activities with respect to the Class Member List, or its assistance to the Settlement Administration therewith, and its service, acts, or omissions as Settlement Administrator (if any), shall be performed reasonably and in good faith, subject to the further provision that the terms of the Settlement and any Court orders shall control.

24. This Agreement is intended to and shall be governed as if a contract executed under the laws of the State of California.

25. The terms and conditions set forth in this Agreement constitute the complete and exclusive agreement between the Parties with respect to Settlement of the Action, and may not

be contradicted by evidence of any prior or contemporaneous agreement, and no extrinsic evidence may be introduced in any judicial proceeding to interpret this Agreement. Any modification of this Agreement must be confirmed in a writing signed by Plaintiffs' Counsel and OCO's Counsel.

26. This Agreement shall inure to the benefit of the respective heirs, successors, and assigns of the Parties, the Released Parties, and the beneficiaries of the Release, and the Released Parties and the beneficiaries of the Release shall be deemed to be intended third party beneficiaries of this Agreement and, once approved by the Court, of the Settlement.

27. The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

28. This Agreement shall become effective upon its execution by all of the Parties and counsel for all of Parties. The Parties and their counsel may execute this Agreement in counterparts. Each counterpart shall be deemed to be an original, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

29. Although the Court shall enter a Judgment, the Court shall retain jurisdiction over the interpretation, effectuation, enforcement, administration, and implementation of this Agreement.

30. List of Exhibits:

30.1. Exhibit A – Class Notice


30.2. Exhibit B – proposed Preliminary Approval Order

30.3. Exhibit C – proposed Final Approval Order


[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below.

**For Plaintiffs and the Class:**

  
\_\_\_\_\_  
Authorized Representative of  
Ryoo Dental, Inc.

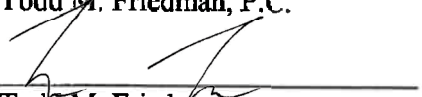
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Richard Marcus

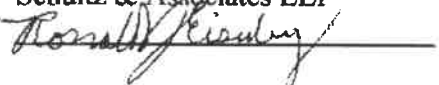
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Farmer, Jaffe, Weissing,  
Edwards, Fistos & Lehrman, P.L.  
*Seth Lehrman*  
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Seth Lehrman

Date: 10/6/2017

Todd M. Friedman, P.C.  
  
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Todd M. Friedman

Date: 10/10/2017

Schultz & Associates LLP  
  
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Ronald J. Eisenberg

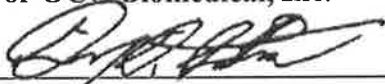
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\_\_\_\_\_  
Ross Schmierer

Date: 10/9/17

Plaintiffs' Counsel and Class Counsel

**For OCO Biomedical, Inc.**



Date: 10/09/2017

Authorized Representative  
OCO Biomedical, Inc.

David D. Dalise, DDS President/CEO

Printed Name and Title



Date: 10-10-17

Esteban Morales

Counsel for OCO Biomedical, Inc.  
MINTZ LEVIN COHN FERRIS  
GLOVSKY AND POPEO, P.C.



# EXHIBIT "A"

**THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF  
CALIFORNIA**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- **A settlement will provide \$275,000 to pay claims to persons that OCO Biomedical, Inc. (“OCO”) has identified as having been sent a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of OCO on or after March 18, 2012, as well as attorneys’ fees, expenses, and costs.**
- **The amount claimants will receive will depend upon the number of persons who submit valid claim forms pursuant to this Notice.**
- **The settlement resolves a dispute over whether such facsimile transmissions violated the federal Telephone Consumer Protection Act, which prohibits the transmission of certain facsimile advertisements.**
- **The two sides disagree on whether plaintiffs and the class could have prevailed at trial.**
- **Your legal rights are affected whether you act, or don't act. Read this notice carefully.**

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

**SUBMIT A CLAIM FORM**      Receive a payment.

**EXCLUDE YOURSELF**      Receive no payment. This option allows you to participate in other lawsuits against OCO based on the legal claims in this case.

**OBJECT**      Write to the Court about why you don't like the settlement.

**GO TO A HEARING**      Ask to speak in Court about the fairness of the settlement.

**DO NOTHING**      Receive no payment. Give up rights.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals are resolved. Please be patient.

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## **BASIC INFORMATION**

### **1. What is this lawsuit about?**

You received this notice because records indicate that a facsimile was sent to you by or on behalf of OCO on or after March 18, 2012.

### **2. What is this lawsuit about?**

On behalf of themselves and a class of similarly situated people, the plaintiffs, Richard Marcus and Ryoo Dental, Inc., allege that OCO sent unsolicited facsimile advertisements in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

### **3. Why is this a class action?**

In a class action, one or more people called Class Representatives (in this case Richard Marcus and Ryoo Dental, Inc.) sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. U.S. District Court Judge David O. Carter is presiding over this class action.

