

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU**

**AOD No. 09-\_\_\_\_\_**

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**In the Matter of:**  
  
**THE GREAT ATLANTIC & PACIFIC  
TEA COMPANY, INC. d/b/a A & P**  
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**ASSURANCE OF DISCONTINUANCE  
PURSUANT TO EXECUTIVE LAW  
SECTION 63(15)**

**WHEREAS**, Andrew M. Cuomo, the Attorney General for the State of New York (“OAG”), has made an inquiry pursuant to the provisions of Section 63(12) of the Executive Law, into the policies, procedures and practices of The Great Atlantic & Pacific Tea Company d/b/a A & P Inc. (“A & P”) regarding its provision of language assistance services to pharmacy customers with limited English proficiency (“LEP”);

**WHEREAS**, A & P is a corporation having its corporate offices at 2 Paragon Drive, Montvale, New Jersey 07645;

**WHEREAS**, A & P owns and operates approximately 34 pharmacies located in New York State, which pharmacies are registered pursuant to 8 N.Y.C.R.R. Part 63;

**WHEREAS**, pharmacists employed by A & P are required pursuant to 8 N.Y.C.R.R. § 63.6(b)(8) to personally counsel each patient (or patient representative) in matters which the pharmacist deems appropriate, such as the name of the medication, the dosage, route of delivery, and duration of therapy, precautions for preparation, common side effects or adverse effects, contraindications, and storage, unless such counseling is refused;

**WHEREAS**, pharmacists employed by A & P are required pursuant to 8 N.Y.C.R.R. § 63.6(b)(7) to solicit from patients the information they need to fully counsel those patients about the safe and effective use of prescription medications. This information includes, among other things, known allergies and drug reactions, chronic diseases, and a comprehensive list of medications taken by the patient;

**WHEREAS**, pharmacists employed by A & P are required pursuant to N.Y. Educ. Law § 6810(1) to affix labels to all prescription medications that they dispense, which labels must include, among other things, the directions for use of the drug by the patient as given upon the prescription;

**WHEREAS**, the words, statements or other information to be printed on a prescription medication label must be in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use, pursuant to N.Y. Educ. Law § 6815(2)(c);

**WHEREAS**, New York State Civil Rights Law §40-c provides that no person shall, because of race, creed, color, national origin be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation or institution;

**WHEREAS**, A & P's pharmacies are public accommodations, subject to the New York Human Rights Law, New York Executive Law §§ 290 *et seq.* and the New York City Human Rights Law, New York City Administrative Code §§ 8-101 *et seq.*, which, among other things, prohibit a public accommodation from engaging in conduct which directly or indirectly withholds any of the accommodations, advantages, facilities or privileges of the business based on a customer's national origin;

**WHEREAS**, A & P receives, and at all relevant times has received, Federal financial assistance administered by the United States Department of Health and Human Services ("HHS"), including Medicare provider payments from the Centers for Medicare/Medicaid Services under Title XVIII, Part D of the Social Security Act, 42 U.S.C. § 1395 *et seq.*, and Medicaid provider payments from the State of New York Department of Health under Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq.*, and as a recipient of such funds is subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* ("Title VI"), and the HHS Title VI regulations at 45 C.F.R. Part 80, which, among other things, prohibit a recipient of HHS funds from engaging in policies or practices that have the effect of discriminating against individuals on the basis of national origin, including policies or practices that preclude or inhibit equal access to a recipient's programs and activities for customers with limited English proficiency;

**IT NOW APPEARING THAT** A & P desires to settle and resolve the Investigation without admitting or denying the OAG's findings, the OAG and A & P hereby enter into this Assurance of Discontinuance.

**I.**  
**DEFINITIONS**

- 1.1 "Agreement" means this Assurance of Discontinuance.
- 1.2 "A & P" means A & P Pharmacy, Inc., a corporation formed under the laws of Rhode Island, and any of its predecessors, successors, members, subsidiaries, or assigns.
- 1.3 "Pharmacy" means any place in which drugs, prescriptions or poisons are possessed for the purpose of compounding, preserving, dispensing or retailing, or in which drugs, prescriptions or poisons are compounded, preserved, dispensed or retailed, or in which such drugs, prescriptions or poisons are by advertising or otherwise offered for sale at retail.
- 1.4 "New York Store" means all A & P stores located in New York State and registered to operate a pharmacy under 8 N.Y.C.R.R. Part 63.

