

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

_____)
COMMONWEALTH OF VIRGINIA,)
EX REL. MARK R. HERRING,)
ATTORNEY GENERAL,)
)
 Plaintiff,)
)
v.)
)
JOULE PHARMACY GROUP, INC.)
d/b/a Joule Wellness Pharmacy,)
a Virginia corporation,)
)
 Defendant.)
)
 _____)

CIVIL ACTION NO. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

I. INTRODUCTION

1.0 This Assurance of Voluntary Compliance (“Assurance”) is entered into by the Commonwealth of Virginia, by, through and at the relation of its Attorney General, Mark R. Herring (the “Attorney General” or the “Commonwealth”), and Joule Pharmacy Group, Inc. d/b/a Joule Wellness Pharmacy (“Joule Pharmacy” or the “Defendant”).

1.1 Joule Pharmacy is a Virginia corporation that is headquartered and operates as a retail pharmacy out of one location in Arlington, Virginia. Its sole retail store is located at 1028 South Walter Reed Drive, Arlington, Virginia 22204.

1.2 Joule Pharmacy does not contest that it has advertised to and served Virginia consumers. Joule Pharmacy consents to and waives all objections to this Court’s jurisdiction for all matters relating to this Assurance’s entry, execution, monitoring and enforcement. Joule Pharmacy

further waives all objections it may have to venue in this Court for all matters relating to this Assurance's entry, execution, monitoring and enforcement.

II. COMMONWEALTH'S POSITION

2.0 The statements contained in this Section II represent the position of the Attorney General.

2.1 The Commonwealth contends that Joule Pharmacy was at all relevant times mentioned herein, a "supplier" of "goods" or "services," and engaged in "consumer transactions," as those terms are defined in § 59.1-198 of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by advertising, offering and selling consumer goods to individual consumers residing in Virginia through its one retail store location.

2.2 The Commonwealth contends that the Defendant violated the Virginia Post-Disaster Anti-Price Gouging Act (the "Price Gouging Act"), Virginia Code §§ 59.1-525 to 59.1-529.1, by charging unconscionable prices on rubbing alcohol offered for sale while a state of emergency declared by the Governor of Virginia was in effect relating to the novel coronavirus ("COVID-19") pandemic. The Commonwealth further contends that rubbing alcohol is a "necessary" good in light of the COVID-19 pandemic as defined in § 59.1-525 of the Price Gouging Act, and that increases in price were not attributable solely to additional costs incurred by the Defendant in connection with the sale of the goods or services.

2.3. The Commonwealth contends that, by violating the Price Gouging Act, Joule Pharmacy also violated the VCPA. *See* Va. Code Ann. §§ 59.1-200(A)(41) and 59.1-529.

III. DEFENDANT'S POSITION

3.0 The statements contained in this Section III represent the position of Joule Pharmacy.

3.1 Joule Pharmacy does not contest the allegations contained in Paragraph 2.1 and denies the allegations contained in Paragraphs 2.2 and 2.3 of this Assurance.

3.2 Joule Pharmacy denies that it has engaged in any acts and practices that violate any Virginia law, including, but not limited to, the Price Gouging Act and the VCPA.

IV. GENERAL PROVISIONS

4.0 This Assurance does not constitute an admission or waiver by Joule Pharmacy for any purpose of any fact or of a violation of any state or federal law, rule or regulation. Joule Pharmacy enters into this Assurance without admitting any wrongdoing or liability and affirmatively states that its execution of this Assurance is for settlement purposes only. This Assurance is made without trial or adjudication of any issue of fact or law. This Assurance does not constitute evidence or admission of any issues of fact or law. Joule Pharmacy enters into this Assurance for the purpose of arriving at a complete, full settlement of any disagreement as to the matters addressed in this Assurance and preceding its execution, which may exist between Joule Pharmacy and the Attorney General, in the interest of resolving the Attorney General's claims.