### **4. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Defendant. The Plaintiffs think they could have won the statutory amount of between \$500 and \$1,500 for each fax for each class member had they won at trial. The Defendant thinks the Plaintiffs would not have won anything at trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of further litigation and trial, and the people involved will get compensation. The Class Representatives and all parties involved think that a settlement is the best resolution for all Class Members.

## **WHO IS IN THE SETTLEMENT**

To see if you will get money from this settlement, you first have to decide if you are a Class Member.

### **5. How do I know if I am a part of the settlement?**

Judge Carter decided that everyone who fits this description is a Class Member:

All persons or business entities who were sent a telephone facsimile message of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of OCO Biomedical, Inc. on or after March 18, 2012.

If you received this notice, then you are a class member.

### **6. Are there exceptions to being included?**

You are not a Class Member if you were not sent a facsimile advertisement by or on behalf of OCO during the time listed in the above description.

**7. I'm still not sure if I am included.**

If you are still not sure whether you are included, you can ask for free help. You can call \_\_\_\_\_ for more information.

**THE SETTLEMENT BENEFITS WHAT YOU GET**

**8. What does the settlement provide?**

OCO has agreed to create a settlement fund of \$275,000.00 to be divided as follows: to all Class Members who send in a valid claim form; to Class Counsel; and to the Settlement Administrator.

**9. How much will my payment be?**

Depending on how many of the class members return claim forms, each claimant may receive more or less money, so your share of the fund will depend on the number of valid claim forms that Class Members send in, and the amounts awarded to the Class Representatives, Class Counsel, and the Settlement Administrator.

OCO has agreed to provide class benefits of \$275,000.00. All costs of notice, administration, class representative incentive award and attorney's fees for class counsel shall come from this amount. The \$275,000.00 distribution pays for: (a) first, notice and settlement administration expenses; (b) second, for class attorneys' fees, expenses, and costs; (c) third, for class representative incentive awards; (d) fourth, a class recovery on a pro rata basis per claiming class member.

**HOW YOU GET A PAYMENT SUBMITTING A CLAIM FORM**

**10. How much will my payment be?**

To qualify for payment, you must send in a valid claim form. A claim form is attached to this Notice. Read the instructions carefully, fill out the form, include all the information the form asks for, sign it, and mail it postmarked no later than \_\_\_\_\_.

**11. How much will my payment be?**

The Court will hold a hearing on \_\_\_\_\_ to decide whether to approve the settlement. If Judge Carter approves the settlement, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a claim form will be informed of the progress of the settlement on the Settlement Administrator's website. Please be patient.

**12. How much will my payment be?**

Unless you exclude yourself, you are staying in the class and agreeing to the settlement, and that means that you can't sue, continue to sue, or be part of any other lawsuit against OCO based on the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the claim form, you will agree to a "Release of Claims." The exact release is available in the settlement agreement, which is posted on the website listed herein.



## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue OCO, on your own, based on the legal issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself, or it is sometimes referred to as opting out of the settlement Class.

### **13. How do I get out of the settlement?**

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *Ryoo Dental, Inc. and Richard Marcus v. OCO Biomedical, Inc.* settlement. Be sure to include your name, address, telephone number, email and your signature. You must mail your exclusion request postmarked no later than \_\_\_\_\_, to the following address:

[Administrator]

### **14. If I don't exclude myself, can I sue OCO for the same thing later?**

If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue OCO in the future based on the legal issues in this case.

### **15. If I exclude myself, can I get money from this settlement?**

No. If you exclude yourself, do not send in a claim form to ask for any money.

## THE LAWYERS REPRESENTING YOU

### **16. Do I have a lawyer in the Case?**

The Court asked the law firms of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. (in Fort Lauderdale, Florida); Todd M. Friedman, P.C. (in Los Angeles, California), Schultz & Associates LLP (in Chesterfield, Missouri); and DeNittis, Osefchen Prince, P.C. (in Marlton, New Jersey), to represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **17. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to \$68,750 to them for attorneys' fees, up to \$12,000 for actual costs and expenses incurred, and payment of \$5,000 each to Richard Marcus and Ryoo Dental, Inc., for their services as Class Representatives. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. OCO has agreed not to oppose these fees and expenses. The cost of notice and administration, attorneys' fees, expenses, and costs, and the service awards are deducted from the Settlement Fund.

### OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

#### 18. How do I tell the Court that I don't like the settlement?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *Ryoo Dental, Inc. and Richard Marcus v. OCO Biomedical, Inc.* Be sure to include your name, address, telephone number, email address, your signature, and the reasons you object to the settlement. Mail the objection to these three different places postmarked no later than \_\_\_\_\_:

U.S. District Court Ronald Reagan Federal Building Attn. Judge Carter 411 West Fourth Street Santa Ana, CA, 92701	Seth M. Lehrman Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. 425 North Andrews Avenue Suite 2 Fort Lauderdale, FL 33301	Joshua Briones Esteban Morales Mintz Levin Cohn Ferris Glovsky and Popeo PC 2029 Cenury Park East Suite 1370 Los Angeles, CA 90067
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Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

#### 20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at \_\_\_\_\_ AM on \_\_\_\_\_ at the United States District Court for the Central District of California, Ronald Reagan Federal Building, 411 West Fourth Street, Santa Ana, California, 9<sup>th</sup> floor in courtroom 9D. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Carter will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

#### 21. Do I have to come to the Hearing?

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

**22. May I speak at the Hearing?**

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your “Notice of Intention to Appear in Ryoo Dental, Inc. and Richard Marcus v. OCO Biomedical, Inc.” Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than \_\_\_\_\_ and be sent to all of the addresses in question 18. You cannot speak at the hearing if you excluded yourself.

**IF YOU DO NOTHING**

**23. What happens if I do nothing at all?**

If you do nothing, you will get no money from this settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against OCO based on the legal issues released in this case.

**GETTING MORE INFORMATION**

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to \_\_\_\_\_.

**24. How do I get more information?**

You can call \_\_\_\_\_ or write to \_\_\_\_\_. Please do not contact Defense Counsel or the Court with any questions.

DATE:

***RYOO DENTAL, INC. and MARCUS v. OCO BIOMEDICAL, INC.***  
**SETTLEMENT CLAIM FORM**

**Your Information**

1. Your name: \_\_\_\_\_
- Business Name (if any): \_\_\_\_\_
2. Address: \_\_\_\_\_
- City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_
3. Telephone Number: \_\_\_\_\_
4. Fax Number: \_\_\_\_\_
5. Email: \_\_\_\_\_

**Certification**

Under 28 U.S.C. § 1746, I declare under penalty of perjury that: By submitting this claim form, I certify that the information I have provided herein is true and correct to the best of my personal knowledge and belief. I also certify that I received one or more telephone facsimile messages of material advertising the commercial availability or quality of any property, goods, or services by or on behalf of OCO Biomedical, Inc. on or after March 18, 2012. I understand under the Settlement Agreement I am forever releasing and waiving any right to seek compensation or make any claim regarding facsimile advertisements sent to me by or on behalf of OCO Biomedical, Inc.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

Return the Claim Form to:

[Administrator]

**Your mailed claim form must be postmarked on or before \_\_\_\_\_.**

YOUR CLAIM FORM WILL NOT BE RETURNED TO YOU. PLEASE RETAIN A COPY FOR YOUR RECORDS. ACCURATE PROCESSING OF CLAIMS MAY TAKE A SIGNIFICANT AMOUNT OF TIME. THANK YOU IN ADVANCE FOR YOUR PATIENCE.

# EXHIBIT "B"

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

RYOO DENTAL, INC. d/b/a RYOO  
DENTAL and RICHARD MARCUS,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

OCO BIOMEDICAL, INC.,

Defendant.

Case No. 8:16-cv-001626-DOC-KES

Judge: Honorable David O. Carter  
Room: 9C

**PRELIMINARY APPROVAL  
ORDER**



1 WHEREAS, this Action is a putative class action under the Telephone  
2 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*;

3 WHEREAS, Plaintiffs Richard Marcus and Ryoo Dental, Inc. (“Plaintiffs”)  
4 have filed a Motion for Preliminary Approval of a Class Wide Settlement (the  
5 “Motion”), which included a Settlement Agreement<sup>1</sup> (the “Settlement Agreement”)  
6 which, together with the exhibits thereto, sets forth the terms and conditions for the  
7 settlement and release of certain claims, on a class wide basis, against OCO  
8 Biomedical Inc. (“OCO”), as more fully set forth below;

9 WHEREAS, the Court having carefully considered the Motion and the  
10 Settlement Agreement and all of the files, records, and proceedings herein, and it  
11 appearing to the Court that upon preliminary examination the Settlement Agreement  
12 appears fair, reasonable and adequate, and that the proposed plan of notice to the  
13 class is the best notice practicable under the circumstances and consistent with Due  
14 Process and Federal Rule of Civil Procedure 23, and that a hearing should and will be  
15 held after notice to the Class to confirm that the Settlement Agreement is fair,  
16 reasonable, and adequate, and to determine whether a judgment approving settlement  
17 and order of dismissal should be entered in this action based upon the Settlement  
18 Agreement;

19 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

20 1. For purposes of settlement only, the Court has jurisdiction over the  
21 subject matter of this action and personal jurisdiction over the parties and the  
22 members of the Class described below.