- 1.5 “Employee” means any person performing work for and compensated by A & P.
- 1.6 “Pharmacy Staff” means any Employee who works in the Pharmacy of a New York Store.
- 1.7 “Pharmacy Services” mean any services relating to prescription medications.
- 1.8 “Customer” means any person seeking services from the Pharmacy of a New York Store, or the authorized representative of such person.
- 1.9 “LEP Customer” means a Customer whose primary language is not English and who cannot speak, read, write, or understand English at a level sufficient to permit such Customer to communicate in English about the safe and effective administration of prescription medications, or otherwise communicate effectively with Pharmacy Staff.
- 1.10 “Customer’s Primary Language” means the language primarily spoken by an LEP Customer and in which such Customer requires language assistance.
- 1.11 “Prescription Drug Information” means any information pertaining to the safe and effective use of a prescription drug, including but not limited to the dosage, route of delivery, duration of therapy, precautions for preparation, common side effects or adverse effects, contraindications, and storage.
- 1.12 “Counseling” means the communication by a pharmacist or pharmacy intern to a Customer of information relating to the safe and effective use of a prescription drug, which information may include: (1) the name and description of the medication and known indications; (2) dosage form, dosage, route of administration and duration of drug therapy; (3) special directions and precautions for preparation, administration and use by the patient; (4) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur; (5) techniques for self-monitoring drug therapy; (6) proper storage; (7) prescription refill information; and (8) action to be taken in the event of a missed dose.
- 1.13 “Medication Profile” means information relating to a Pharmacy Customer including, but not limited to, the Customer’s name, address, telephone number, gender, date of birth or age, known allergies and drug reactions, chronic diseases, a comprehensive list of medications and relevant devices and other information reported to the pharmacist appropriate for counseling an individual regarding use of prescription and over-the-counter drugs.
- 1.14 “A & P’s Written Languages” shall include English, Spanish, Chinese, Italian, Russian and French. A & P shall add five additional languages to A & P’s Written Languages within six months after full implementation of its new pharmacy computer system (“A & P Pharmacy Computer System”). The full implementation of the A & P Pharmacy

Computer System shall take place by March 31, 2010. A & P shall notify the OAG of the date of full implementation, within 30 days of occurrence. A & P shall choose the five additional languages based on an assessment of the Primary Languages of the greatest number or highest proportion of LEP Customers eligible to be served or likely to be encountered by the Pharmacies of the New York Stores.

- 1.15 “Effective Date” means the date this Agreement is executed by the parties hereto.

## **II.**

### **ATTORNEY GENERAL’S INVESTIGATION AND FINDINGS**

- 2.1 The OAG received complaints from numerous LEP Customers who had filled prescriptions at a variety of stores throughout New York State, including A & P stores. The complainants alleged that the stores repeatedly failed to provide them with adequate interpretation and translation services. Specifically, they alleged that the stores did not provide them with prescription drug labels printed in their Primary Language, so they were unable to read and understand the instructions for use. The complainants also alleged that the stores did not offer or provide them with prescription drug counseling in their Primary Language.
- 2.2 The OAG commenced an investigation into A & P’s policies, procedures, and practices regarding language assistance services for LEP Customers. The investigation consisted of undercover contacts with A & P Pharmacies in which investigators sought assistance in languages other than English, and a thorough review of A & P documents.
- 2.3 The OAG investigation found that, although A & P had taken some steps to ensure equal access to pharmacy services for LEP Customers, including building capacity to print prescription drug labels and other vital documents in Spanish and contracting with a telephonic interpreter service:
- a. A & P had not conducted an analysis of the language assistance needs of the communities it serves;
  - b. A & P did not provide sufficient training to its Pharmacy Staff concerning their legal obligation to make services accessible to LEP Customers;
  - c. A & P did not provide adequate notice to its Customers who needed language assistance regarding how A & P could provide those Customers equal access to its Pharmacy Services;
  - d. A & P did not consistently offer or provide language-appropriate Counseling to LEP Customers; and

- e. A & P did not have the capacity to print prescription drug labels or the instructions for use of a prescription drug in any language other than English or Spanish, and did not consistently print such labels or instructions in any language other than English.

Based on the foregoing, the OAG has determined that failure to provide adequate language assistance for prescription medication is unlawful. A & P offers this Assurance of Discontinuance in settlement of the violations alleged by the OAG, and the OAG accepts the specific assurances made herein pursuant to Section 63(15) of the New York Executive Law in lieu of commencing a civil action. A & P asserts that this Assurance of Discontinuance is in no regard an admission of guilt or liability by A & P regarding the allegations set forth above.

### **III.** **COMPLIANCE WITH LAW**

- 3.1 A & P shall comply fully with the obligations, terms and conditions set forth in Title VI and the regulations promulgated thereunder, the New York Human Rights Law, the New York City Human Rights Law, New York Civil Rights Law, the New York Education Law and the regulations promulgated thereunder.