4.1 This Assurance shall be governed by the laws of the Commonwealth of Virginia.

4.2 This Assurance does not constitute an approval by the Attorney General of any of Joule Pharmacy's services or practices and Joule Pharmacy shall not make any representation to the contrary.

4.3 Nothing in this Assurance shall be construed as a waiver of whatever, if any, private rights of action any affected person may have relating to the conduct at issue.

4.4 Nothing in this Assurance shall permit any person or entity not a signatory hereto to enforce any provision of this Assurance.

4.5 Nothing in this Assurance shall be construed to authorize or require any action by Joule Pharmacy in violation of applicable federal, state or other laws.

4.6 Joule Pharmacy agrees that this Assurance constitutes a legally-enforceable obligation of Joule Pharmacy in accordance with its terms.

4.7 The Commonwealth shall not subsequently institute any civil proceeding or take any civil action against Joule Pharmacy, its officers, directors, employees or agents under the Price Gouging Act or the VCPA, for any conduct that occurred prior to the date this Assurance is signed by all parties and approved and adopted as an Order of the Court (the "Effective Date" of this Assurance) that is based on any service or practice addressed in this Assurance. The Parties agree that if Joule Pharmacy, or its employees, agents, officers, or directors provided any materially-false information to the Commonwealth during any settlement negotiations between the Parties, this provision shall be null and void.

4.8 The Commonwealth, through its Attorney General, releases and discharges Joule Pharmacy from all potential liability for law violations that the Commonwealth has or might have asserted based on practices alleged by the Attorney General, to the extent such practices occurred before the Effective Date and the Attorney General knew about them as of the Effective Date. Notwithstanding this release, the Attorney General may use the practices alleged in the Complaint in future enforcement actions against Joule Pharmacy or its affiliates to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Attorney General to determine and ensure compliance with the Order by which this Assurance is approved and adopted by this Court or to seek penalties for any violation of the Order.

4.9 The Parties agree that, if Joule Pharmacy files for bankruptcy within ninety (90) days of any required payment under this Assurance, the release appearing in Paragraphs 4.7 and 4.8 shall be null and void. In such situation, Joule Pharmacy agrees not to contest any nondischargeability complaint filed by the Commonwealth, and Joule Pharmacy further agrees that the facts alleged in the Commonwealth's Complaint will be taken as true, without further proof, in any subsequent nondischargeability litigation filed by or on behalf of the Plaintiff.

4.10 The Parties agree that the facts alleged in the Commonwealth's Complaint establish all elements necessary to sustain an action by the Commonwealth pursuant to § 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and this Assurance will have collateral estoppel effect for such purpose.

4.11 This Assurance applies to Joule Pharmacy, together with its officers, directors, employees, assigns and agents.

4.12 This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any amendment or modification to this Assurance must be in writing and signed by a duly authorized representative of all the parties hereto, and subsequently approved by the Court.

V. ASSURANCES

5.0 Joule Pharmacy voluntarily agrees to this Assurance of Voluntary Compliance without trial or adjudication of any issue of fact or law.

5.1 Joule Pharmacy agrees to refrain from and to be permanently enjoined from selling, leasing, or licensing, or offering to sell, lease or license, any necessary goods or services at an unconscionable price within the area for which a state of emergency is declared, in violation of the Price Gouging Act.

5.2 Joule Pharmacy agrees to refrain from and to be permanently enjoined from engaging in any and all practices in violation of the Price Gouging Act and the VCPA, as they now exist, or as amended in the future.

5.3 Joule Pharmacy agrees to make available and to disclose the provisions of this Assurance to its officers, directors, employees, agents and representatives within five (5) days of the last

execution date of this Assurance, or the date this Assurance is filed with the Court, whichever is later.

5.4 Joule Pharmacy shall institute supervisory compliance procedures that are reasonably designed to ensure compliance with this Assurance, including, without limitation, a) the training of relevant employees and b) revisions to and/or development of appropriate training materials and internal procedures.