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<sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same definition  
28 as set forth in the Settlement Agreement (ECF       ).

**Certification of Settlement Class**

2           2.     Under Rule 23(b)(3) of the Federal Rules of Civil Procedure, and for the  
3 purposes of settlement only, the “Class” is preliminarily certified, consisting of the  
4 following class:

5                 All persons or business entities who were sent a telephone  
6 facsimile message of material advertising the commercial  
7 availability or quality of any property, goods, or services by  
8 or on behalf of OCO Biomedical Inc. on or after March 18,  
9 2012.

10           3.     All people and business entities who are members of the Class are  
11 collectively the “Settlement Class Members” or individually a “Settlement Class  
12 Member.”

13           4.     For purposes of settlement only, the Court finds that the prerequisites for  
14 a class action under Federal Rules of Civil Procedure 23(a) and (b)(3) have been  
15 preliminarily satisfied in that: (a) the number of Settlement Class Members is so  
16 numerous that joinder of all members thereof is impracticable; (b) there are questions  
17 of law and fact common to the Settlement Class; (c) the claims of the class  
18 representative are typical of the claims of the respective classes within the Settlement  
19 Class they seek to represent; (d) the class representative will fairly and adequately  
20 represent the interests of the Settlement Class; (e) the questions of law and fact  
21 common to the Settlement Class Members predominate over any questions affecting  
22 only individual Settlement Class Members; and (f) a class action is superior to other  
23 available methods for the fair and efficient adjudication of the controversy. The  
24 Court further finds, for purposes of settlement only, that: (A) the members of the  
25 class have a limited interest in individually prosecuting the claims at issue; (B) the  
26 Court is satisfied with Class Counsel’s representation that they are unaware of any  
27 other litigation commenced regarding the claims at issue by members of the  
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1 Settlement Class; (C) it is desirable to concentrate the claims in this forum; and (D) it  
2 is unlikely that there will be difficulties encountered in administering this Settlement.

3 5. Under Federal Rule of Civil Procedure 23, and for settlement purposes  
4 only, plaintiffs Richard Marcus and Ryoo Dental, Inc. are hereby appointed as class  
5 representatives and Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., Todd  
6 M. Friedman, P.C., Schultz & Associates LLP, and DeNittis, Osefchen Prince, P.C.  
7 hereby are appointed as Class Counsel.

8 6. The foregoing determination regarding class certification is for purposes  
9 of settlement only. The Court recognizes that, under the Settlement Agreement, OCO  
10 retains the right to dispute that a class may be certified in this case, should the  
11 Settlement not be finally approved. Therefore, as more fully set forth below, if the  
12 Settlement is not finally approved, and litigation resumes, this preliminary finding  
13 regarding class certification shall be of no further force or effect whatsoever, and this  
14 Order will be vacated in its entirety.

15 **Notice and Administration**

16 7. The Court hereby approves of Kurtzman Carson Consultants, LLC, as  
17 claims administrator to perform the duties of the Claims Administrator set forth in the  
18 Settlement Agreement, including providing Notice to Settlement Class Members, to  
19 perform such other functions and duties of the administrator as are set forth in the  
20 Settlement Agreement, and to provide such administration services as are reasonably  
21 necessary to facilitate the completion of the Settlement.

22 8. The Court has carefully considered the plan for notice set forth in the  
23 Settlement Agreement, including receiving briefs on the issue of the propriety of the  
24 notice. The Court finds that the form and method set forth or identified in the  
25 Settlement Agreement of notifying the Settlement Class, and the members thereof, of  
26 the Settlement and its terms and conditions constitutes the best notice practicable  
27 under the circumstances, including individual notice to all Settlement Class Members  
28 who could be identified through reasonable effort, and satisfies fully the requirements

1 of Rule 23 of the Federal Rules of Civil Procedure, the requirements of due process  
2 and any other applicable law, such that the Settlement Agreement and final judgment  
3 will be binding on all Class Members.

4 9. The Court hereby approves the form, content and requirements of the  
5 Class Notice annexed to the Settlement Agreement as Exhibit A. The Court approves  
6 the regime for notice set forth in the Settlement Agreement. Claims Administrator  
7 shall cause the Class Notice to be emailed or mailed on or before [REDACTED], to the  
8 individuals that OCO identified as Class Members, which the Court finds constitutes  
9 reasonable effort to identify Settlement Class Members for purposes of making  
10 individual notice.

