

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

**CIVIL DIVISION
Docket No. _____**

IN RE: PFIZER INC.)
)
)

ASSURANCE OF DISCONTINUANCE

Vermont Attorney General Thomas J. Donovan, Jr. (the “Attorney general”) and Pfizer Inc. (“Pfizer” or “Respondent”) hereby agree to this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459. The parties enter into this AOD for the purpose of compromising and resolving disputed claims and to avoid further expense of protracted litigation.

I. REGULATORY FRAMEWORK

1. The Vermont Consumer Protection Act (“CPA”) prohibits “[u]nfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce.” 9 V.S.A. § 2453.
2. Violations of the CPA are subject to a civil penalty of up to \$10,000 for each unfair or deceptive act or practices. 9 V.S.A. § 2458(b)(1).
3. The Attorney General may also seek injunctive relief under the CPA. 9 V.S.A. § 2458(a).
4. The Vermont Consumer Protection Act authorizes the Attorney General to accept an AOD of any method, act, or practices in violation of the CPA, 9 V.S.A. from any person alleged to be engaged or to have been engaged in such method, act, or practice. 9 V.S.A. § 2459.

II. RESPONDENT

5. Respondent Pfizer Inc., (“Respondent” or “Pfizer”) is a Delaware corporation with its principal place of business located in New York, and includes its United States-based affiliates, subsidiaries, predecessors, successors, and assigns. For avoidance of doubt, Pfizer does not admit any violations of the CPA and does not admit any wrongdoing.

III. DEFINITIONS

The following definitions shall be used in construing this AOD:

6. “Clearly and Conspicuously” or “clear and conspicuous” shall mean that the statement, representation or term being disclosed is of such size, color, contrast and/or audibility and is presented so as to be readily noticed and understood by the consumer to whom it is disclosed. In addition to the foregoing, with regard to interactive media, the disclosure shall also be unavoidable (i.e., no click-through required to access it), and shall be presented prior to the consumer incurring any financial obligation.

7. “Consumer” shall mean a consumer located within the State of Vermont who utilized a Copayment Coupon during the Covered Conduct period, as defined herein.

8. “Copayment Coupons” or “Coupons” shall mean the drug coupons offered by Pfizer to assist eligible Consumers with some of their out-of-pocket costs associated with purchasing Estring®, Quillivant®, or Flector Patch® from at least 2014 through 2018. Many of these Coupons set forth that eligible consumers who are commercially-insured or uninsured would “PAY NO MORE THAN” certain amounts out-of-pocket, subject to certain terms and conditions.¹

¹ Pfizer’s Copayment Coupons are not valid for prescriptions that are eligible to be reimbursed, in whole or in part by Medicaid, Medicare, Tricare, or other federal or state healthcare programs.

9. “Covered Conduct” shall mean Pfizer’s offer of Copayment Coupons to eligible Consumers who were prescribed Estring®, Quillivant®, and Flector Patch® from at least 2014 through 2018, which was the subject of an investigation by the State pursuant to the CPA.

10. “Effective Date” shall mean the date on which each Party has executed and delivered this AOD to the other.

11. “Health Care Provider” or “HCP” shall mean any physician or other health care practitioner, who is licensed to provide health care services or to prescribe pharmaceutical products.

12. “Internet Coupons” shall mean Pfizer’s Copayment Coupons that were downloaded and/or printed from consumer websites that Pfizer maintained during the Covered Conduct period.

13. “Parties” shall mean Pfizer as defined herein and the Signatory Attorney General.

14. “Pfizer” shall mean Pfizer Inc., and its United States-based affiliates, subsidiaries, predecessors, successors, and assigns.

15. “Plastic Coupons” shall mean wallet-size plastic coupons cards provided to Consumers or a Health Care Provider.

16. “Signatory Attorney General” shall mean the Attorney General of Vermont or his authorized designee, who has agreed to this AOD.