### **IV.** **PROVISION OF EQUAL ACCESS TO PHARMACY SERVICES**

- 4.1 **Pharmacy Customer Bill of Rights for Language Services**

A & P shall adopt and abide by the Pharmacy Customer Bill of Rights for Language Services, attached hereto as Exhibit A, and shall post such Bill of Rights in English and A & P's Written languages on A & P's website. Nothing in this paragraph or in A & P's adherence to the Customer Bill of Rights shall in any way affect or limit A & P's obligations under this Assurance of Discontinuance.

- 4.2 **Equal Access to Pharmacy Services**

A & P shall ensure equal access to pharmacy services for its Customers, regardless of national origin, by providing language assistance to those Customers who require such assistance to communicate with Pharmacy Staff and to receive services related to prescription medications.

- 4.3 **Written Language Assistance Policy**

Within 30 days of the Effective Date, A & P shall create a written policy ("Language Assistance Policy"), subject to the approval of the OAG, describing the language assistance procedures designed by A & P to ensure equal access to pharmacy services as

required by this Agreement.

#### **4.4 Notice to Customers of their Right to Language Assistance**

Within 30 days of the Effective Date, A & P shall inform Customers of their right to free language assistance services. Multilingual signs advising Customers of the availability of free language assistance services shall be posted in conspicuous places in the Pharmacies of all New York Stores and on A & P's website.

#### **4.5 Language Assistance Services**

Pharmacy Staff shall communicate with Customers in each Customer's Primary Language when: 1) soliciting information necessary to maintain a patient medication profile; 2) offering prescription drug counseling; 3) providing prescription drug counseling, where such counseling is not refused by the Customer; 4) accepting in-person and telephonic prescription drug refill requests; and 5) when otherwise necessary to ensure the safe and effective use of prescription drugs. A & P shall ensure such information is communicated, at no extra charge, to Customers in each Customer's Primary Language, for in-store and over-the-telephone assistance, by using the free interpretation resources set forth below.

##### **a. Telephonic Services**

In Store and customer call-in communications: A & P shall continue to maintain a contract with a provider of telephonic interpretation services to provide immediate, simultaneous interpretation of communications between LEP Customers and Pharmacy Staff. The telephonic interpretation service shall have available trained interpreters who speak all of the languages that A & P can reasonably expect its LEP Customers to speak and shall be accessible to all Pharmacy Staff during Pharmacy business hours. Pharmacy Staff shall access the service as necessary to ensure verbal communications between Pharmacy Staff and LEP Customers take place in the Customer's Primary Language. In order to ensure proper provision of simultaneous interpretation services, the Pharmacy shall be equipped with either dual-handset telephone or any other configuration of telephonic equipment to allow for simultaneous interpretation services. The installation of such telephones shall be completed within 180 days of the Effective Date. Pharmacy Staff training on such equipment shall occur within 15 days of installation and shall be provided by the telephonic interpretation services provider. Such training shall include a written procedure distributed to all Pharmacy staff and available at all pharmacies, and field training on how to use the telephone dual-handset or other necessary telephonic equipment.

##### **b. Pharmacy Staff**

Effective March 1, 2009, before a Pharmacy Staff person communicates in the usual course of store operations Prescription Drug Information to any LEP Customer (either

directly, as in the case of Pharmacists, or in the capacity as interpreter, as in the case of other Pharmacy Staff), A & P shall assess such Pharmacy Staff person's language abilities and determine them to be sufficient to communicate Prescription Drug Information effectively in the LEP Customer's Primary Language. A & P shall contract with a vendor to assist with this assessment. The choice of vendor and assessment tool shall be subject to the approval of the OAG, which shall not be unreasonably withheld. A & P shall maintain data regarding the methodology and assessment of all Pharmacy Staff persons deemed qualified to communicate Prescription Drug Information in languages other than English, and shall incorporate and maintain such assessments in Pharmacy Staff persons' personnel profiles.

#### 4.6 **Translated Documents**

A & P shall make available at all its New York Stores English-language versions, and translations into A & P's Written Languages, of all prescription drug label information, warning labels and vital documents as described in this provision.

##### a. Prescription Drug Labels

Within 45 days following the full implementation of the A & P Pharmacy Computer System, which shall occur by March 31, 2010, when filling a prescription for an LEP Customer, A & P shall print the directions for use of the prescription drug in both English and the Customer's Primary Language if the LEP Customer's Primary Language is among A & P's Written Languages. Where the LEP Customer's Primary Language is not among those languages translated by A & P, A & P shall print the instructions for use in English and shall employ telephonic interpreter resources or Pharmacy Staff as described in paragraph 4.5 to verbally communicate the instructions for use to the Customer in his/her Primary Language.

