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MYMEDICALRECORDS, INC.

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11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 MYMEDICALRECORDS, INC., a) Case No. 2:13-cv-9214
14 Delaware corporation,)
15 Plaintiff,) **COMPLAINT FOR**
16 vs.) **PATENT INFRINGEMENT**
17 WALGREEN CO., an Illinois corporation,)
18 Defendant.) **DEMAND FOR JURY TRIAL**

19
20 Plaintiff MyMedicalRecords, Inc. (“MMR”) brings this Complaint against
21 Defendant Walgreen Co. (“Defendant” or “Walgreens”), alleging as follows:

22
23 **PARTIES**

- 24 1. Plaintiff MMR is a Delaware corporation with its principal place of
25 business in Los Angeles, California.
26 2. On information and belief, Defendant Walgreen Co. is an Illinois
27 corporation with its principal place of business in Deerfield, Illinois.
28

1 **JURISDICTION, VENUE AND JOINDER**

2 3. This action arises under the patent laws of the United States, Title 35 of
3 the United States Code. This Court has subject matter jurisdiction pursuant to 28
4 U.S.C. §§ 1331 and 1338(a).

5 4. This Court has personal jurisdiction over Defendant. Defendant has
6 conducted extensive commercial activities and continues to conduct extensive
7 commercial activities within the State of California. On information and belief,
8 Walgreens is the largest drugstore chain in the United States and operates drugstores
9 in all 50 states, including numerous locations in California and in this judicial
10 district. Defendant, directly and/or through intermediaries (including Defendant
11 entities, subsidiaries, distributors, sales agents, partners and others), manufactures,
12 ships, distributes, offers for sale, sells, and/or advertises its products (including, but
13 not limited to, the products and services that are accused of infringement in this
14 lawsuit) in the United States and in the State of California. Defendant (directly
15 and/or through intermediaries, including other Defendant entities subsidiaries,
16 distributors, sales agents, partners and others) has purposefully and voluntarily
17 placed one or more of its products and services accused of infringement in this
18 lawsuit, including those offered on Defendant’s websites, into the stream of
19 commerce with the expectation that the products and services will be purchased or
20 used by customers in California. Accordingly, Defendant has infringed MMR’s
21 patents within the State of California as alleged in more detail below.

22 5. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b).

23
24 **BACKGROUND**

25 6. MMR is a wholly owned operating subsidiary of MMRGlobal, Inc.
26 MMR provides various electronic solutions in the healthcare information technology
27 market (“Health IT”), including MyMedicalRecords, MyMedicalRecordsMD,
28 MMRPatientView and MyEsafeDepositBox.

1 7. MMR’s product known as MyMedicalRecords is a personal health
2 records solution (“PHR”) that enables individuals and families to safely maintain
3 their medical records and other important documents in one central location and
4 instantly access them anytime from anywhere in the world. The MyMedicalRecords
5 PHR is built on proprietary, patented technologies that facilitate, among other things,
6 documents, images and voicemail messages to be transmitted and stored using a
7 variety of methods, including fax, e-mail, phone, or file upload, creating an
8 integrated telecommunications platform that does not rely on any specific electronic
9 medical record (“EMR”) system to populate a user’s account. The product is
10 “untethered” providing the patient with significant benefits. Further, in the event of
11 an emergency or disaster, medical personnel and first responders can retrieve
12 potentially lifesaving information via a separate emergency login to the patient’s
13 PHR.

14 8. MyMedicalRecordsMD (“MMRPro”) is MMR’s professional solution
15 for healthcare providers, designed to give physicians and hospitals an easy and cost-
16 effective solution to digitizing paper-based medical records and sharing them with
17 patients in real time through an integrated patient portal, MMRPatientView.

18 9. MMR’s MyEsafeDepositBox service provides secure online storage for
19 vital financial, legal and insurance documents in addition to medical records using
20 the same patented technologies that drive the MyMedicalRecords PHR service.

21 10. MMR is the owner of eight issued patents covering innovations
22 regarding PHRs and the electronic exchange of medical records. The patents include
23 US Patent Nos. 8,117,045; 8,117,646; 8,121,855; 8,301,466; 8,321,240; 8,352,287;
24 8,352,288, and 8,498,883. MMR’s patents are generally directed to methods for
25 providing a user with the ability to access and collect personal health records
26 associated with the user in a secure and private manner, among other things. These
27 patents are relevant to the market for providing PHRs as required under current law,
28 among other things.

1 11. On information and belief, Walgreens is the nation’s largest drugstore
2 chain with fiscal 2012 sales of \$72 billion. Walgreens operates 8,061 drugstores in
3 all 50 states, the District of Columbia and Puerto Rico. Walgreens provides over 6
4 million customers with pharmacy, health and wellness services and advice.
5 Walgreens has expressed its “vision to become America’s first choice for health and
6 daily living.”

7 12. On information and belief, according to its public statements, Walgreens
8 is on a mission to “own well” and is undertaking various programs to do so,
9 including programs related to personal health records and prescription information.

10 13. On information and belief, Walgreens offers to its customers the ability
11 to access and manage secure customer information including certain personal health
12 records, such as prescriptions. As part of the prescription services it offers its
13 customers through its website and various other means including internet and mobile
14 applications (the “Manage Your Prescription Service”), Walgreens allows customers
15 to create a secure on-line account compliant with the Health Insurance Portability
16 and Accounting Act (“HIPAA”), with a user name and password associated with the
17 customer, among other things. The account is used to maintain and manage the
18 customer’s prescription information, including the type of prescription, the
19 prescription number, the date it was prescribed, the number of refills, and
20 notifications when those refills become available. This information is defined in part
21 as “Protected Health Information” or “PHI” on Walgreens’ website and in its Notice
22 of Privacy Practices. A customer may add all of his or her family members to the
23 account, including pets, and manage the entire family’s prescriptions from a single
24 account.

