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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

13 **THE PEOPLE OF THE STATE OF**
14 **CALIFORNIA,**

15 Plaintiff,

16 v.

17 **ALLION HEALTHCARE, INC.**, a Delaware
Corporation; **MOMS PHARMACY, INC.**, a
18 California Corporation; **MEDICINE MADE**
EASY INC., a California Corporation, *d/b/a*
19 **MOMS PHARMACY, d/b/a PRIORITY**
PHARMACY, d/b/a WHITTIER
20 **GOODRICH PHARMACY**; and DOES 1
through 100, inclusive,

21 Defendants.

Case No. 37-2012-00103218-CU-BT-CTL

AG Matter No. SD2009307480

**NOTICE OF ENTRY OF PERMANENT
INJUNCTION AND FINAL JUDGMENT**

Department: C-67
Judge: Hon. William S. Dato
Complaint Filed: August 31, 2012

23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE that on September 14, 2012, the San Diego Superior Court, per
25 the Honorable William S. Dato, issued and entered a Permanent Injunction and Final Judgment
26 ("PIFJ") in the above-captioned matter in favor of Plaintiff THE PEOPLE OF THE STATE OF
27 CALIFORNIA, and against Defendants ALLION HEALTHCARE, INC., MOMS PHARMACY,
28 INC., and MEDICINE MADE EASY INC., *d/b/a* MOMS PHARMACY, *d/b/a* PRIORITY
SD2009307480

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People v. Allion Healthcare, Inc., et al. (Case No. 37-2012-00103218-CU-BT-CTL)
Notice of Entry of Permanent Injunction and Final Judgment

CIVIL BUSINESS OFFICE 1
CENTRAL DIVISION

2012 SEP 21 PM 2:39

CLERK OF SUPERIOR COURT
SAN DIEGO COUNTY, CA

F I L E D

Clerk of the Superior Court

SEP 21 2012

By: _____ Deputy

PLAINTIFFS TRIAL
EXHIBIT

P-04450_00001

P-04450_00001

1 PHARMACY, *d/b/a* WHITTIER GOODRICH PHARMACY (collectively “Defendants”). A true
2 and correct copy of the PIFJ is attached hereto as Exhibit “A” and is incorporated herein by
3 reference.

4 Dated: September 19, 2012

Respectfully Submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 SUE MELTON-BARTHOLOMEW
8 Supervising Deputy Attorney General



9 MARK T. CUMBA
10 Deputy Attorney General
11 *Attorneys for the People of the State of*
12 *California*

Exhibit A

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F I L E D

Clerk of the Superior Court

SEP 14 2012

By: L. SAN NICOLAS, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

ALLION HEALTHCARE, INC., a Delaware Corporation; **MOMS PHARMACY, INC.,** a California Corporation; **MEDICINE MADE EASY INC.,** a California Corporation, *d/b/a* **MOMS PHARMACY, d/b/a PRIORITY PHARMACY, d/b/a WHITTIER GOODRICH PHARMACY;** and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2012-00103218-CU-BT-CTL

AG Matter No. SD2009307480

PERMANENT INJUNCTION AND FINAL JUDGMENT

Department: C-67
Judge: Hon. William S. Dato
Complaint Filed: August 31, 2012

FOR PLAINTIFF

KAMALA D. HARRIS
Attorney General of the State of California
MARK ZAHNER, Chief of Prosecutions
Bureau of Medi-Cal Fraud & Elder Abuse
SUE MELTON BARTHOLOMEW
Supervising Deputy Attorney General
MARK T. CUMBA, SBN 223458
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FOR DEFENDANTS

CHRISTOPHER K. LUI, State Bar No. 190180
Crowell & Moring LLP
515 S Flower St 40th Fl
Los Angeles, CA 90071
Telephone: (213) 443-5551
Email: clui@crowell.com

1 Plaintiff, the People of the State of California, and Defendants ALLION HEALTHCARE,
2 INC., MOMS PHARMACY, INC., and MEDICINE MADE EASY INC., d/b/a MOMS
3 PHARMACY, d/b/a PRIORITY PHARMACY, d/b/a WHITTIER GOODRICH PHARMACY
4 (collectively "Defendants"), by and through their attorneys, have stipulated to the entry of this
5 Permanent Injunction and Final Judgment ("PIFJ").