##### b. Warning Labels

Within 45 days following A & P's full implementation of the A & P Pharmacy Computer System, which shall occur by March 31, 2010, when filling a prescription for an LEP Customer, in circumstances where A & P Pharmacy Staff deem it appropriate to affix labels, in addition to and separate from the prescription drug labels referred to in paragraph 4.6.a, with information regarding the safe and effective use of the prescription drug, including but not limited to common side effects or adverse effects and contraindications ("Warning Labels"), A & P Pharmacy Staff shall affix such labels in both English and the Customer's Primary Language if the Customer's Primary Language is among A & P's Written Languages. Where the LEP Customer's Primary Language is not among those languages translated by A & P, A & P shall affix the Warning Labels in English and shall employ telephonic interpreter resources or Pharmacy Staff as described in paragraph 4.5 to verbally communicate the information conveyed by the Warning Label to the Customer in

his/her Primary Language.

c. Vital Documents

Within 90 days of the Effective Date, A & P shall translate the following materials into all A & P Written Languages and shall make such translated material available in the same manner as the corresponding English-language documents:

1. notices of privacy practices, as required by 45 C.F.R. § 164.520;
2. written offers of counseling, as required by 8 N.Y.C.R.R. § 63.6(8)(ii)(a); and
3. any other material A & P considers vital to a Customer's safe and effective use of prescription medications.

**4.7 Training**

A & P shall provide annual training for all Pharmacy Staff regarding A & P's language assistance policies and procedures as set forth in this Agreement. - As part of this training, Pharmacy Staff shall be given copies of A & P's Language Assistance Policy and the one-page summary of such Policy. A & P shall provide such training to all new Pharmacy Staff within 30 days of their date of hire. All Pharmacy Staff shall sign an acknowledgment that they have received such training and such signed acknowledgment shall be maintained on file by A & P. A & P shall also produce a one-page summary of the Language Assistance Policy to serve as a reference for Pharmacy Staff, and shall post such summary near the point of sale of the Pharmacy of each New York Store.

**4.8 Complaint System**

Within 60 days of the Effective Date, A & P shall develop a system for tracking and responding to complaints from Customers about barriers to effective communication with Pharmacy Staff, which system shall include the capacity to confirm receipt of complaints and provide details of any remedial actions taken in response to the complaints.

**4.9 Advertising**

During the first year following the Effective Date, a majority of all A & P advertisements and promotional materials concerning Pharmacy Services, including but not limited to coupons and circulars, shall state that A & P provides language assistance services to its Customers.

**4.10 Recordkeeping**

A & P shall maintain documents and records sufficient to accurately provide the



Monitoring and Reporting information required in paragraphs 5.1 and 5.2, and to permit the analysis of Customer Primary Languages required in paragraph 4.5.

#### **4.11 Future Research and Advancements**

The parties agree that A & P will continue to research and where feasible implement protocols that expand access for Customers who require language assistance services. Moreover, nothing in this Agreement shall prevent A & P from providing services in a Customer's Primary Language that exceed the requirements of this Agreement.

### **V.**

#### **MONITORING AND REPORTING**

5.1 Commencing six (6) months following A & P's full implementation of its new pharmacy system, which shall occur by March 31, 2010, and every six (6) months thereafter during the duration of this Assurance, A & P shall provide the OAG with the following information for each New York Store based on the previous six-month period: the number of prescriptions filled, broken down in percentage terms by the Customer's Primary Language; the number of Warning Labels printed, broken down in percentage terms by the language in which they were printed; and the number of instructions for use of a prescription drug printed, if provided in some manner other than on the prescription drug label, broken down in percentage terms by the language in which they were printed.

A & P shall retain documents and materials that form the basis of this information for at least six (6) months from the date originally provided to the OAG.

5.2 A & P shall retain an independent examiner at its own cost and acceptable to the OAG to run a monitoring program in which individuals employed by that examiner make unannounced and incognito visits to New York Stores to determine the extent to which A & P is in compliance with the terms of this Agreement. The independent examiner shall have the right to make recommendations for other investigative steps, to ensure compliance with this AOD. A & P and the independent examiner shall submit a monitoring plan for approval by the OAG. Every six (6) months during the life of this Agreement, the independent examiner shall provide the OAG and A & P with a report that describes the visits and its findings.

5.3 Every six (6) months A & P shall provide the OAG with information about any complaints received through the system put in place pursuant to paragraph 4.8, and the steps, if any, that A & P took to address or resolve those complaints.