IV. BACKGROUND

17. During the Covered Conduct period, Pfizer sold Estring®, (which treats moderate to severe symptoms of vulvar and vaginal atrophy due to menopause by releasing local estrogen therapy via a vaginal ring); Quillivant® XR and Quillichew ER® (which treat attention deficit hyperactivity disorder via a liquid formulation and chewable tablet, respectively) (Quillivant® XR

and Quillichew ER® are referred to collectively herein as “Quillivant®”²; and Flector Patch® (a prescription NSAID patch that treats acute pain due to minor strains, sprains, and bruises).

18. Pfizer occasionally offers copayment coupons to assist patients with some of their out-of-pocket costs associated with accessing certain important medicines. From at least 2014 - 2018, Pfizer made Copayment Coupons for Estring®, Quillivant®, and Flector Patch® available to Consumers. Many of those Copayment Coupons set forth that eligible Consumers would “PAY NO MORE THAN” a certain amount out-of-pocket, subject to certain “terms and conditions.” Although the Co-payment Coupons included terms and conditions describing the maximum potential savings and the possibility that out-of-pocket expenses could exceed the “PAY NO MORE THAN” amount listed on the face of the Copayment Coupon, these terms and conditions were not disclosed Clearly and Conspicuously.

19. In general, Consumers accessed Pfizer’s Copayment Coupons in two ways. First, these Consumers could have received wallet-size Plastic Coupon cards from their Health Care Providers. Second, these Consumers could have downloaded and printed paper Internet Coupons from consumer websites that Pfizer maintained. The Plastic Coupons and Internet Coupons both advertised the same offer; however, the Internet Coupons presented the terms and conditions differently than the Plastic Coupons.

20. While many Consumers paid less than or equal to the “PAY NO MORE THAN” amount that appeared on the relevant Pfizer Copayment Coupons, hundreds of Consumers paid more than the “PAY NO MORE THAN” amount indicated on the Copayment Coupons.

21. The above conduct violates the CPA, including 9 V.S.A. § 2453.

² Pfizer stopped selling Quillivant® in 2017.

22. In early 2018, Pfizer began changing the text of the “PAY NO MORE THAN” Copayment Coupons to say that patients could “PAY AS LITTLE AS” the listed amount.

23. While Pfizer does not admit any violations of the CPA and does not admit any wrongdoing, Pfizer is willing to enter into this AOD regarding the Covered Conduct in order to resolve the concerns of the Vermont Attorney General, under the CPA as to the matters addressed in this AOD and thereby avoid significant expense, inconvenience, and uncertainty.

24. Pfizer is entering into this AOD solely for the purpose of settlement, and nothing contained herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Pfizer expressly denies. Pfizer does not admit any violation of the CPA and does not admit any wrongdoing that was or could have been alleged by any Attorney General before the date of the AOD under those laws. No part of this AOD, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Pfizer. This document and its contents are not intended for use by any third party for any purpose.

25. This AOD shall not be construed or used as a waiver or limitation of any defense otherwise available to Pfizer in any other action, or of Pfizer’s right to defend itself from, or make any arguments in, any other private individual, regulatory, governmental, or class claims or suits relating to the subject matter or terms of this AOD. This AOD is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the foregoing, the State may file an action to enforce the terms of this AOD.

26. No part of this AOD shall create a private cause of action or confer any right to any third party for violation of any federal or state statute except that the State may file an action to enforce the terms of this AOD. It is the intent of the Parties that this AOD shall not be binding or

admissible in any other matter, including, but not limited to, any investigation or litigation, other than in connection with the enforcement of this AOD.

V. MONETARY TERMS

27. Pfizer shall pay a total of **\$34,564.59** to the State of Vermont. Said payment shall be used by the Vermont Attorney General to reimburse Consumers, attorneys' fees and other costs of investigation and litigation, or for any lawful purpose, at the sole discretion of the Vermont Attorney General and pursuant to the Constitution of the State of Vermont, Ch. II § 27 and 32 V.S.A. § 462.

28. Within thirty (30) days of receiving approval from the Court, Pfizer shall send initial payment to the State of Vermont of **\$30,000.00**.