6 I. DEFINITIONS

- 7 1. **BMFEA:** Means the Bureau of Medi-Cal Fraud and Elder Abuse of the Office of the
8 Attorney General of the State of California.
- 9 2. **Covered Persons:** Includes each of the named Defendants, their subsidiaries and affiliates,
10 and their respective owners, officers, directors, employees, partners, agents, representatives,
11 subsidiaries, transferees, assigns, successors, contractors, and subcontractors, consistent with the
12 limitations set forth in the PIFJ. Any non-employee who is hired on a temporary basis, regardless
13 of whether he or she is considered a "Covered Person," is required to follow the policies and
14 procedures of the Pharmacy and this PIFJ. Defendants shall ensure that there is sufficient
15 supervision to ensure that a temporary non-employee is acting within the parameters of such
16 policies and procedures.
- 17 3. **Defendants:** Shall include the named Defendants, and each of them separately.
- 18 4. **DHCS:** Means California Department of Health Care Services.
- 19 5. **Effective Date:** Is the date of the filing of this PIFJ.
- 20 6. **Effective Period:** Is the period of time the injunctive provisions of this PIFJ are in effect,
21 beginning on the date of the filing of this PIFJ.
- 22 7. **Pharmacy:** ALLION HEALTHCARE, INC., MOMS PHARMACY, INC., and
23 MEDICINE MADE EASY INC., d/b/a MOMS PHARMACY, d/b/a PRIORITY PHARMACY,
24 d/b/a WHITTIER GOODRICH PHARMACY and any other pharmacy operating in the State of
25 California under the corporate umbrella of Medicine Made Easy Inc. and/or Allion Healthcare,
26 Inc. and/or MOMS Pharmacy, Inc.

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1 II. GENERAL PROVISIONS

2 8. Nothing in this PIFJ, nor any act performed, nor any document executed pursuant to this
3 PIFJ, shall constitute a finding of any violation of any statutory, regulatory, common law, or
4 equitable duty, claim, or principle.

5 9. Venue lies in the County of San Diego because at least some of the acts and/or omissions
6 by the Defendants as alleged are claimed to have occurred within the County of San Diego, State
7 of California.

8 10. The venue for enforcement of any violation of this PIFJ shall lie in the County of San
9 Diego. Jurisdiction for any other purpose is retained in this Court.

10 11. The injunctive provisions of this PIFJ are entered into pursuant to California Business and
11 Professions Code section 17203 and 17204.

12 12. This PIFJ is applicable to and binding upon each of the Defendants, their subsidiaries, and
13 affiliates and each of their owners, partners, directors, officers, employees, agents, representatives,
14 subsidiaries, transferees, assigns, successors, contractors, and subcontractors. Any "bona-fide
15 third party purchaser" shall be subject to, and shall comply with, all applicable State and Federal
16 rules, regulations and/or laws. With respect to such contractors and subcontractors, the
17 provisions of this PIFJ apply only to pharmacy and related services including, but not limited to,
18 selling and distributing medications and support services.

19 13. Plaintiff agrees to release the Defendants and their owners, officers, directors, and
20 employees from any further civil liability that the People may be able to assert pursuant to
21 California Business and Professions Code section 17200 *et seq.*, only for conduct regarding
22 the offering of inducements, or the receipt or payment of remuneration, for transferring
23 prescription medications from other competing pharmacies in the form of, including but not
24 limited to, kickbacks, bribes, rebates, refunds, discounts or any other gratuitous consideration or
25 economic benefit in connection with the rendering of health care services to any Medi-Cal
26 beneficiary arising on or prior to the Effective Date at the Pharmacy. Plaintiff also agrees to
27 release Defendants and their owners, officers, directors, and employees from any civil liability
28 and false claims that the Plaintiff may be able to assert pursuant to California Government Code
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1 section 12651 *et seq.*, and fraud (both statutory and common law), whether based upon alleged
2 tort or any other legal or equitable theory of recovery, whether based upon statute or common law
3 or otherwise, known or unknown for conduct, acts, and omissions arising out of or in connection
4 with, the offering of inducements, or the receipt or payment of remuneration, for transferring
5 prescription medications from other competing pharmacies in the form of, including but not
6 limited to, kickbacks, bribes, rebates, refunds, discounts or any other gratuitous consideration or
7 economic benefit in connection with the rendering of health care services to any Medi-Cal
8 beneficiary on or prior to the Effective Date at the Pharmacy. These releases do not cover the
9 following:

- 10 a. Any type of conduct occurring after the Effective Date;
- 11 b. Criminal conduct occurring at any time;
- 12 c. Liability to the DHCS, the California Franchise Tax Board, the Centers for Medicare
13 and Medicaid Services (hereafter "CMS"), or the Office of the Inspector General for conduct
14 occurring at any time that would give rise to administrative fines, penalties, or other relief that
15 may be sought by such agencies;
- 16 d. The liability of any contractor or subcontractor at any time;
- 17 e. Any future enforcement proceedings based upon alleged violations occurring after the
18 Effective Date.

19 14. Only the parties to this PIFJ may rely upon or enforce this PIFJ.

20 15. Nothing in this PIFJ shall preclude Defendants from contesting any citation or deficiency or
21 from challenging any present or future statute, regulation, or other requirement that is or becomes
22 covered by or related to this PIFJ.

23 16. In Part V of this PIFJ – "INJUNCTIVE RELIEF – COMPLIANCE WITH PIFJ
24 OBLIGATIONS" – with respect to any specific reference to state or federal statutes or
25 regulations cited, the actual language of the statutes and regulations shall control. The
26 Defendants shall comply with such statutes and regulations and any revisions of such statutes or
27 regulations effective subsequent to the Effective Date, ie., the conduct of Defendants shall be
28 governed by the language of the statutes and regulations in effect at the time of such conduct. If
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1 any revisions to existing statutes or regulations result in the statutes or regulations or their
2 subdivisions being renumbered, then the statutes or regulations or subdivisions as renumbered
3 shall continue to be complied with by the Defendants.

4 **III. TERM OF INJUNCTION**

5 17. The obligations imposed by this PIFJ on Defendants shall become permanent, unless
6 modified pursuant to the provisions of Part VI – “MODIFICATION OF INJUNCTION.”

7 **IV. INJUNCTIVE RELIEF – COMPLIANCE WITH STATUTES AND REGULATIONS**

8 18. Pursuant to California Business and Professions Code section 17203 and 17204, Defendants
9 and all Covered Persons, while engaged in the conduct of any business activity involving or
10 related to the Pharmacy, are enjoined and restrained from engaging in or performing directly or
11 indirectly any act that is in violation of any federal or state statute or regulation governing the
12 operation of the Pharmacy with respect to pharmacy and related services including, but not
13 limited to, selling and distributing medications and support services in which such sales,
14 distribution and/or services are provided to patients of such Pharmacy. Specifically, all
15 Defendants and Covered Persons, while engaged in the conduct of any business activity involving
16 or related to the Pharmacy, are enjoined and restrained from:

- 17 a. The receipt or payment of remuneration including, but not restricted to, any
18 kickback, bribe, or rebate including, but not limited to free cell phones, airtime
19 minutes, bus passes, gym memberships and/or any other item of value;
- 20 b. Offering rebates, discounts or other economic benefits, if the earning of the
21 benefits are contingent on an event to occur subsequent to the consummation of
22 the transaction;
- 23 c. Engaging in any business act or practice that threatens an incipient violation of
24 an antitrust law, and/or violates the policy or spirit of one of those laws because
25 its effects are comparable to or the same as a violation of the law, or otherwise
26 significantly threatens or harms competition.

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1 **V. INJUNCTIVE RELIEF – COMPLIANCE WITH PIFJ OBLIGATIONS**

2 19. Pursuant to California Business and Professions Code sections 17203 and 17204,
3 Defendants and all Covered Persons, while engaged in the conduct of any business activity
4 involving or related to the Pharmacy are ordered to comply with the following injunctive
5 obligations during the Effective Period:

6 **A. Code of Conduct**

7 20. To the extent not already established, Defendants shall, within one hundred twenty (120)
8 days after the Effective Date, Defendants shall establish a Code of Conduct for the Pharmacy and
9 distribute it to all Covered Persons.

