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CIRCUIT COURT OF OREGON
MULTNOMAH COUNTY

IN THE MATTER OF:
PFIZER INC.

Case No.
ASSURANCE OF VOLUNTARY
COMPLIANCE

1.

Pfizer Inc. does business in Oregon and is the Respondent herein. This agreement is between Pfizer and the Oregon Department of Justice (DOJ) acting pursuant to ORS 646.632.

2.

Pfizer waives notice from the State of Oregon pursuant to ORS 646.632(2) of the alleged unlawful trade practice and the relief to be sought.

3.

Pfizer understands and agrees that if this AVC is accepted by DOJ, it will be submitted to the Circuit Court of the State of Oregon for Multnomah County for approval, and, if approved, will be filed with the court pursuant to ORS 646.632(2).

4.

Pfizer waives any further notice of submission to and filing with the court of this AVC. Pfizer agrees to accept service of a conformed or court certified copy by prepaid first class mail sent to the addresses following Pfizer's signature.

5.

If monies which are ordered to be paid in this AVC are not paid timely, DOJ may convert the AVC to a money judgment under ORS 646.632(2) without notice to Pfizer. Pfizer

1 agrees a copy of the money judgment may be sent to Pfizer, first class mail to the address
2 following Pfizer's signature.

3 6.

4 The parties acknowledge that no other promises, representations or agreements of any
5 nature have been made or entered into by the parties. The parties further acknowledge that this
6 AVC constitutes a single and entire agreement that is not severable or divisible, except that if
7 any provision herein is found to be legally insufficient or unenforceable, the remaining
8 provisions shall continue in full force and effect.

9 7.

10 Pfizer shall not represent or imply that DOJ acquiesces or approves of Pfizer's past
11 business practices, current efforts to reform its practices, or any future practices which Pfizer
12 may adopt or consider adopting. DOJ's decision to settle this matter or to otherwise unilaterally
13 limit current or future enforcement action does not constitute approval or imply authorization
14 for any past, present, or future business practice.

15 8.

16 Definitions:

17 (a) "Covered Conduct" shall mean Pfizer's use of Copayment Coupons to promote
18 Estring®, Quillivant®, and Flector Patch® from 2014 through 2018, that was the subject of an
19 investigation by DOJ pursuant to Oregon's Unlawful Trade Practices Act, ORS 646.605 to
20 646.656.

21 (b) "Effective Date" shall mean the date by which both parties have signed this
22 AVC.

23 (c) "Pfizer" shall mean Pfizer Inc and its United States-based affiliates, subsidiaries,
24 predecessors, successors, and assigns.

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

7 9.

8 The parties have agreed to resolve the issues raised by the Covered Conduct by entering
9 into this AVC.

10 (a) Pfizer is entering into this AVC solely for the purpose of settlement, and
11 nothing contained herein may be taken as or construed to be an admission or concession of any
12 violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or
13 wrongdoing, all of which Pfizer expressly denies. Pfizer does not admit any violation of ORS
14 646.605 to 646.656 and does not admit any wrongdoing that was or could have been alleged by
15 DOJ before the date of the AVC under that law. No part of this AVC, including its statements
16 and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Pfizer.
17 This document and its contents are not intended for use by any third party for any purpose,
18 including submission to any court for any purpose.

19 (b) This AVC shall not be construed or used as a waiver or limitation of any
20 defense otherwise available to Pfizer in any action, or of Pfizer's right to defend itself from, or
21 make any arguments in, any private individual, regulatory, governmental, or class claims or
22 suits relating to the subject matter or terms of this AVC. This AVC is made without trial or
23 adjudication of any issue of fact or law or finding of liability of any kind. Notwithstanding the
24 foregoing, DOJ may file an action to enforce the terms of this AVC.

1 (c) It is the intent of the Parties that this AVC not be admissible in other cases or
2 binding on Pfizer in any respect other than in connection with the enforcement of this AVC.

