

STATE OF MICHIGAN  
IN THE 30TH JUDICIAL CIRCUIT COURT FOR THE COUNTY OF INGHAM

DANA NESSEL, ATTORNEY GENERAL OF  
THE STATE OF MICHIGAN, *ex rel*  
The People of the State of Michigan,

Petitioner,

No.

HON.

v

HOLLAND PHARMACY, LLC d/b/a Skip's  
Pharmacy, SHASAM DRUGS PC d/b/a Birch  
Run Drugs, BGS Pharmacy II LLC d/b/a Value  
Center Pharmacy II,

Respondents.

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

Dana Nessel, Attorney General of the State of Michigan, on behalf of the State of Michigan and Holland Pharmacy, LLC d/b/a Skip's Pharmacy, Shasam Drugs PC d/b/a Birch Run Drugs, and BGS Pharmacy II LLC d/b/a Value Center Pharmacy II (Respondents), hereby execute and agree to be bound by this Assurance of Voluntary Compliance (Assurance).

This Assurance concerns the resolution of alleged violations of the Michigan



Consumer Protection Act (MCPA), 1976 PA 331, as amended, MCL 445.901 *et seq.*

Respondents agree not to contest any terms of this Assurance.

The parties agree that the entry into this Assurance by Respondents is not an admission or agreement with respect to any legal or factual issues dealt with in this Agreement.<sup>1</sup>

THEREFORE, the parties agree as follows:

**I. Jurisdiction**

1.1 The Department of Attorney General (the Department) has jurisdiction over the subject matter of this Assurance pursuant to MCL 445.905 and 445.910.

Respondents waive all objections and defenses that they may have as to the jurisdiction of the Department over the matters covered by this Assurance.

**II. Parties Bound**

2.1 This Assurance binds Respondents, whether acting through associates, principals, officers, directors, employees, representatives, successors or assigns, or through any other subsidiary, corporation, assumed name or business entity, including the above-referenced pharmacies. Respondents are responsible for compliance with the terms of this Assurance, and must ensure that all employees,

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<sup>1</sup> By entering into this Assurance, the parties wish to make clear the preliminary and voluntary nature of this inquiry to date. As relates to the events described in the Notice of Intended Action, COD confirms the following: at no point were Respondents' licenses or permits in jeopardy of being suspended or revoked by the Department; the Department has not initiated a lawsuit or formal investigation against Respondents that might result in an adverse action; there has been no formal subpoena of records, investigative demand letter, plea of no contest, or filing of a civil lawsuit against Respondents; there has been no seizure by law enforcement of any prescription records, computer systems, financial records, accounts, or real property; this Assurance is not intended as a corporate integrity agreement for healthcare as that term is used by the Office of Inspector General for the United States Department of Health and Human Services, nor does it constitute a consent order; and at no point have Respondents been terminated from a third-party payer's network for cause.

contractors, subcontractors, agents and representatives comply with the terms of this Assurance.

### **III. Definitions**

3.1 “Respondents” refer to Holland Pharmacy, LLC d/b/a Skip’s Pharmacy, Shasam Drugs PC d/b/a Birch Run Drugs, BGS Pharmacy II LLC d/b/a Value Center Pharmacy II, BGS Pharmacy LLC d/b/a Value Center Pharmacy I, Laansa Drugs, LLC d/b/a Maplewood Pharmacy, and all employees; agents; representatives; and contractors for these entities.

3.2 “Assurance” means this Assurance of Voluntary Compliance.

3.3 “COD” means the Michigan Department of Attorney General, Corporate Oversight Division.

3.4 “Parties” means COD and Respondents, collectively.

3.5 All other terms shall have the meaning specifically defined in the MCPA.

### **IV. COD’s informal inquiry related to Respondents.**

4.1 On December 23, 2021, the Attorney General received a consumer complaint regarding COVID-19 at home test kits being sold at a Madison Heights, Michigan pharmacy called Value Center Pharmacy II. In this complaint, the consumer stated that a box containing 2 at home tests were being sold at Value Center Pharmacy II for \$50.00 per box, when the consumer was able to purchase the same box of 2 tests on Amazon for \$17.98. The consumer provided the Attorney General a receipt for this purchase, showing the brand name “iHealth” for the test



kits.

4.2 On January 6, 2022, the Attorney General received a consumer complaint regarding COVID-19 at home test kits being sold at a Holland, Michigan pharmacy called Skip's Pharmacy. In this complaint, the consumer stated that a package of 2 at home test kits were being sold at Skip's Pharmacy for \$80.00 per box. The consumer called the pharmacy to ask about the prices after purchasing 4 boxes. The consumer was told that Skip's Pharmacy was being charged an elevated price per box by the wholesaler. The consumer provided a receipt for this purchase, also showing a brand name of "iHealth" for the test kits.

