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In the Matter of:	)	OCP CASE NO. 2022-1141
	)	
COASTAL MEDICAL SUPPLY, INC.	)	
	)	
Respondent.	)	
_____	)	

## ASSURANCE OF VOLUNTARY COMPLIANCE

### **I. PREAMBLE**

This Assurance of Voluntary Compliance (the "Assurance") is entered by and between COASTAL MEDICAL SUPPLY, INC. ("Respondent"), and THE STATE OF HAWAII OFFICE OF CONSUMER PROTECTION ("OCP"), a governmental agency that is statutorily authorized, pursuant to Hawaii Revised Statutes ("HRS") Chapter 487, to represent the State of Hawaii in matters involving consumer protection (Respondent and OCP shall hereinafter collectively be referred to as the "Parties").

Pursuant to HRS § 487-5(6), Mana Moriarty, as Executive Director of OCP, has caused an investigation to be made into the business practices of Respondent in light of the information OCP acquired about Respondent, involving the unsolicited shipment of merchandise to consumers in Hawaii, such merchandise having been the subject of notices of recall issued by the government and the manufacturer. OCP commenced an investigation of Respondent to determine whether such practices violate applicable consumer protection laws, rules, or regulations.

This Assurance is entered into between the Parties at this time, in accordance with HRS § 487-12, because the Parties have reached agreement on the terms herein, in lieu of OCP continuing its investigation.

NOW, THEREFORE, in consideration of their mutual agreement to the provisions of this Assurance, and such other consideration as described herein, the validity, legality, sufficiency, and receipt of which is hereby acknowledged, the Parties agree as follows:

## II. DEFINITIONS

A. “Consumer” means a natural person who, primarily for personal, family, or household purposes, purchases, attempts to purchase, or is solicited to purchase, goods or services, or who commits money, property, or services in a personal investment.

B. “Effective Date” shall mean the date on which Respondent receives a copy of this Assurance, via email, duly executed in full by Respondent and by the Executive Director of OCP.

C. “Respondent” means COASTAL MEDICAL SUPPLY, INC. and all respective employees, agents, representatives, successors, and assigns.

D. “Complainants” means Rochelle R. T. Kauai (OCP Case No. 2021-1175), Michael T. Usui (OCP Case No. 2022-0160), Lori Jane Nelson, on behalf of Michael Nelson (OCP Case No. 2022-0935), Darryl Yoshio Masagatani (OCP Case No. 2022-1104), Aileen O. Agena (OCP Case No. 2022-1112), Jeffery Young (OCP Case No. 2023-0565), George Kurt Haia (OCP Case No. 2023-0960), Arthur Y. Park (OCP Case No. 2023-1092), Sandra Kahoano (OCP Case No. 2023-0476), and Diane Yamamoto (OCP Case No. 2024-734).

E. “Covered Conduct” means the Complainants’ receipt of bills for unsolicited merchandise from Respondent, or the Complainants’ receipt of medical supplies that were recalled by the government or manufacturer, including but not limited to Philips CPAP and BiPAP equipment and related supplies, when the Complainants were not notified that the medical supplies were the subject of a recall notice.

F. “Recall” means the recall of the various Philips Respironics CPAP (continuous positive air pressure) and BiPAP (bi-level positive air pressure) machines recalled by Philips Respironics beginning on June 18, 2021.

G. “Customer Complaint Response Procedure” means a procedure implemented by Respondent designed to satisfy Respondent’s obligations set forth in section IV, paragraph 6.

H. “Clear and Conspicuous” is defined pursuant to 16 CFR Part 425.2 and means that a required disclosure is easily noticeable and easily understandable by ordinary consumers.<sup>1</sup>

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<sup>1</sup> 16 CFR Part 425.2 states: “Clear and Conspicuous” means that a required disclosure is easily noticeable (*i.e.*, difficult to miss) and easily understandable by ordinary consumers, including in all of the following ways:

- (1) In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audio means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audio portions of the communication even if the representation requiring disclosure is made in only one means.
- (2) A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
- (3) An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
- (4) In any communication using an Interactive Electronic Medium, such as the Internet, mobile application, or software, the disclosure must be unavoidable.

I. "Release date" shall mean a date 91 days after OCP receives all payments due under Section IV.B.

### **III. RECITALS**

#### **A. BACKGROUND RE: THE INVESTIGATION BY OCP**

1. OCP commenced its investigation of Respondent to determine whether Respondent's business practices violate applicable consumer protection statutes, including but not limited to HRS § 480-2.