25 14. On information and belief, a physician or other healthcare provider that
26 writes a prescription can send it to Walgreens for inclusion in the customer’s account
27 by electronic means such as facsimile or email. In the alternative, the customer may
28 bring a written copy of the prescription to a Walgreens pharmacy and it will be added

1 to the customer's account. The number of different physicians whose prescriptions
2 can be managed through the Manage Your Prescription Service is not limited.
3 Further, the physicians need not be part of the same physician group or practice at
4 the same hospital. The Manage Your Prescription Service allows a customer to store
5 and manage all of his or her prescriptions, and is not linked to any physician,
6 physician group, hospital or clinic. The PHI stored as part of Walgreens' Manage
7 Your Prescription Service is independent from records stored by the physician or
8 healthcare provider.

9 15. Prior to the issuance of U.S Patent No. 8,498,883 (the '883 Patent) on
10 July 30, 2013, MMR filed a complaint against Walgreens for infringement of U.S.
11 Patent No. 8,301,466 (the '466 Patent) (United States District Court, Central District
12 of California, Case No. CV 13-00631-ODW (SHx)). After the issuance of the '883
13 Patent, MMR and Walgreens stipulated to an amendment of that complaint to include
14 a claim of infringement regarding the '883 Patent. Although that stipulation was
15 ultimately denied by the Court, Walgreens was and has been on notice of the '883
16 Patent before this action was filed, by virtue of at least the parties' prior discussions
17 regarding issuance of the '883 Patent, MMR's discussions with Walgreens regarding
18 infringement of the '883 Patent, and Walgreens' prior stipulation and agreement that
19 claims for infringement of the '883 Patent may be added to the action asserting the
20 '466 Patent, including claims for direct, indirect and willful infringement.

21 16. Prior to the filing of this lawsuit, Walgreens was also aware that its
22 actions would induce infringement of the '883 Patent. Specifically, Walgreens has
23 provided instructions directing other entities specifically to use the infringing
24 Manage Your Prescription Service in a manner known to be infringing. For
25 example, Walgreens maintains a website at www.walgreens.com, which includes
26 instructions specifically directing users to access, collect, and/or manage drug
27 prescriptions associated with the user in a secure and private manner, constituting
28 infringement of the '883 Patent. Walgreens provides those instructions on its

1 websites, including at www.walgreens.com and www.walgreens.com/pharmacy.
2 Walgreens knows its actions induce infringement of the '883 Patent, because, for
3 example, it has been informed that use of the Manage Your Prescription service
4 infringes the '883 Patent.

5 17. Walgreens was also aware that the Manage Your Prescription service
6 has no substantial non-infringing uses, and that it is especially made or adapted for
7 use in infringement of the '883 Patent. Since the Manage Your Prescription service
8 is specifically designed to allow patients to manage their care by providing access to
9 their personal health records, including prescriptions, Walgreens is aware that the
10 Manage Your Prescription service has no substantial uses other than in providing
11 users with the ability to access, collect, and/or manage drug prescriptions associated
12 with the user in a secure and private manner, constituting infringement of the '883
13 Patent. Walgreens is aware that the Manage Your Prescription service is made and
14 adapted for use in providing users with the ability to access, collect, and/or manage
15 drug prescriptions associated with the user in a secure and private manner, and
16 therefore that they are especially made or adapted for use in infringement of the '883
17 Patent.

18
19 **FIRST CLAIM FOR RELIEF**

20 **(Patent Infringement as to the '883 Patent)**

21 18. Plaintiff incorporates paragraphs 1 through 17 of this complaint as if set
22 forth in full herein.

23 19. MMR is the owner of the entire right, title, and interest in and to U.S.
24 Patent No. 8,498,883 (the '883 Patent), entitled "Method for Providing a User with a
25 Service for Accessing and Collecting Prescriptions." The '883 Patent was duly and
26 legally issued on July 30, 2013 to MMR as assignee of inventor Robert H. Lorsch. A
27 true and correct copy of the '883 Patent is attached as Exhibit A.
28

- 1 3. That Defendant has induced the infringement of the '883 Patent;
- 2 4. That Defendant's infringement be adjudged willful and deliberate;
- 3 5. That Defendant and any of its affiliates, subsidiaries, officers, directors,
- 4 employees, agents, representatives, successors, assigns, and all those acting in
- 5 concert with it or on its behalf, including customers, be enjoined from infringing,
- 6 inducing others to infringe or contributing to the infringement of the '883 Patent;
- 7 6. For damages, according to proof, for Defendant's infringement, together
- 8 with pre-judgment and post-judgment interest, as allowed by law and that such
- 9 damages be trebled as provided by 35 U.S.C. § 284;
- 10 7. That this Court determine that this is an exceptional case under 35
- 11 U.S.C. § 285 and an award of attorneys' fees and costs to MMR is warranted; and
- 12 8. For such other and further relief as the Court may deem just and proper.

14 Dated: December 13, 2013

Respectfully submitted,

LINER GRODE STEIN YANKELEVITZ
SUNSHINE REGENSTREIF & TAYLOR LLP

By: /s/ Randall J. Sunshine
Randall J. Sunshine
Attorneys for MYMEDICALRECORDS,
INC.

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JURY DEMAND

Pursuant to Federal Rules of Civil Procedure Rule 38(b), Plaintiff MyMedicalRecords, Inc. respectfully demands a jury trial on any and all issues triable as of right by a jury in this action.

Dated: December 13, 2013

Respectfully submitted,

LINER GRODE STEIN YANKELEVITZ
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