4.3 The Attorney General contacted the pharmacies via letter to ask for more information on pricing and to respond to the consumer complaints. To follow up on getting the requested information after it was not provided, an Investigator from the Attorney General's Office contacted Skip's Pharmacy to inquire about the iHealth test kit pricing. Skip's Pharmacy confirmed to the Investigator that the tests were sold for \$80.00 but did not provide information about acquisition costs. Mr. Ginjupalli stated acquisition cost information would be emailed to the Investigator.

4.4 On January 29, 2022, invoices were emailed to the Attorney General showing iHealth kits were purchased by Skip's Pharmacy and Value Center Pharmacy II from Birch Run Drugs for \$40.00 each. A \$199 cost for overnight shipping and handling was also included on the Skip's Pharmacy invoice. Upon further inquiry, the Attorney General learned that Skip's Pharmacy, Birch Run Drugs, and Value Center Pharmacy II have common ownership. As of the date of this

Assurance, Respondents still have an inventory of approximately 500 of the iHealth at-home rapid test kit boxes (each containing two kits).

4.5 The consumer complaints and resulting information implicate the Michigan Consumer Protection Act. In relevant part, section 1 of the Michigan Consumer Protection Act prohibits:

(cc) Failing to reveal facts that are material to the transaction in light of representations of fact made in a positive manner

COD determined there was probable cause to believe Respondents were engaging in unfair trade practices made unlawful by the MCPA. On February 3, 2022, the Attorney General issued a Notice of Intended Action to Skip's Pharmacy, Value Center Pharmacy II, and Birch Run Drugs after receiving information on iHealth test kit pricing at other Michigan pharmacies. The Notice of Intended Action requested specific pricing information be provided to the Attorney General's Office, including supplier acquisition costs. Respondents, by and through their attorneys, provided the Attorney General's Office documents demonstrating where Respondents obtained iHealth test kits and related pricing. Through this documentation, the Attorney General learned that Birch Run Drugs acquired iHealth test kits from several suppliers at a cost of approximately \$12-\$14 per box. Birch Run Drugs then sold iHealth COVID-19 test kits to Skip's Pharmacy, Value Center Pharmacy II, and another related entity called Maplewood Pharmacy for \$40.00 per box.

4.6 In entering into the Assurance, the mutual objective of the parties is to resolve, without litigation, COD's potential claims under the MCPA for preliminary and permanent injunctive relief, as well as the potential claims for payment of

damages and reimbursement of the Department's costs and expenses related to the informal inquiry. The entry into this Agreement by Respondents is not an admission of liability with respect to the particular claims of any individual consumer.

Respondents are offering this Assurance to avoid the time and expense of litigating this matter.

## **V. Implementation of Compliance Measures**

5.1 To the extent that Respondents and related entities may have engaged in any unfair or deceptive business practices in the State of Michigan, including any violations of the MCPA, Respondents shall immediately cease and desist such practices. While Respondents may continue to sell their remaining inventory of iHealth test kits, Respondents give assurance they will not sell the test kits for above \$12.99 per box.<sup>2</sup> Respondents further agree they will not give or sell the remaining inventory of test kits to any business entity in which any of Respondents' owners, managers, employees or agents have an interest in as owner, manager, employee or agent.

5.2 Respondents shall notify COD in writing when the existing inventory is fully sold or otherwise disposed of, and will cooperate with any COD requests for

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<sup>2</sup> This price applies only to over-the-counter cash sales and excludes any sales of the iHealth at-home rapid test kit boxes that are reimbursed by any third-party payers that have pre-established payment amounts for this product. Respondents have represented, for purposes of entering into this agreement, that they do not control the price at which third-party payers reimburse for any given product. Indeed, for the product at issue, third-party payers may reimburse at prices above or below \$12.99 per box. Should Respondents decide to sell their remaining inventory, Respondents agree to make the iHealth at-home rapid test kit boxes available on a first-come, first-serve basis, meaning they will be made available to both over-the-counter cash buyers and insured consumers.



documentation related to the sale or other disposition of this remaining inventory. Further, should Respondents choose to sell iHealth at-home rapid test kit boxes beyond the existing inventory within one year of the Effective Date of this Assurance, they will notify COD in writing of that intention and the price at which such kits will be sold.

5.3 Respondents understand that by accepting these assurances, the Attorney General and COD are making no representation as to their adequacy in selling products, or compliance with the MCPA. In other words, if the Attorney General receives consumer complaints or other information in the future suggesting that Respondents have violated, or are violating, the MCPA, Respondents' implementation of these assurances shall not deprive COD from taking any appropriate action described in these laws.

## **VI. Financial obligations**

6.1 Respondents agree to resolve this matter, and avoid the need for litigation, through payments totaling \$1,200.<sup>3</sup> Accordingly, Respondents' payment obligations under this agreement shall be met through the following schedule:

1. Respondents shall make payments totaling \$200.00 to the consumers identified in Attachment A within thirty days of the Effective Date. These payments shall be made directly by Respondents by sending a check or money order made payable to the consumer in the amount specified in Attachment A.