2. Respondent is registered to do business in the State of Hawaii.

3. Respondent operates a medical supply business located at 560 Nimitz Highway, Ste. 115B, Honolulu, HI 96817.

4. Respondent sells medical supplies, including continuous positive airway pressure (CPAP) and bilevel positive airway pressure (BiPAP) devices.

5. OCP received and investigated complaints from the Complainants.

6. OCP's investigation resulted in findings including, but not limited to:

- a. Complainants allege that they received bills for unsolicited merchandise from Respondent;
- b. Complainants allege that they received medical supplies from Respondent that were subject to a government or manufacturer recall and were not notified of the recall by Respondent;
- c. Complainants allege that they had difficulty in communicating with Respondent about (i) being charged for unsolicited merchandise, and (ii) the return or disposition of unsolicited merchandise; and
- d. Complainants dispute and deny their liability to Respondent for allegedly unsolicited merchandise and medical supplies that were subject to a government or manufacturer recall.

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- (5) The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the presentation that requires disclosure appears.
  - (6) The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  - (7) The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  - (8) When the presentation or sales practice targets a specific audience, such as children, older adults, or the terminally ill, "ordinary consumers" includes members of that group.

7. Respondent acknowledges that such conduct, if proven, would constitute unfair or deceptive acts or practices in the conduct of trade or commerce in violation of HRS § 480-2(a).

8. Respondent is willing to:

- a. refrain from charging consumers for unsolicited merchandise;
- b. comply with the manufacturer's instructions regarding any future recalls of products it supplies to affected consumers;
- c. take steps to repair credit scores of names Complainants; and
- d. communicate with consumers to avoid or resolve any complaints.

9. The Parties are agreeable to resolving OCP's interest in the matter in the fashion set forth below.

**B. MUTUAL INTEREST IN SETTLEMENT**

1. Respondent has cooperated with OCP in its pending investigation.

2. Respondent acknowledges, without conceding, that it may have violated HRS § 480-2(a) beginning in 2021.

3. The Parties have determined that it is in their respective best interests to settle the above-identified disputes and disagreements between Respondent and OCP, pursuant to the terms of this Assurance.

**IV. TERMS**

**A. RESPONDENT'S OBLIGATIONS**

1. Respondent shall not send unsolicited merchandise to consumers. The term "unsolicited merchandise" shall not include merchandise sent (i) periodically to consumers under a subscription contract, or continuity plan, with Respondent or (ii) as required by the manufacturer or the third-party payor of the applicable CPAP or BiPAP equipment for proper use, operation and maintenance of the equipment until the consumer has properly terminated the purchase contract for the CPAP or BiPAP machine and returned the same to Respondent.

2. Respondent shall clearly and conspicuously disclose all material terms prior to obtaining the consumer's express informed consent to enter into a subscription contract. The subscription contract shall provide consumers with a simple mechanism to cancel the contract and/or scheduled shipments. The contract shall specify the number of days prior to a scheduled shipment the consumer has to cancel a shipment free of charge. The signed subscription contract and the cancellation procedures shall be provided to the consumer in written and/or electronic form at the time of signing. Respondent shall provide written or electronic notice when Respondent is required by the manufacturer or third-party payor to send consumers unordered merchandise.

3. Respondent shall not provide any consumer with recalled equipment that has not been repaired and/or remediated by Phillips Respironics. Upon request of any Consumer, Respondent shall assist in answering any questions regarding the Recall including directing the consumer to the Phillips Respironics Recall website.

4. With respect to existing contracts, which may in some instances include ongoing subscription services, within five (5) days of the Effective Date, Respondent shall terminate all existing contracts with Complainants and cancel all existing balances or amounts billed to and disputed by Complainants. ("Debt Resolution"). Within fifteen (15) days of the Effective Date, Respondent shall provide written confirmation to OCP of the terminated contracts and cancellation of the disputed balances and amounts allegedly owed.