11 10. Settlement Class Members who wish to receive benefits under the  
12 Settlement Agreement must complete and submit a claim form in accordance with the  
13 instructions provided therein. The Court hereby approves as to form and content the  
14 claim form attached to the Settlement Agreement along with the Class Notice as  
15 Exhibit A, which shall be included in the direct notice package, and as the Claim  
16 Form attached to the Settlement Agreement. All Claim Forms must be postmarked or  
17 received by the Claims Administrator no later than [REDACTED].

18 11. All costs of providing notice to the Settlement Class, processing claim  
19 forms and administering distributions from the Settlement Fund according to a Court-  
20 approved procedure in the Final Approval Order, shall be paid out of the Settlement  
21 Fund, as provided by the Settlement Agreement.

22 **Exclusion & “Opt-Outs”**

23 12. Settlement Class Members shall be bound by all determinations and  
24 orders pertaining to the Settlement, including the release of all claims to the extent set  
25 forth in the Settlement Agreement, whether favorable or unfavorable, unless such  
26 persons request exclusion from the Settlement Class in a timely and proper manner,  
27 as hereinafter provided. Settlement Class Members who do not timely and validly  
28 request exclusion shall be so bound even if they have previously initiated or

1 subsequently initiate individual litigation or other proceedings against OCO relating  
2 to the claims released pursuant to or covered by the terms of the Settlement.

3 13. A Settlement Class Member wishing to make a request for exclusion  
4 from the Settlement Class shall mail the request in written form, by first class mail,  
5 postage prepaid, and postmarked no later than \_\_\_\_\_, to the Claims  
6 Administrator at the address specified in the Notice. In the written request for  
7 exclusion, the Settlement Class Member must state their full name, address, telephone  
8 numbers, and whether each telephone number is a cellular phone or a residential  
9 landline. Further, the Settlement Class Member must include a statement in the  
10 written request for exclusion that they wish to be excluded from the Settlement. The  
11 request for exclusion shall not be effective unless the request for exclusion provides  
12 the required information and is made within the time stated above, or the exclusion is  
13 otherwise accepted by the Court. No Settlement Class Member, or any person acting  
14 on behalf of or in concert or in participation with that Settlement Class Member, may  
15 request exclusion of any other Settlement Class Member from the Settlement Class.

16 14. Settlement Class Members who opt out of the Settlement will relinquish  
17 their rights to benefits under the Settlement and will not release their claims.  
18 However, Settlement Class Members who fail to submit a valid and timely request to  
19 exclude themselves from the class on or before the dates specified herein shall be  
20 bound by all terms of the Settlement Agreement and Final Approval Order, regardless  
21 of whether they have requested exclusion from the Settlement Agreement.

22 15. The Claims Administrator will promptly provide all Parties with copies  
23 of any opt-out requests, and Plaintiffs shall file a list of all who have opted out with  
24 the Court no later than ten (10) calendar days prior to the Final Approval Hearing.

### 25 **Objections**

26 16. Any member of the Settlement Class who is not excluded from the  
27 Settlement Class and who objects to the approval of the proposed settlement must file  
28 with the Court and serve on all Parties a written statement with his or her full name,

1 address, telephone numbers that s/he maintains was called, all grounds for the  
2 objection with factual and legal support for the stated objection, the identity of any  
3 witnesses they may call to testify and exhibits they intend to introduce into evidence  
4 at the Final Approval Hearing, which shall be attached. A member of the Settlement  
5 Class may appear at the Final Approval Hearing in person or through counsel to show  
6 cause why the proposed settlement should not be approved as fair, reasonable, and  
7 adequate. Attendance at the hearing is not necessary; however, persons wishing to be  
8 heard orally in opposition to the approval of the Settlement and/or the request for  
9 attorneys' fees and/or the request for compensation awards to the Class  
10 Representatives are required to indicate in their written objection their intention to  
11 appear at the Fairness Hearing on their own behalf or through counsel.

12 17. The Court will consider comments and/or objections to the Settlement,  
13 the award of attorneys' fees and reimbursement of expenses, and the service award to  
14 the Class Representatives only if, on or before \_\_\_\_\_, such comments or  
15 objections and any supporting papers are filed in writing with the Clerk of this Court.  
16 No Settlement Class Member shall be entitled to be heard and no objection shall be  
17 considered unless these requirements set forth in this Order are satisfied.

18 18. Any Settlement Class Member who does not opt out and/or make his  
19 objection to the Settlement in the manner provided herein shall be deemed to have  
20 waived any such objection by appeal, collateral attack, or otherwise, and shall be  
21 bound by the Settlement Agreement, the releases contained therein, and all aspects of  
22 the Final Approval Order.