3 (d) No part of this AVC shall create a private cause of action or confer any right to
4 any third party for violation of any federal or state statute except that DOJ may file an action to
5 enforce the terms of this AVC.

6 (e) All obligations undertaken by Pfizer in this AVC shall apply prospectively.

7 10.

8 Nothing in this AVC shall require Pfizer to:

9 (a) take an action that is prohibited by the Food, Drug, and Cosmetic Act
10 (“FDCA”), 21 USC 301 to 399a, or any regulation promulgated thereunder, or by the Food and
11 Drug Administration (FDA); or

12 (b) fail to take an action that is required by the FDCA or any regulation
13 promulgated thereunder, or by FDA. Any written or oral promotional claim subject to this AVC
14 which is the same, or materially the same, as the language required or agreed to by the Director
15 of the Office of Prescription Drug Promotion or the Director of the Center for Drug Evaluation
16 and Research or their authorized designees in writing shall not constitute a violation of this
17 Judgment.

18 11.

19 By its execution of this AVC, the State of Oregon releases Pfizer and all of its past and
20 present subsidiaries, affiliates, predecessors and successors (collectively, the “Released Parties”)
21 from the following: all civil claims, causes of action, damages, restitution, fines, costs, and
22 penalties on behalf of the State of Oregon under ORS 646.605 to 646.656 arising from the
23 Covered Conduct that is the subject of this AVC.

12.

Notwithstanding any term of this AVC, specifically reserved and excluded from the Release in Paragraph 11 as to any entity or person, including Released Parties, are any and all of the following:

(a) Any criminal liability that any person or entity, including Released Parties, has or may have to the State of Oregon.

(b) Any civil or administrative liability that any person or entity, including Released Parties, has or may have to the State of Oregon not expressly covered by the release in Paragraph 11 above, including but not limited to any and all of the following claims:

i) Oregon state or federal antitrust violations;

ii) Reporting practices, including “best price,” “average wholesale price,” or “wholesale acquisition cost”;

iii) Medicaid violations, including federal Medicaid drug rebate statute violations, Medicaid fraud or abuse, and/or kickback violations related to Oregon State’s Medicaid program; and,

iv) Oregon state false claims violations under the Oregon False Claims Act, which went into effect on January 1, 2010.

(c) Any liability under the State of Oregon’s above-cited consumer protection laws which any person or entity, including Released Parties, has or may have to individual consumers or State of Oregon program payors, and which have not been specifically enumerated as included herein.

13.

For the purposes of resolving disputes with respect to compliance with this AVC, should DOJ have a reasonable basis to believe that Pfizer has engaged in a practice that violates a provision of this AVC subsequent to the Effective Date of this AVC, then the Attorney General

1 shall notify Pfizer in writing of the specific objection, identify with particularity the provisions
2 of this AVC that the practice appears to violate, and give Pfizer thirty (30) days to respond to
3 the notification; provided, however, the Attorney General may take any action if DOJ concludes
4 that, because of the specific practice, a threat to the health or safety of the public requires
5 immediate action.

6 14.

7 Upon receipt of written notice, Pfizer shall provide a good-faith written response to the
8 DOJ notification, containing either a statement explaining why Pfizer believes it is in
9 compliance with the AVC, or a detailed explanation of how the alleged violation occurred and a
10 statement explaining how Pfizer intends to cure the alleged breach. Nothing in this paragraph
11 shall be interpreted to limit the state's Civil Investigative Demand (“CID”) or subpoena
12 authority, to the extent such authority exists under applicable state law, and Pfizer reserves all
13 of its rights with respect to a CID or subpoena issued pursuant to such authority.

14 15.

15 Upon giving Pfizer thirty (30) days to respond to the notification described above, DOJ
16 shall also be permitted reasonable access to inspect and copy relevant, non-privileged, non-work
17 product records and documents in the possession, custody or control of Pfizer that relate to
18 Pfizer’s compliance with each provision of this AVC. If DOJ makes or requests copies of any
19 documents during the course of that inspection, DOJ will provide a list of those documents to
20 Pfizer.