10 **B. Policies and Procedures**

11 21. Defendants shall assess and update as necessary at least annually on a rotational basis, and
12 more frequently if appropriate, their written policies and procedures confirming their commitment
13 to promoting full compliance with state and federal regulations and statutes applicable to the
14 Pharmacy which directly or indirectly affect pharmacy and related services including, but not
15 limited to, selling and distributing medications and support services being provided to the
16 customers, clients, and/or patients of the Pharmacy.

17 **VI. MODIFICATION OF INJUNCTION**

18 22. Defendants will not, unless agreed to by Plaintiff, seek modification of this PIFJ for at least
19 five (5) years after the Effective Date. Modification as used in this PIFJ includes termination of
20 this PIFJ.

21 **VII. COSTS**

22 23. Defendants, jointly and severally, shall pay Plaintiff its legal costs in the sum of \$87,400.00
23 no later than August 27, 2012.

24 **VIII. PENALTIES**

25 24. Pursuant to California Business and Professions Code §17206, Defendants, jointly and
26 severally, shall pay a total sum of \$993,000.00 to Plaintiff as civil monetary penalties, paid no
27 later than August 27, 2012.

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1 IX. RESTITUTION

2 25. Pursuant to California Business and Professions Code section 17203, Defendants, jointly
3 and severally, shall pay a total sum of \$48,706.00 to Plaintiff as restitution, paid no later than
4 August 27, 2012.

5 X. PAYMENT OF COSTS, PENALTIES AND RESTITUTION

6 26. The total sum of costs, penalties and restitution in the amount of One Million, One Hundred
7 Twenty-Nine Thousand, One Hundred Six Dollars and Zero Cents (\$1,129,106.00) shall be made
8 payable to **BMFEA Litigation Deposit Fund**, and shall be delivered to Deputy Attorney General
9 Mark Cumba no later than September 21, 2012.

10 XI. MISCELLANEOUS ORDERS

11 27. Defendants and their owners, partners, officers, directors, representatives, assigns,
12 successors, subsidiaries, transferees, agents, employees, contractors, and subcontractors shall not
13 intimidate or take any retaliatory action against any individual who cooperated with the
14 investigation of this matter, and/or who cooperates with the BMFEA throughout the pendency of
15 this PIFJ.

16 28. In the event Plaintiff takes action to enforce compliance with any provision of this PIFJ,
17 including collection of any sums due under this judgment, and if Plaintiff shall prevail in such
18 action, Plaintiff shall be entitled to collect from the Defendants against whom such action is taken
19 expenses incurred in taking such action, including attorneys' fees and costs of investigation.

20 Defendants shall not be entitled to collect expenses, costs, or attorneys' fees from Plaintiff if
21 Plaintiff does not prevail. California Civil Code §1717 is not applicable to this provision.

22 29. The parties acknowledge that they engaged in arms' length negotiations which resulted in
23 the final language of the Stipulation for Entry of the Permanent Injunction and Final Judgment
24 and this PIFJ, and for the purposes of construing the terms of these documents there is no
25 presumption the documents should be interpreted against any party. The presumption set forth in
26 California Civil Code §1654 is not applicable.

1 30. Nothing in this PIFJ shall affect the right of CMS or any other federal agency to enforce
2 any statutory or regulatory authorities with respect to Defendants' compliance with applicable
3 state and federal health care program requirements.

4 31. This PIFJ shall take effect immediately upon the entry thereof.

5 32. The clerk shall enter this PIFJ forthwith.

6 **XII. EFFECTIVE AND BINDING AGREEMENT**

7 33. This PIFJ shall be binding on the successors, assigns, and transferees of Defendants,
8 including restructuring resulting from mergers or acquisitions.

9 34. Any modifications to this PIFJ shall be made with the prior written consent of the parties to
10 this PIFJ.

11 35. The signed Defendants' signatories represent and warrant that they are authorized to
12 execute the Stipulation for Entry of Permanent Injunction and Final Judgment for this PIFJ. The
13 signed BMFEA signatory represents that he is signing said Stipulation in his official capacity and
14 that he is authorized to execute said Stipulation for this PIFJ.

15
16 GOOD CAUSE APPEARING THEREFORE, THE FOREGOING PROVISIONS SHALL BE
17 THE ORDER OF THIS COURT.

18
19 IT IS SO ORDERED.

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21 Dated: SEP 14 2012

WILLIAM S. DATO

JUDGE OF THE SUPERIOR COURT

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