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10 **SUPERIOR COURT OF ARIZONA**  
11 **IN MARICOPA COUNTY**

12 In the Matter of:  
13 BUDGET HEARING AIDS, LLC, an Arizona  
14 limited liability company; and AUDIEN LLC,  
15 a Wyoming limited liability company and its  
16 wholly owned subsidiary,  
17 Respondent.

Case No. CV 2021-007536

**ASSURANCE OF DISCONTINUANCE**

(Assigned to the Hon. Pamela Gates)

18  
19 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), and  
20 BUDGET HEARING AIDS, LLC, an Arizona limited liability company, and AUDIEN LLC, a  
21 Wyoming limited liability company and its wholly owned subsidiary, (“Respondents”) agree to  
22 the entry of the following Assurance of Discontinuance (the “Assurance”) pursuant to A.R.S.  
23 § 44-1530 of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534 (the “CFA”).

24 1. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of  
25 Arizona, who is authorized to bring this action under the CFA, A.R.S. §§ 44-1521 to -1534.

26 2. Respondents are Budget Hearing Aids, LLC, an Arizona limited liability company,  
27 and its wholly owned subsidiary, Audien, LLC, a Wyoming limited liability company.

28 . . .

1           3.     Budget Hearing Aids LLC (“Budget”) began selling hearing devices in October  
2 2019 through Audixhearing.com, a website it owned. In January 2020, Budget shut down  
3 Audixhearing.com and began selling hearing devices through Xoomhearing.com, which it also  
4 owned. Due to the pandemic, Budget was unable to fill hundreds of orders due to shipping delays  
5 from China. As lockdowns in China eased and shipments became available and reliable again,  
6 Budget launched Audien LLC (“Audien”), a wholly owned subsidiary of Budget. Audien sells  
7 hearing aid devices through its website, Audienhearing.com.

8           4.     As of September 2020, Respondents made sales to approximately 68,000 different  
9 customers through its three different websites, Audixhearing.com, Xoomhearing.com, and  
10 Audienhearing.com. Respondents currently sell two hearing products that are priced at \$89.00  
11 and \$249.00 per pair.

12           5.     Respondents misled consumers on each of its websites by using the U.S. Food and  
13 Drug Administration (“FDA”) logo in conjunction with the term “FDA APPROVED.” Budget  
14 used the FDA logo and the term “FDA APPROVED” on its website, Audixhearing.com, from the  
15 time the website launched in October 2019 until Budget shut down the website and replaced it  
16 with Xoomhearing.com. Budget used the FDA logo and “FDA APPROVED” on its website  
17 Xoomhearing.com from the time the website began until Budget replaced it with  
18 Audienhearing.com. Respondents used the FDA logo and the term “FDA APPROVED” on their  
19 website Audienhearing.com from the time the website began until September 2020.

20           6.     Respondents then misled consumers on their website, Audienhearing.com, by using  
21 the FDA logo in conjunction with the term “FDA REGISTERED” from September 2020 until  
22 April 2021.

23           7.     Respondents’ use of the term “FDA APPROVED” or “FDA REGISTERED”  
24 conveys a message to the public that the FDA favors or endorses a private sector organization or  
25 the organization’s activities, products, services, and/or personnel (either overtly or tacitly), which  
26 FDA does not and cannot do.

27           8.     The State alleges that Respondents’ conduct, as described in paragraphs 5 through 7  
28 above, constitutes an unfair and deceptive act and practice in violation of the CFA.

1           **NOW, THEREFORE,** it is hereby agreed as follows:

2           9.       The injunctive relief set forth in paragraph 10 below is binding upon any of the  
3 following that receive actual notice of this Assurance through personal service or otherwise: (a)  
4 Respondents; (b) their officers, agents, servants, employees, and attorneys; and (c) those persons  
5 in active concert or participation with Respondents or any of Respondents' officers, agents,  
6 servants, employees, or attorneys.

7           10.      Respondents agree, undertake, and assure that they will stop using the FDA logo in  
8 conjunction with the wording "FDA APPROVED" or "FDA REGISTERED" in all advertising,  
9 whether online or print-based, now and in the future.

10          11.      Pursuant to A.R.S. § 44-1534, Respondents are liable and obligated to pay to the  
11 Attorney General the amount of \$5,840.00 in attorneys' fees and costs due prior to the time of  
12 entry of this Assurance, to be deposited into the Consumer Protection-Consumer Fraud Revolving  
13 Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

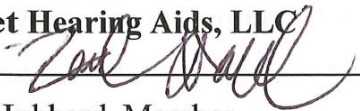
14          12.      The payments required herein shall be paid in the form of cashier's checks or  
15 money orders made payable to "The State of Arizona," payment shall be delivered, or mailed and  
16 postmarked, to:

17                           Consumer Protection and Advocacy Section  
18                           The Office of the Arizona Attorney General  
19                           2005 N. Central Ave  
                              Phoenix, AZ 85004


20          13.      In the event that Respondents commit a material breach of this Assurance, the State  
21 may, in its sole discretion, reopen the investigation and/or proceedings and continue with this  
22 matter as though this Assurance had not been entered, provided that Respondents shall be entitled  
23 to an offset for any amount Respondents already paid to the State under this Consent Judgment.

24          14.      Nothing in this Assurance shall be construed as an approval by the Attorney  
25 General, the Court, the State of Arizona, or any agency thereof of Respondents' past, present or  
26 future conduct. Respondents shall not represent or imply that the Attorney General, the Court, the  
27 State of Arizona, or any agency thereof has approved or approves of any of Respondents' actions  
28 or any of Respondents' past, present or future business practices.




1 **Budget Hearing Aids, LLC**  
By:   
2 Zack Hubbard, Member  
3

Date: 5/4/21

4 **Audien, LLC**  
5 By:   
6  
7 Zack Hubbard, Authorized Signatory

Date: 5/4/21

8  
9 Approved as to form and content:

10  
11 **Kerry McCue**  
12 By:   
13 **David A. Grieme**  
14 Attorneys for Respondents  
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Date: 5/4/21