5.5 Joule Pharmacy agrees to be permanently enjoined from entering into, forming, organizing or reorganizing into any partnership, corporation, limited liability company, sole proprietorship or any other legal structures, for the purpose of avoiding compliance with the terms of this Assurance, but is permitted to do any of the aforementioned for tax or legitimate corporate reasons.

5.6 Joule Pharmacy agrees that it shall not represent that the Attorney General approves of or endorses Joule Pharmacy's past or future business practices, or that the execution of this Assurance constitutes such approval or endorsement.

VI. RESTITUTION

6.0 The Defendant informs the Commonwealth, and the Commonwealth understands, that during the period from March 20, 2020 to March 25, 2020 (the "Restitution Period"), the Defendant sold exactly four (4) bottles of rubbing alcohol to consumers at \$22.00 per bottle, a price level that the Commonwealth contends was unlawful.

6.1 Simultaneously with the execution of this Assurance, the Defendant agrees to provide the Commonwealth with a sum total of Thirty-Seven Dollars (\$37.00) (the "Restitution Funds"), which represents the difference between the total aggregate price paid by the Defendant to procure bottles of rubbing alcohol sold during the Restitution Period, and the total aggregate price at which the Defendant sold the referenced bottles of rubbing alcohol.

6.2 The Attorney General, at his discretion, may distribute the Restitution Funds to consumers on their providing evidence satisfactory to him, showing that they purchased bottles of rubbing alcohol at the price point described in Paragraph 6.0 from the Defendant during the Restitution Period. If the Commonwealth is not able to locate or distribute restitution to all restitution-eligible consumers, then any undistributed amounts from the Restitution Funds remaining after a period determined by the Attorney General may be treated as a disgorgement and deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

6.3 The Defendant agrees that, because Virginia Code § 59.1-527 precludes private rights of action under the Price Gouging Act, it may not require releases to be executed as a precondition to distributing restitution under this Section, and the Defendant further agrees not to attempt to obtain releases from any Restitution-Eligible Consumer.

VII. MISCELLANEOUS

7.0 Joule Pharmacy agrees not to destroy any customer records, whether maintained in electronic or hard copy form, relating to any Restitution-Eligible Consumer. This prohibition shall lapse after a period of three (3) years from the Effective Date, provided that Joule Pharmacy satisfies the requirements in Section VI, *supra*.

VIII. ATTORNEYS' FEES

8.0 The Commonwealth shall recover from Joule Pharmacy, and Joule Pharmacy agrees to pay to the Commonwealth, the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00), for reimbursement of the Commonwealth's reasonable expenses, costs and attorneys' fees in investigating and preparing this action. The Attorney General maintains that said reasonable expenses, costs and attorneys' fees are recoverable by the Commonwealth pursuant to § 59.1-

206(C) of the VCPA and any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

IX. CIVIL PENALTIES

9.0 The Commonwealth shall recover from Joule Pharmacy, and Joule Pharmacy agrees to pay to the Commonwealth, the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00), pursuant to § 59.1-206(A) of the VCPA, for its alleged violations of the Price Gouging Act and the VCPA. Any amounts paid and collected shall be deposited to the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

X. PAYMENT TO THE COMMONWEALTH


10.0 Simultaneously with the execution of this Assurance, Joule Pharmacy agrees to make payment of the Two Thousand Five Hundred Thirty-Seven Dollars (\$2,537.00) required by Sections VI, VIII and IX, *supra*, by delivering to the Commonwealth a certified or cashier's check, in the amount of Two Thousand Five Hundred Thirty-Seven Dollars (\$2,537.00), made payable to "Treasurer of Virginia," and remitted to: Mark S. Kubiak, Assistant Attorney General, Consumer Protection Section, 202 North Ninth Street, Richmond, Virginia 23219.

XI. SIGNATURES

11.0 Each undersigned individual represents that he or she is fully authorized by the Party he or she represents to enter into this Assurance and to legally bind such Party to the terms and conditions herein.

Signed this 8th day of January, ~~2020~~ 2021

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

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JOULE PHARMACY GROUP, INC.

By: 

Its: PRESIDENT
Title