29. The amount to be refunded and payable by Pfizer to Consumers, under this Consent Judgment, is **\$4,564.59**. Pfizer shall pay restitution to Vermont Consumers based on the first time each of those Consumers utilized a Copayment Coupon for Estring®, Quillivant®, and Flecten Patch® during the Covered Conduct period and paid more out-of-pocket than the “PAY NO MORE THAN” amount listed on their Coupon. Pfizer shall pay those Vermont Consumers as follows:

- a. A Consumer who utilized a Plastic Coupon and paid his or her pharmacy an amount exceeding the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon shall receive a restitution payment equal to 100% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.³

³ For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estring Plastic Coupon that stated, “Pay No More Than \$15” (subject to terms and conditions), that Consumer would receive \$5 in restitution under this Judgment.

- b. A Consumer who utilized an Internet Coupon and paid his or her pharmacy an amount exceeding the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon shall receive a restitution payment equal to 25% of his or her first-time payment in excess of the “PAY NO MORE THAN” amount.⁴
- c. If a Consumer utilized both Plastic and Internet Coupons during the Covered Conduct period, or used the same type of Coupon more than once during the Covered Conduct period, he or she will receive a restitution payment tied to the first time that Consumer paid his or her pharmacy an amount in excess of the “PAY NO MORE THAN” amount listed on his or her Copayment Coupon. No Consumer is entitled to more than one restitution payment per medicine under this Judgment.

30. Within thirty (30) days of the Effective Date, Pfizer shall provide to the State a list containing (a) the available names and addresses of Vermont Consumers who are entitled to a restitution payment under this Judgment; (b) the amounts to which those Consumers are entitled; and (c) whether those Consumers used a Plastic Coupon or Internet Coupon for the transaction at issue (the “Restitution List”).

31. Within fourteen (14) days of the date on which Pfizer provides the Restitution List, the State shall notify Pfizer that (i) it approves the Restitution List; or (ii) that the State has found an error or discrepancies in the Restitution List. Both parties shall work in good faith to resolve and or correct any discrepancies in the Restitution List.

⁴ For example, if a Consumer paid \$20 at the pharmacy counter when utilizing an Estrin Internet Coupon that stated, “Pay No More than \$15” (subject to terms and conditions), that Consumer would receive \$1.25 in restitution under this Judgment.

32. Within ninety (90) days of finalizing the Restitution List, Pfizer, or its vendor, will issue restitution payments by check according to the Restitution List. These Restitution payments will be accompanied by a letter to the Consumer that is substantially similar to the form attached as **Exhibit A**. Once sent, these payments will constitute a full refund to all Consumers identified on the Restitution List as specified and associated with the Covered Conduct.

33. Within one hundred eighty (180) days of issuing the restitution payments described in Paragraph 29, Pfizer, or its vendor, will cancel all undeposited checks issued to Consumers on the Restitution List.

34. Within two hundred ten (210) days of issuing the restitution payments described in Paragraph 29, Pfizer will submit a report to the Attorney General providing a full accounting of all restitution paid to Vermont Consumers pursuant to this Judgment. Pfizer will then send the balance of the Restitution Amount, if any, to the State of Vermont.

35. Such payments shall be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud, consumer credit or antitrust enforcement, consumer education, or public welfare purposes.

36. Payments to the State of Vermont under the preceding paragraph shall be by wire transfer or in the form of a certified check, cashier's check, or money order made payable to the State of Vermont shall reference "Pfizer Co-Payment Coupons" and shall be delivered to:

Merideth C. Chaudoir, AAG
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, Vermont 05609

VI. FURTHER ASSURANCES OF PFIZER

A. Compliance

37. Pfizer's advertising, marketing and business practices concerning Copayment Coupons shall comply fully with the CPA and all other applicable laws.

B. Advertising and Marketing Practices

38. Pfizer shall, as of the Effective Date, cease disseminating any printed materials including Copayment Coupons themselves, which include the "PAY NO MORE THAN" language where the terms and conditions reveal that some consumers may pay more than the stated amount.

39. Pfizer shall disclose in its marketing materials, online and in print, Clearly and Conspicuously:

- a. The maximum savings associated with its Copayment Coupons. Such disclosures shall be made contemporaneously with the claim that they are intended to qualify; and
- b. A toll-free number for customer service regarding the offer, eligibility requirements, and terms and conditions associated with Pfizer's Copayment Coupons.