5. Within thirty (30) days of the Effective Date, Respondent shall implement a Customer Complaint Response Procedure that comports with the following:

- a. Respondent shall provide the consumer with written or electronic notice of a working phone number with voicemail capability twenty-four hours a day, seven days a week, and an email address when (i) a consumer enters into any contract with Respondent and (ii) on each occasion when a consumer receives merchandise from Respondent.
- b. Respondent shall provide consumers with notice of receipt of all consumer complaints and inquiries pertaining to orders, returns, cancellations, and billing within seventy-two (72) hours of receipt. Respondent shall maintain a log of all consumer complaints received.
- c. Respondent shall provide a substantive response to all consumer complaints and inquiries pertaining to orders, returns, cancellations, and billing within seven (7) business days of receipt, which responses shall be noted in a log maintained by Respondent.
- d. Within fifteen (15) days following the end of a calendar month, Respondent shall provide OCP with Respondent's log(s) of the complaints and inquiries received from consumers and its responses to consumer complaints and inquiries for the calendar month just passed.
- e. Once Respondent has provided OCP with its log(s) of complaints and inquiries for six (6) consecutive months, OCP shall have the right, in its sole discretion, to excuse Respondent from having to provide its log(s) on a monthly basis, provided that Respondent continues to follow its Customer Complaint Response Procedure and continues to log all communications exchanged with consumers.

- f. The foregoing Customer Complaint Response Procedure shall supersede and replace the Customer Complaint Response Procedure submitted by Respondent to OCP on November 9, 2023.

6. In the event of future recalls of any equipment sold by Respondent, it shall fully comply with the manufacturer's instructions regarding recall procedures and cooperate with any remediation plan implemented by the manufacturer in conjunction with the U.S. Food and Drug Administration.

B. MONETARY PAYMENT

1. Respondent shall pay restitution in the amount of \$397.30 by delivering a cashier's check made payable to Diane Yamamoto.
2. Respondent shall reimburse OCP \$5,000 for the costs involved in investigating ten (10) consumer complaints over a three (3) year period by delivering a cashier's check made payable to OCP.
3. Respondent shall pay both restitution and costs within five (5) days of the Effective Date. Payment may be mailed or hand-delivered to:

Attn: Melissa Enright  
Office of Consumer Protection  
235 S. Beretania St., Rm. 801  
Honolulu, HI 96813

C. SURVIVING CLAIMS

1. This Assurance shall not resolve or compromise any claim that any particular consumer may raise regarding Respondent's business practices.

2. This Assurance shall not resolve or compromise any claim of the State of Hawaii Department of Health, with respect to Respondent maintaining a durable medical equipment supplier license pursuant to HRS § 321-543.

3. If, after the Effective Date of this Assurance, Respondent violates or continues to violate terms of this Assurance, Respondent agrees to pay, pursuant to HRS § 480-3.1, a penalty of \$500 for each violation that goes unremedied for seven (7) business days from when Respondent first receives notice of the violation. If Respondent violates this Assurance and such violation is directed towards, targets, or injures an elder, defined by HRS § 480-13.5(c) as a consumer who is sixty-two years of age or older, Respondent shall pay an additional penalty of \$500 per violation.

D. STANDARD OF CONDUCT

1. Respondent acknowledges it is aware of, and Respondent represents it shall fully comply with, HRS Chapter 480, including but not limited to HRS § 480-2(a).

2. Respondent is permanently enjoined from violating HRS § 480-2, including but not limited to unfair, deceptive, or misleading practices regarding the shipment and billing of unsolicited merchandise to consumers.

E. COMPLIANCE

1. This Section shall in no way limit any right of OCP to obtain documents, records, testimony, or other information pursuant to any law, regulation, or rule.

2. For the purposes of monitoring and investigating compliance with any provision of this Assurance, upon the written reasonable request of OCP, Respondent agrees to provide responsive, non-privileged information, books, records, documents, or testimony (formal or informal) to OCP. The requested information shall be provided to OCP by Respondent within thirty (30) calendar days of the request.

F. ENFORCEMENT

1. Enforceable Agreement. The Parties agree that this Assurance constitutes a legally enforceable agreement, setting forth the rights and obligations of the Parties hereunder and that this Assurance constitutes a good faith settlement.

2. Conflicts. Nothing in this Assurance shall be construed as preventing or exempting Respondent from complying with any applicable law, rule, or regulation, nor shall any of the provisions of this Assurance be deemed to authorize or require Respondent to engage in any acts or practices prohibited by such applicable law, rule, or regulation.