23 **Final Approval Hearing**

24 19. The Federal Rule of Civil Procedure 23(e) Final Approval Hearing is  
25 hereby scheduled to be held before the Court on \_\_\_\_\_ at \_\_\_\_\_ am for the  
26 following purposes:

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- 1 (a) to finally determine whether the applicable prerequisites for  
2 settlement class action treatment under Federal Rules of Civil Procedure  
3 23(a) and (b) are met;
- 4 (b) to determine whether the Settlement is fair, reasonable and  
5 adequate, and should be approved by the Court;
- 6 (c) to determine whether the judgment as provided under the  
7 Settlement Agreement should be entered, including a bar order  
8 prohibiting Settlement Class Members from further pursuing claims  
9 released in the Settlement Agreement;
- 10 (d) to consider the application for an award of attorneys' fees,  
11 costs, and expenses of Class Counsel;
- 12 (e) to consider the application for incentive awards to the class  
13 representatives;
- 14 (f) to consider the distribution of the Settlement Benefits under  
15 the terms of the Settlement Agreement; and
- 16 (g) to rule upon such other matters as the Court may deem  
17 appropriate.

18 20. Briefs and papers in support of the final approval of the proposed  
19 settlement shall be filed no later than fourteen (14) calendar days before the Final  
20 Approval Hearing. The Final Approval Hearing may be postponed, adjourned,  
21 transferred or continued by order of the Court without further notice to the Settlement  
22 Class. At, or following, the Final Approval Hearing, the Court may enter a judgment  
23 approving the Settlement Agreement and Final Approval Order in accordance with  
24 the Settlement Agreement that will adjudicate the rights of all class members.

25 21. On or before fourteen (14) calendar days prior to the Final Approval  
26 Hearing, Class Counsel shall file and serve (i) a motion for final approval; (ii) any  
27 application for award of attorneys' fees and expenses; and (iii) any application for  
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1 compensation awards to the Class Representatives. For clarity, the deadlines the  
2 Parties shall adhere to are as follows:

3 **Class Notice Mailed/Emailed by:** \_\_\_\_\_

4 **Objection/Exclusion:** \_\_\_\_\_

5 **Claim Deadline:** \_\_\_\_\_

6 **Final Approval Hearing:** \_\_\_\_\_ at \_\_\_ am

7 22. Settlement Class Members do not need to appear at the Final Approval  
8 Hearing or take any other action to indicate their approval.

9 **Further Matters**

10 23. All discovery and other pretrial proceedings in the Action as between the  
11 Plaintiffs and OCO are stayed and suspended until further order of the Court except  
12 such actions as may be necessary to implement the Settlement Agreement and this  
13 Order.

14 24. Settlement Class Members shall be bound by all determinations and  
15 judgments in the Action concerning the Action and/or Settlement Agreement,  
16 whether favorable or unfavorable.

17 25. In the event that the Settlement Agreement is terminated under the terms  
18 of the Settlement Agreement, or for any reason whatsoever the approval of it does not  
19 become final and no longer subject to appeal, then: (i) the Settlement Agreement shall  
20 be null and void, including any provisions related to the award of attorneys' fees and  
21 expenses, and shall have no further force and effect with respect to any party in this  
22 Action, and shall not be used in this Action or in any other proceeding for any  
23 purpose; (ii) all negotiations, proceedings, documents prepared, and statements made  
24 in connection therewith shall be without prejudice to any person or party hereto, shall  
25 not be deemed or construed to be an admission by any party of any act, matter, or  
26 proposition, and shall not be used in any manner of or any purpose in any subsequent  
27 proceeding in this Action or in any other action in any court or other proceeding; and  
28

1 (iii) this Order shall be vacated and of no further force or effect whatsoever, as if it  
2 had never been entered.

3 26. The Court retains jurisdiction to consider all further matters arising out  
4 of or connected with the Settlement.

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6 DATED: \_\_\_\_\_

\_\_\_\_\_  
United States District Court Judge  
David O. Carter

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# EXHIBIT "C"

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

RYOO DENTAL, INC. d/b/a RYOO  
DENTAL and RICHARD MARCUS,  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

vs.

OCO BIOMEDICAL, INC.,

Defendant.

Case No. 8:16-cv-001626-DOC-KES

Judge: Honorable David O. Carter  
Room: 9C

**FINAL ORDER OF JUDGMENT  
AND DISMISSAL**

1 This matter coming to be heard on Plaintiffs' Richard Marcus and Ryoo  
2 Dental, Inc.'s Motion for Final Approval of Class Action Settlement ("Motion"), due  
3 and adequate notice having been given to the Class,<sup>1</sup> and the Court having considered  
4 all papers filed and proceedings in this matter, it is HEREBY ORDERED,  
5 ADJUDGED and DECREED as follows:

6 1. This Court has jurisdiction over the subject matter of the Action and  
7 personal jurisdiction over all parties to the Action, including all Class Members.