### **VI.**

## JURISDICTION AND OTHER PROVISIONS

- 6.1 A & P agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects A & P's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.
- 6.2 Notwithstanding any provision of this Agreement to the contrary, the OAG may, in its sole discretion, grant written extensions of time for A & P to comply with any provision of this Agreement.
- 6.3 Where notices of privacy practices required by 45 C.F.R. § 164.520 and/or written offers of counseling required by 8 N.Y.C.R.R. § 63.6(8)(ii)(a) are amended, A & P will be granted a reasonable amount of time to amend its vital documents as described in section 4.6.c of this Assurance.
- 6.4 The signatories to this Agreement warrant and represent that they are duly authorized to execute this Agreement and that they have the authority to take all appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.
- 6.5 All the terms of this Agreement are contractual, and none may be amended or modified except in a writing signed by all parties.
- 6.6 If A & P desires to modify any of the obligations and requirements set forth in this Agreement, it shall submit in writing its proposed modifications, along with any explanations for the desired changes, for review and approval by the OAG.
- 6.7 The parties may seek to enforce this Agreement through administrative or judicial enforcement proceedings, including a civil action in federal or state court, as appropriate, seeking specific performance of the provisions of this Agreement. Pursuant to New York Executive Law § 63(15), evidence of a violation of the Assurance will constitute prima facie proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the OAG. In the event of a dispute among the parties regarding any issue arising hereunder, the parties shall attempt in good faith to resolve the dispute before seeking administrative or judicial intervention.
- 6.8 The failure by the OAG to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the right of the OAG to enforce other deadlines and provisions of this Agreement.
- 6.9 This Agreement constitutes the entire agreement among A & P and the OAG on the

matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Agreement shall be enforceable.

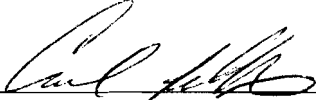
- 6.10 Nothing in this Agreement is intended to confer any right, remedy, obligation or liability upon any person or entity other than the parties hereto.
- 6.11 This Agreement does not apply to any other issues, reviews, or complaints that may be pending before the OAG or any other federal or state agency regarding A & P's compliance with applicable statutes or regulations enforced by the OAG, or any other agency. This Agreement also does not preclude further OAG investigations, inquiries or compliance reviews of A & P. Any matters arising from subsequent reviews or investigations shall be addressed and resolved separately in accordance with the procedures and standards of the statute(s) and implementing regulation(s) applicable to the matter(s) raised.
- 6.12 A & P shall not retaliate, intimidate, threaten, coerce, or discriminate against any person, including any A & P Customer or Employee, who has filed a complaint, testified, assisted, or participated in any manner in the investigation of the matter addressed in this Agreement.
- 6.13 This Agreement shall expire three (3) years following the full implementation of the A & P Pharmacy Computer System, which shall occur by March 31, 2010.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound thereby, have caused this Resolution to be executed, by their duly authorized attorneys or representatives, as of the date and year first written below.

Dated: New York, New York  
February 25, 2009

THE GREAT ATLANTIC & PACIFIC TEA  
COMPANY, INC. ("A&P")

By:

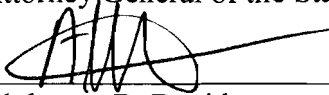
  
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CAROL J. DINICOLANTONIO  
Senior Director, Pharmacy

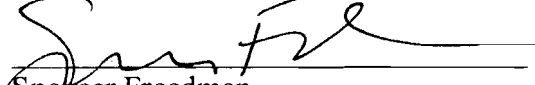
CONSENTED TO:

Dated: New York, New York  
~~February~~ 21, 2009  
April

ANDREW M. CUOMO  
Attorney General of the State of New York

By:

  
\_\_\_\_\_  
Alphonso B. David  
Deputy Bureau Chief

  
\_\_\_\_\_  
Spencer Freedman  
Counsel for Civil Rights

120 Broadway  
New York, New York 10271  
Tel. (212) 416-8250  
Fax. (212) 416-8074

**EXHIBIT A**

## Pharmacy Customer Bill of Rights for Language Services

1. The right to understand all information necessary to ensure the safe and effective use of prescription medications.
2. The right to receive counseling from a pharmacist in the language you speak.
3. The right to interpreter services to ensure that communications with a pharmacist can take place in your language.
4. The right to have vital documents, such as the directions for use of a prescription drug, translated into your language or explained to you by an interpreter.
5. The right to file a complaint with the pharmacy if you do not receive assistance or if any staff member violates these rights.