VII. ENFORCEMENT

40. All obligations undertaken by Pfizer in this AOD shall apply prospectively.

41. For the purposes of resolving disputes with respect to compliance with this AOD, should the State have a reasonable basis to believe that Pfizer has engaged in a practice that violates a provision of this AOD subsequent to the Effective Date, then the State shall notify Pfizer in writing of the specific objection, identify with particularity the provision of this AOD that the practice appears to violate and give Pfizer thirty days to respond to the notification; provided,

however, that the State may take any action if the State believes that, because of the specific practices, a threat to the health or safety of the public requires immediate action.

42. Upon receipt of written notice, Pfizer shall provide a good faith written response to the State's notification, containing either a statement explaining why Pfizer believes it is in compliance with the AOD, or a detailed explanation of how the alleged violation occurred and a statement explaining how Pfizer intends to remedy the alleged breach. Nothing in this section shall be interpreted to limit the State's Civil Investigative Demand ("CID") to the extent such authority exists under applicable law, and Pfizer reserves all of its rights in responding to a CID, to the extent such authority exists under applicable law.

43. The State may agree, in writing, to provide Pfizer with additional time to extend any of the deadlines listed in this AOD.

VIII. RELEASE

44. Released Claims. By its execution of this AOD, the State of Vermont releases and forever discharges Pfizer and its past and present officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, operating companies, predecessors, assigns and successors (collectively, the "Releasees") from the following: all civil causes of action, claims, damages, restitution, disgorgement, fines, costs, attorney's fees, or penalties that the Vermont Attorney General has asserted or could have asserted against Releasees under the CPA, or any amendments thereto, or by common law claims concerning deceptive or fraudulent trade practices, that the Vermont Attorney General has the authority to release resulting from the Covered Conduct up to and including the Effective Date.

45. Claims Not Covered. Notwithstanding any term in this AOD, specifically reserved and excluded from the release in Paragraph 44 as to any entity or person, including Releasees, are any and all of the following:

- a. Any criminal liability that any person or entity, including Releasees, has or may have to the State of Vermont;
- b. Any civil or administrative liability that any person and/or entity, including Releasees, has or may have to the State of Vermont not expressly covered by the release in Paragraph 44, including, but not limited to, any and all of the following claims:
 - i. State or federal antitrust violations;
 - ii. Claims involving “best price,” “average wholesale price,” “wholesale acquisition cost,” or any reporting practices;
 - iii. Medicaid claims, including but not limited to federal Medicaid drug rebate statute violations, Medicaid fraud or abuse (whether common law, statutory or otherwise), and/or kickback violations related to the State’s Medicaid program;
 - iv. State false claims violations; and
 - v. Claims to enforce the terms and conditions of this AOD.
- c. Actions of, or on behalf of, state program payors of the State of Vermont arising from the purchase of Estring®, Quillivant®, and Flector Patch®.
- d. Any claims individual consumers have or may have under the CPA or other laws against any person or entity, including the Releasees.

46. Nothing contained in this AOD shall relieve Pfizer of the obligations it maintains under any other judgment or agreement relating to any Pfizer product.

IX. ADDITIONAL PROVISIONS

47. Nothing this this AOD shall be construed to authorize or require any action by Pfizer in violation of applicable federal, state or other laws.

48. Modification. The AOD may be modified by a written stipulation of the Parties.

49. Pfizer shall not cause or encourage third parties, nor knowingly permit third parties acting on its behalf to engage in the practices from which Pfizer is prohibited by this AOD.

50. No Approval by the State. The acceptance of this AOD by the State of Vermont shall not be deemed approval by the State of any Pfizer's marketing or business practices. Further, neither Pfizer nor anyone acting on its behalf shall state or imply, or cause to be stated or implied that the State of Vermont or any other governmental unit of Vermont has approved, sanctioned or authorized any practices, act, advertisement, coupon or conduct of Pfizer.