8 2. The Court preliminarily approved the Settlement Agreement by the  
9 Preliminary Approval Order dated \_\_\_\_\_, and notice was given to the  
10 Class under the terms of the Preliminary Approval Order.

11 3. The Court has read and considered the papers filed in support of the  
12 Motion, including the Settlement Agreement and the exhibits thereto, memoranda and  
13 arguments submitted on behalf of the Class and the defendants, and supporting  
14 declarations. The Court has also read and considered any written objections filed  
15 with the Clerk of the Court by Class Members. The Court held a hearing on  
16 \_\_\_\_\_, at which time the Parties and all other interested persons were afforded  
17 the opportunity to be heard in support of and in opposition to the Settlement.  
18 Furthermore, the Court finds that notice under the Class Action Fairness Act was  
19 effectuated on \_\_\_\_\_, and that ninety (90) days has passed without  
20 comment or objection from any governmental entity. The Court has received no  
21 objections from any person regarding this Settlement.

22 4. Based on the papers filed with the Court and the presentations made to  
23 the Court by the Parties and other interested persons at the hearing, the Court now  
24 gives final approval to the Settlement and finds that the Settlement is fair, adequate,  
25 reasonable, and in the best interests of the Class. Specifically, the complex legal and  
26 \_\_\_\_\_

27 <sup>1</sup> Unless otherwise defined herein, all capitalized terms have the same definition as  
28 set forth in the Settlement Agreement.

1 factual posture of the Action, and the fact that the Settlement is the result of arms'  
2 length negotiations presided over by a neutral mediator support this finding.

3 5. Under Federal Rule of Civil Procedure 23(c), the Court certifies, for  
4 settlement purposes only, the following "Class":

5 All persons or business entities who were sent a telephone facsimile  
6 message of material advertising the commercial availability or quality of  
7 any property, goods, or services by or on behalf of OCO Biomedical, Inc.  
8 on or after March 18, 2012.

9 6. Under Federal Rule of Civil Procedure 23, Plaintiffs Richard Marcus and  
10 Ryoo Dental, Inc. are hereby appointed as class representatives and Farmer, Jaffe,  
11 Weissing, Edwards, Fistos & Lehrman, P.L.; Todd M. Friedman, P.C., Schultz &  
12 Associates LLP; and DeNittis, Osefchen Prince, P.C. are appointed as Class Counsel.

13 7. With respect to the Class, this Court finds for settlement purposes only  
14 that: (a) the Class as defined above is so numerous that joinder of all members is  
15 impracticable; (b) there are questions of law or fact common to the Class; (c) the  
16 claims of the class representatives, identified above, are typical of the claims of the  
17 Class; (d) the class representatives will fairly and adequately protect the interests of  
18 the Class; (e) the questions of law or fact common to the members of the Class  
19 predominate over the questions affecting only individual members, and (f)  
20 certification of the Class is superior to other available methods for the fair and  
21 efficient adjudication of the controversy. The Court further finds that: (A) the  
22 members of the Class have a limited interest in individually prosecuting the claims at  
23 issue; (B) the Court is satisfied with Class Counsels' representation that they are  
24 unaware of any other litigation commenced regarding the claims at issue by members  
25 of the Class; (C) it is desirable claims described in the Settlement Agreement are  
26 released against the Released Parties to concentrate the claims in this forum; and (D)  
27 it is unlikely that there will be difficulties encountered in administering this  
28 Settlement.

1           8.     The Court has determined that the Class Notice given to the Class  
2 members, in accordance with the Preliminary Approval Order, fully and accurately  
3 informed members of the Class of all material elements of the Settlement and  
4 constituted the best notice practicable under the circumstances, and fully satisfied the  
5 requirements of Due Process, Federal Rule of Civil Procedure 23, and all applicable  
6 law.

7           9.     The Court finds that Defendant properly and timely notified the  
8 appropriate state and federal officials of the Settlement Agreement under the Class  
9 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715.

10          10.    The persons who made timely and valid requests for exclusion are  
11 excluded from the Class and are not bound by this Final Order of Judgment and  
12 Dismissal. Annexed hereto as Appendix \_\_\_ is a schedule of all such persons  
13 excluded from the Class.

14          11.    The Court orders the parties to the Settlement Agreement to perform  
15 their obligations thereunder. The Settlement Agreement shall be deemed  
16 incorporated herein as if explicitly set forth and shall have the full force of an order of  
17 this Court.