21 16.

22 DOJ may assert any claim that Pfizer has violated this AVC in a separate civil action
23 solely to enforce compliance with this AVC, or to seek any other relief afforded by law, but
24 only after providing Pfizer an opportunity to respond to the notification described in Paragraph
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1 13 above; provided, however, that DOJ may take any action if DOJ concludes that, because of
2 the specific practice, a threat to the health or safety of the public requires immediate action.

3 17.

4 This AVC represents the full and complete terms of the settlement entered into by the
5 parties hereto. In any action undertaken by DOJ, or Pfizer, no prior versions of this AVC, and
6 no prior versions of any of its terms, that were not entered by the Court in this AVC, may be
7 introduced for any purpose whatsoever. This AVC does not alter the terms of any prior
8 agreements between Pfizer and the State of Oregon.

9 REMEDIES

10 18.

11 Pfizer's advertising, marketing and business practices concerning Copayment Coupons
12 shall comply fully with ORS 646.605 *et seq.*, and all other applicable laws.

13 19.

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

18 20.

19 Pfizer shall disclose in its marketing materials, online and print, clearly and
20 conspicuously:

21 (a) The maximum savings associated with its Copayment Coupons. Such
22 disclosures shall be made contemporaneously with the claim that they are intended to
23 qualify; and

24 (b) A toll-free number for customer service regarding the offer, eligibility
25 requirements, and terms and conditions associated with Pfizer's Copayment Coupons.

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21.

Within ten days from the Effective Date of this AVC, Pfizer shall pay the sum of three hundred fourteen thousand, seven hundred fifty-three dollars (\$314,753) to DOJ for deposit into the Department of Justice Account established pursuant to ORS 180.095 to be used by DOJ as provided by law.

22.

Within 90 days of the Effective date of this AVC, DOJ shall identify non-profit or governmental organization(s) that dispense medications or provide medical treatment to Oregonians. Within 60 days of the Attorney General identifying the organization(s), Respondent shall make a contribution to the organization(s) in the amount designated by DOJ, for the purpose of providing prescription medication (s) or medical services to Oregonians. Respondent shall not be required to contribute more than a total of six hundred twenty thousand dollars (\$620,000). Respondent may not require any *quid pro quo* from the organization(s) that receives the contribution. The recipient of the contribution shall not be required to link or associate with the Respondent with the product(s) or service(s) paid for by the Respondent's contribution.

23.

Restitution shall be paid as provided in this paragraph:

DOJ will provide to Pfizer a list containing the names of Oregon consumers who utilized the relevant coupons that are the subject of the Covered Conduct and the out-of-pocket amounts these consumers paid in excess of the "pay no more than" amount listed on the relevant coupons, which totals \$40,247 (the "Restitution List").

Within 60 days of the date on which DOJ provides the Restitution List, Pfizer will send the full

1 restitution to any Oregon consumer, who paid more than the “pay no more than” copayment
2 amount listed by Pfizer in its copayment coupon promotion of Estring®, Quillivant®, and
3 Flector Patch®. Pfizer shall use the letter attached as Exhibit 1 when sending these restitution
4 payments.

5
6 If within 120 days of the Effective Date of this AVC, Pfizer is unable to pay the full
7 \$40,247 to identified consumers because the consumer cannot be located or for other good
8 cause, the unpaid amount shall be paid instead to DOJ for deposit into the Department of Justice
9 Account established pursuant to ORS 180.095 to be used by DOJ as provided by law. No later
10 than 90 days after the restitution program is complete, Pfizer shall submit a report to DOJ
11 providing a full accounting of all restitution paid to Oregon consumers pursuant to this
12 Assurance.

13
14 APPROVAL BY COURT

15 APPROVED FOR FILING and SO ORDERED this ____ day of

16 _____, 2019.

17 _____
18 Circuit Court Judge
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REVIEW BY PFIZER'S ATTORNEY

Approved as to form.