V. RELEASES

A. RELEASE BY OCP

This Assurance constitutes a full and final settlement and release by OCP of Respondent. OCP's release will be effective upon the Release Date, which shall be 91 days after OCP's receipt of all payments due pursuant to Section IV.B. Upon the Release Date, OCP shall irrevocably and unconditionally release and forever discharge Respondent from any and all manner of past or present claims or causes of actions under Hawaii's above-cited consumer protection statutes relating to the Covered Conduct. Nothing in this Assurance shall be construed as a release of any claims held by consumers, even where those claims are identical to claims of OCP, as OCP does not represent any particular consumers, and OCP has no ability to release, resolve, or compromise such consumer claims, or otherwise impair the ability of consumers to pursue violations of consumer protection laws on their own behalf. Nothing in this Assurance shall be construed as a release of claims beyond those held by OCP, meaning that the released claims are limited in scope to civil claims and causes of action which OCP may bring on its own behalf for violation of Hawaii's consumer protection laws.

B. RELEASE BY RESPONDENT

This Assurance constitutes a full and final settlement and release by Respondent of OCP. Upon the Effective Date, Respondent irrevocably and unconditionally releases and forever

discharges OCP and its attorneys from any and all past or present claims or causes of action, obligations, liabilities, debts, demands, costs and expenses (including legal fees and costs) of every nature, kind and description whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, except as may arise outside of this Assurance.

## **VI. REPRESENTATIONS AND WARRANTIES**

A. Complete Agreement. 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.

B. Designated Representative. J. George Hetherington, Esq. has been authorized by Respondent to act as its agent, and to communicate with OCP regarding this Assurance. Until OCP is otherwise notified in writing, J. George Hetherington shall serve as the designated agent of Respondent for purposes of receiving notices connected with this Assurance.

C. Authority. Each of the Parties, and each person signing this Assurance, warrants and represents to each other that the signing party has all the requisite power, authority, and capacity to enter this Assurance and execute this Assurance without the approval or consent of any person not a party hereto or any governmental entity.

D. Free Act. Respondent acknowledges that this Assurance is entered into on its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed by this Assurance.

E. Consultation with Attorneys. Respondent acknowledges that: (i) it has been given a reasonable opportunity to consult with legal counsel regarding the effect and consequences of this Assurance; (ii) its agreement to this Assurance is made with the benefit of having waived the opportunity to confer with its legal counsel; (iii) it has not been induced to consent to this Assurance other than as expressly set forth in this Assurance; and (iv) OCP is going to rely upon this Assurance, and accordingly, Respondent waives all right to assert any such defenses it may have to the validity or enforcement of this Assurance.

F. Binding Effect. This Assurance is binding on Respondent, any entity that it controls, its heirs, officers, directors, agents, employees, successors, personal representatives, and assigns.

G. Survival. The representations and warranties made in this Assurance shall survive settlement.

## **VII. GENERAL PROVISIONS**

A. Powers. Nothing in this Assurance shall be deemed to constitute permission to engage in any acts or practices prohibited by any applicable laws, rules, or regulations, and nothing in this Assurance shall be deemed to waive, compromise, or limit OCP's exercise of its powers set forth in HRS Chapter 487 with respect to such conduct.

B. Cooperation. Respondent shall reasonably cooperate in OCP's ongoing investigations into matters of consumer protection. Respondent further agrees to execute any further documents that OCP may reasonably request in order for Respondent to carry out Respondent's obligations under this Assurance or otherwise comply with the provisions of this Assurance.

C. Preservation of Authority. Nothing in this Assurance shall be construed to limit the authority of OCP. This Assurance shall not bar OCP or any other governmental entity from enforcing laws, regulations, or rules against Respondent for conduct subsequent to or otherwise not covered by Section V.

D. No Admission of Liability. The execution and acceptance of this Assurance shall, in no event, be considered an admission of violation by Respondent, nor shall it constitute prima facie evidence of any violation by Respondent.

E. Not an Approval. This Assurance shall not be deemed an approval by OCP of any of the business or business-related practices of Respondent.

F. Disclaimer. Nothing herein constitutes approval by OCP of Respondent's past or future practices, including but not limited to Respondent's implementation of policies or procedures intended to satisfy Respondent's obligations under this Assurance. Respondent shall not make any representation to the contrary. Nothing herein relieves Respondent of its duty to comply with applicable laws of the State and all federal or local laws, regulations, ordinances, and codes, nor constitutes authorization by OCP for Respondent to engage in prohibited acts or practices.

G. No Limitation of Defenses. This Assurance shall not be construed or used as a waiver or any limitation of any defense otherwise available to Respondent in any pending or future legal or administrative action or proceeding relating to the conduct of Respondent prior to the Effective Date of this Assurance, or the right of Respondent to defend any individual or class claims or suits relating to the existence, subject matter, or terms of this Assurance.