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<sup>3</sup> The parties wish to make clear the nature of this payment, which is neither a fine nor punitive. Instead, this payment is designed to reimburse certain consumers that have purchased iHealth at-home rapid test kits.

These payments shall be sent via the United States Postal Service in an envelope clearly identifying the sender as one of Respondents' pharmacies. The mailings shall be addressed to the consumers at the addresses specified in Attachment A.

2. Respondents will make a payment to the Attorney General's COD in the total amount of \$1,000.00. It is understood that the Attorney General will distribute these funds as restitution to consumers who have filed, or do file, substantiated complaints regarding their purchase of iHealth at-home rapid test kits from Respondents during the period from December 1, 2021 through February 28, 2022. All distributions shall be at COD's discretion; COD will notify Respondents of the recipients of such distributions and the amounts distributed—but Respondents may not challenge such distributions. . Any undistributed funds will be kept to offset investigation costs or distribution expenses of this Assurance. This payment will be accomplished through a check or money order made payable to the State of Michigan. The payment will be due to the Attorney General within 14 days of the effective date of this Assurance.

6.2 Should the payment anticipated under this agreement not be timely made, an additional \$5 per day shall be added for each calendar day of delinquency. COD will give notice of the delinquency and resultant costs to Respondents by email and first-class mail. Respondents understand the COD reserves the right to commence a lawsuit for collection of the obligations under this agreement should



any payment be more than fourteen days late.

6.3 Respondents agree to compensate the Attorney General for any litigation costs and attorney fees associated with any action brought to enforce the terms of this Assurance.

6.4 The payment to the State of Michigan anticipated by Section 6.1 shall be sent to the attention of Andrea Moua Assistant Attorney General, Corporate Oversight Division, P.O. Box 30736, Lansing, MI 48909.

## **VII. Release**

7.1 Upon the Effective Date, the COD hereby releases and discharges Respondents and any of their entities, affiliates, subsidiaries, predecessors, successors or assigns, and each and all of its past or present officers, directors, associates, shareholders, controlling persons, representatives, employees, attorneys, counselors, advisors, or agents, from any and all civil or administrative claims, demands, rights, actions, causes of action, and liabilities, of any kind or nature whatsoever, that are related to the sale of iHealth at-home COVID-19 test kits prior to the Effective Date. This release does not apply to Respondents' sale of any other products. Nothing herein shall be construed as a waiver or release of claims asserted or that may be asserted by individual consumers.

## **VIII. General Provisions**

8.1 This Assurance is binding upon, inures to the benefit of, and applies to the parties and their successors-in-interest. This Assurance does not bind any Division of the Michigan Department of the Attorney General other than COD. Nor

does this Assurance bind the Public Service Commission or any other agencies, boards, commissions or offices of the State of Michigan.

8.2 This Assurance does not affect, expand or limit the rights of any private party to pursue any available remedy or remedies pursuant to applicable law, except that any common law right of set off would still be applicable. Further, this Assurance does not create any private right or cause of action to any third party.

8.3 This Assurance does not constitute an approval by the Attorney General of any of Respondents' business practices and Respondents must not make any representation to the contrary.

8.4 No change or modification of this Assurance is valid unless in writing and signed by all parties.

8.5 Within three business days of the Effective Date of this Assurance, COD may file a copy of this Assurance with the Ingham County Circuit Court in the above-captioned matter as anticipated by MCL 445.905.

8.6 Unless a temporary restraining order is sought, COD will make reasonable efforts to provide written notice in the event that COD believes Respondents are in noncompliance with any provision of this Assurance, setting forth the basis for such belief.

## **IX. Signatories**

9.1 Each undersigned individual represents and warrants 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 of this Assurance. If this

Assurance is signed by a corporate officer or representative, by signing you acknowledge that you have had the opportunity to consult with an attorney acting on behalf of the corporation before executing this document.

**X. Effective Date**

10.1 The effective date of this Assurance is the date upon which the COD representative signs this Assurance. Electronic signatures, as confirmed through electronic mail messages, shall be deemed sufficient and binding for purposes of this Assurance.

Dated: 03/21/2022

By: \_\_\_\_\_



Andrea Moua (P83126)  
Assistant Attorney General  
Michigan Dep't of Attorney General  
Corporate Oversight Division

Dated: 3/18/22

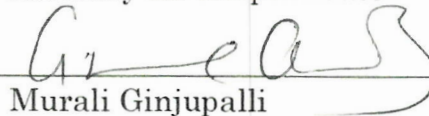
By: \_\_\_\_\_



Christopher E. Tracy (P46738)  
Attorney for Respondents

Dated: 3/18/22

By: \_\_\_\_\_

  
Murali Ginjupalli