51. Pfizer acknowledges that it is the State's customary position that an agreement restraining certain conduct by a party does not prevent the State from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the State's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the State from taking enforcement action to address conduct occurring after the Effective Date that the State believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this AOD shall not be a defense to any such enforcement action.

52. The terms and provisions of this AOD may be enforced by the current Vermont Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

53. Pfizer acknowledges that it had a full opportunity to review this AOD and consult with legal counsel regarding it. The undersigned representatives of Pfizer agree and represent that they have read and understood this AOD, accept the legal consequences involved in signing it, and that there are no other representations, agreements, or understandings between the State and Pfizer

that are not stated in writing herein.

54. This AOD may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the AOD. Electronic copies of this AOD and the signatures hereto may be used with the same force and effect as an original.

55. Strict Performance. Any failure by any party to this AOD to insist upon strict performance by any other party of any of the provisions of this AOD shall not be deemed a waiver of any of the provisions of this AOD, and such party, notwithstanding such failure, shall have the right thereafter to insist upon a specific performance of any and all of the provisions of this AOD.

56. Entire Agreement. This AOD represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by the parties, no prior versions of this Assurance and no prior versions of any of its terms that were not entered by the Court in this AOD, may be introduced for any purpose whatsoever.

57. Counterparts. This AOD may be executed in counterparts and a pdf signature shall be deemed to be, and shall have the same force and effect as, and original signature.

58. Notices. All Notices under this AOD shall be provided to the following via email and United States Postal Service First-Class Mail:

Pfizer:

Markus Green
Vice President
Assistant General Counsel
Pfizer Inc.
235 East 42nd Street
New York, NY 10017
E-mail: markus.green@pfizer.com
Telephone: 212-733-3966

Copy to Pfizer's Counsel:

Andrew Hoffman II
DLA Piper

2000 Avenue of the Stars
Suite 400 North Tower
Los Angeles, CA 90067-4704
E-mail: andrew.hoffman@dlapiper.com
Telephone: 310-595-3010

State of Vermont

Merideth C. Chaudoir
Assistant Attorney General
Office of the Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609
E-mail: merideth.chaudoir@vermont.gov
Telephone: 802-828-3171

59. To the extent that any provision of this AOD obligates Pfizer to change any policy(ies) or procedure(s) and to the extent not already accomplished, Pfizer shall implement the policy(ies) or procedures(s) as soon as reasonably practicable, but no later than 120 days after the Effective Date of this AOD.

60. The terms of this AOD shall be governed by the laws of the State of Vermont.

[Signatures appear on the following page(s).]

SIGNATURES

In lieu of instituting an action or proceeding against Pfizer Inc., the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance. By signing below, Respondent voluntarily agrees with and submits to the terms of this Assurance of Discontinuance.

For Respondent Pfizer Inc.

Dated at NY,NY, Wednesday this 18 day of May, 2022.



Name: Markus Green

Title: VP& Assistant General Counsel

Accepted on behalf of the Attorney General:

Dated at Montpelier, Vermont this 20th day of May, 2022.

THOMAS J. DONOVAN, JR.
Attorney General



Merideth C. Chaudoir
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
merideth.chaudoir@vermont.gov
802-828-3171

Exhibit A

- THOMAS J.
DONOVAN, JR.
ATTORNEY GENERAL
- JOSHUA R. DIAMOND
DEPUTY ATTORNEY
GENERAL
- SARAH E.B. LONDON
CHIEF ASST. ATTORNEY
GENERAL



- TEL: (802) 828-3171
- http://www.ago.vermont.gov

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
• MONTPELIER, VT
05609-1001

[Date]

Greetings,

Earlier this year my office settled with Pfizer Inc. ("Pfizer") concerning its use of certain copayment coupon cards for Estring, Quillivant XR, Quillichew ER, and Flectora Patch. The enclosed check reflects what you are entitled to receive pursuant to that settlement in connection with your use of such coupons. Please cash or deposit this check promptly. **If you do not deposit the check within 180 days from the date of issue printed on the check, it will be canceled.**

If you have any questions about this check, you may call the Attorney's General's Consumer Protection Division at 802-828-5479 between the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday.

Sincerely,

THOMAS J. DONOVAN, JR.
Attorney General