Samantha Badlam

Joshua Levy/Samantha Badlam
Attorneys for Pfizer

PFIZER'S SIGNATURE AND ACKNOWLEDGMENTS

Sr. VP I, *Carlton E. Wessel* being first duly sworn on oath depose and say that I am the
of Pfizer Inc. and am fully authorized and empowered to sign this Assurance of Voluntary
Compliance on behalf of Pfizer Inc. and bind the same to the terms hereof.

Carlton E. Wessel

Carlton E. Wessel
Print Name

Senior Vice President
Title

Address *235 E. 42nd St.*
New York, NY

SUBSCRIBED AND SWORN to before me this 25 day of
February, 2019.

Roxanna Lisa Providence
Notary Public for New York

ACCEPTANCE OF DOJ

Accepted this 7th day of March, 2019.

Roxanna Lisa Providence
Notary Public, State of New York
No. 01PR6227478 Qualified in Queens County
Certificate Filed in New York County
Commission Expires August 30, 2022

ELLEN ROSENBLUM
Attorney General

D. Hart

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Of Attorneys for Plaintiff
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ELLEN F. ROSENBLUM
ATTORNEY GENERAL



FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-6002

March 2, 2019

Greetings,

I am pleased to enclose a check for you as a result of a settlement. Let me assure you – THIS IS NOT A SCAM!

Earlier this year my office settled with the drug company, Pfizer Inc. ("Pfizer"), following an investigation into the company's business and advertising practices for its copayment coupon program. As part of the program, consumers – like you – were told that they would "pay no more than" \$15 or \$20, for example, for certain drugs – but ended up being charged more.

The settlement resolves the cases where we said Pfizer deceptively marketed its copayment coupon program for its Estring, Quillivant XR and Quillichew ER ("Quillivant"), and Flector Patch products. We alleged that Pfizer distributed these copayment coupons to consumers throughout Oregon without clearly and conspicuously disclosing material terms and conditions.

The enclosed check reflects the difference between your first copayment and what was advertised by the copayment coupon(s) our records show you used to obtain one or more of the drugs listed above. Please cash or deposit this check promptly. If you do not deposit the check within 90 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 General's Consumer Hotline at (877) 877-9392 between the hours of 8:30 a.m. – 4:30 p.m. Pacific, Monday through Friday.

I trust this unexpected, but well-deserved, payment can be put to good use by you and your family.

Sincerely,

A handwritten signature in cursive script that reads "Ellen F. Rosenblum".

ELLEN ROSENBLUM
Oregon Attorney General

1 **CERTIFICATE OF READINESS**

2 This proposed *Assurance of Voluntary Compliance* is ready for judicial signature because:

3 1. Each opposing party affected by this order has stipulated to the order, as shown
4 by each opposing party's signature on the document being submitted.

5 2. Each opposing party affected by this order has approved the order, as shown by
6 signature on the document being submitted or by written confirmation of approval
7 sent to me.

8 3. I have served a copy of this order on all parties entitled to service and provided
9 written notice of the objection period, and:

10 a. No objection has been served on me within that time frame.

11 b. I received objections that I could not resolve with the opposing party
12 despite reasonable efforts to do so. I have filed with the court a copy of the
13 objections I received and indicated which objections remain unresolved.

14 c. After conferring about objections, [*role and name of opposing party*]
15 agreed to file any remaining objection with the court by [*date*], which
16 predated my submission.

17 4. The relief sought is against an opposing party who has been found in default.

18 5. An order of default is being requested with this proposed judgment.

19 6. Service is not required by statute, rule, or otherwise.

20
21 /s/ David A. Hart
22 David A. Hart, OSB #002750
23 Assistant Attorney-in-Charge
24 Oregon Department of Justice
25 Financial Fraud/Consumer Protection Section
26 100 SW Market Street
Portland, Oregon 97201
Phone: (971) 673-1880
Fax: (971) 673-1888
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