H. Entire Agreement. OCP acknowledges by its execution that this Assurance constitutes a complete settlement of its concerns and that it shall not institute any civil or administrative proceeding or take any civil or administrative action in any forum against Respondent, its affiliates or its shareholders, owners, officers, directors, successors, assigns, contractors, employees, representatives, agents, or attorneys under Hawaii's above-cited consumer protection statutes relating to the Covered Conduct. Nothing in this Assurance shall be construed to make lawful any act, practice, or course of conduct prohibited or made unlawful by HRS Chapters 480, 487, or any other law.

I. Execution in Counterparts. This Assurance may be executed in counterparts.

J. Mutually Drafted. The Parties have participated jointly in the negotiation and drafting of this Assurance. In the event an ambiguity or question of intent or interpretation arises, as well as in all other events, this Assurance shall be construed as having been drafted jointly by all Parties and shall not be construed or interpreted against any party by reason of such party's role

in drafting the same. No presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Assurance.

K. Section Titles and Paragraph Headings. The titles and headings in this Assurance are for convenience and reference purposes only and are not intended by the Parties to expand or limit the meaning of the actual provisions of this Assurance.

L. Notice/Delivery of Notice. Whenever notice is to be given under this Assurance, notices shall be in writing and shall be deemed to have been duly given if delivered in person, by United States mail postage prepaid, or via email. OCP shall provide notice to Respondent under this Assurance.

Any notices or other documents sent to Respondent pursuant to this Assurance shall be sent to the following address:

Via U.S. mail to: Coastal Medical Supply, Inc.  
560 Nimitz Highway, Ste 115B,  
Honolulu, Hawaii 96817  
Attention: Shilpa Deshmukh, M.D.

With copy to: Yamamoto Caliboso Hetherington LLC  
Attn: J. George Hetherington, Esq  
1100 Alakea Street, Ste. 3100  
Honolulu, HI 96813

Or via email to [ghetherington@ychawaii.com](mailto:ghetherington@ychawaii.com), with confirmation via phone to (808) 540-4504.

Any notices or other documents sent to OCP pursuant to this Assurance shall be sent to the following address:

Via U.S. mail to: State of Hawaii Office of Consumer Protection  
Attn: Melissa Enright  
235 South Beretania St., Room 801  
Honolulu, HI 96813-2419

or Via email to [menright@dcca.hawaii.gov](mailto:menright@dcca.hawaii.gov), with confirmation via phone to (808) 586-5979.

Notice by letter shall be deemed to have been received five (5) business days from the date it was mailed, and email notice shall be deemed received upon transmission.

Respondent shall be responsible for notifying OCP of any change in address or change in email address. It shall be the responsibility of OCP to notify J. George Hetherington, Esq. of any change of address or change in email address.

M. Choice of Forum. The Parties submit to the personal jurisdiction of the courts of the State of Hawaii with respect to the Assurance only.

N. Choice of Law. This Assurance shall, in all respects, be interpreted, enforced, and governed by and under the laws of the State of Hawaii.

O. Recitals. The recitals contained at the beginning of this Assurance are part of the terms and provisions hereof and shall be binding on the Parties as if the same had been set forth as dispositive provisions hereof.

P. Interpretation of Terms. As used in this Assurance, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, as the context may require.

Q. Amendment. Any amendment or modification to this Assurance must be in writing and signed by duly authorized representatives of all the Parties hereto.

R. Construction. All terms of the Assurance shall be construed and interpreted in accordance with the fair import of the terms and provisions hereof.

S. Regulatory Powers Unaffected. No part of this Assurance shall compromise OCP's ability to enforce Hawaii's consumer protection laws as to issues arising on or after the Effective Date.

IN WITNESS WHEREOF, the Parties through their fully authorized representatives, have agreed to this Assurance:

STATE OF HAWAII  
Office of Consumer Protection

By Mana Moriarty 6/19/2025  
MANA MORIARTY Date  
Its Executive Director

COASTAL MEDICAL SUPPLY, INC.

By Shilpa Deshmukh 6/17/2025  
SHILPA DESHMUKH Date  
Its President and Director

By \_\_\_\_\_  
STEPHEN SEINK Date

Its Treasurer, Secretary, and Director

APPROVED AS TO FORM AND CONTENT:



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J. GEORGE HETHERINGTON

Attorney for Respondent Coastal Medical Supply, Inc.



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MELISSA ENRIGHT

Attorney for State of Hawaii  
Office of Consumer Protection