18          12.    The Court dismisses this Action with prejudice and without costs (except  
19 as otherwise provided herein and in the Settlement Agreement) as to Plaintiffs and all  
20 Class members. The Court adjudges that the released claims described in the  
21 Settlement Agreement are released against the Released Parties.

22          13.    The Court adjudges that the Plaintiffs and all Class Members shall be  
23 deemed to have fully, finally and forever released and relinquished their claims  
24 against the Released Parties, as specified in the Settlement Agreement.

25          14.    After the Effective Date, all Class Members, including Representative  
26 Plaintiffs, are hereby permanently enjoined from commencing, prosecuting, or  
27 assisting in any suit against the Released Parties with respect to the fees, charges,  
28



1 conduct, services, acts, or omissions of the Released Parties relating to all matters  
2 within the scope of the releases contained in the Settlement Agreement.

3 15. The Court further adjudges that upon the Effective Date, the above-  
4 described release and the Settlement Agreement will be binding on, and have res  
5 judicata and preclusive effect in all pending and future lawsuits or other proceedings  
6 maintained by or on behalf of, Plaintiffs and all other Class Members, and their  
7 respective affiliates, assigns, heirs, executors, administrators, successors and agents.  
8 The Released Parties may file the Settlement Agreement and/or this Final Order of  
9 Judgment and Dismissal in any action or proceeding that may be brought against  
10 them in order to support a defense or counterclaim based on principles of res judicata,  
11 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any  
12 other theory of claim preclusion or issue preclusion or similar defense or  
13 counterclaim.

14 16. Without affecting the finality of this Final Order of Judgment and  
15 Dismissal in any way, the Court retains jurisdiction over: (a) implementation and  
16 enforcement of the Settlement Agreement until the final judgment contemplated  
17 hereby has become effective and each and every act agreed to be performed by the  
18 parties hereto pursuant to the Settlement Agreement have been performed; (b) any  
19 other action necessary to conclude the Settlement and to administer, effectuate,  
20 interpret and monitor compliance with the provisions of the Settlement Agreement;  
21 and (c) all parties to this Action and the Settlement Class members for the purpose of  
22 implementing and enforcing the Settlement Agreement, including the bar order set  
23 forth in paragraph 14 above.

24 17. The Court approves payment of attorneys' fees, costs and expenses to  
25 Class Counsel in the amount of                     . This amount shall be paid from the  
26 Settlement Benefits in accordance with the terms of the Settlement Agreement. The  
27 Court, having considered the materials submitted by Plaintiffs' counsel in support of  
28 final approval of the Settlement and their request for attorneys' fees, costs, and

1 expenses and in response to the filed objections thereto, finds the award of attorneys’  
2 fees, costs, and expenses appropriate and reasonable for the following reasons: First,  
3 the Court finds that the quantifiable value of the Settlement is \$275,000. The Court  
4 therefore considers the Settlement to provide substantial benefits to the Class.  
5 Second, the Court finds the payment fair and reasonable in light of the substantial  
6 work performed by Plaintiffs’ counsel. Third, the Court concludes that the  
7 Settlement was negotiated at arms’ length and without collusion, and that negotiation  
8 of the attorneys’ fees followed agreement on the settlement benefits for Class  
9 Members. Finally, the Court notes that the class notice specifically and clearly  
10 advised the class that Class Counsel would seek the award.

11 18. The Court approves the incentive fee payment of \$5,000 for Richard  
12 Marcus and \$5,000 for Ryoo Dental, Inc., and specifically finds such amounts to be  
13 reasonable in light of the service performed by Plaintiffs for the class. This amount  
14 shall be paid from the Settlement Benefits in accordance with the terms of the  
15 Settlement Agreement.

16 19. Neither this Final Order of Judgment and Dismissal nor the Settlement  
17 Agreement shall be construed or used as an admission or concession by or against  
18 either OCO Biomedical, Inc. (“OCO”) or any of the Released Parties of any fault,  
19 omission, liability, or wrongdoing, or the validity of any released claims. This Final  
20 Order of Judgment and Dismissal is not a finding of the validity or invalidity of any  
21 claims in this Action or a determination of any wrongdoing by OCO or any of the  
22 Released Parties. The final approval of the Settlement Agreement does not constitute  
23 any opinion, position, or determination of this Court, one way or the other, as to the  
24 merits of the claims and defenses of Plaintiffs, the Class Members, or OCO.

25 20. Any objections to the Settlement Agreement are overruled and denied in  
26 all respects. The Court finds that no just reason exists for delay in entering this Final  
27 Order of Judgment and Dismissal. Accordingly, the Clerk is hereby directed  
28 forthwith to enter this Final Order of Judgment and Dismissal.

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DATED: \_\_\_\_\_

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United States District Court Judge  
David O. Carter