

**IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND**

STATE OF MARYLAND,
200 St. Paul Place
Baltimore, Maryland 21202

Plaintiff,

v.

Case No.

JOHNSON & JOHNSON VISION
CARE, INC.,
7500 Centurion Parkway, Suite 100
Jacksonville, Florida 32256

Defendant.

* * * * *

COMPLAINT

Plaintiff, State of Maryland, by its Attorney General, brings this action in equity against Johnson & Johnson Vision Care, Inc. ("Johnson & Johnson") and seeks injunctive relief and civil penalties for Johnson & Johnson's ongoing violation of the Maryland Antitrust Act, Md. Code Ann., Com. Law §§ 11-201 through 11-213, by establishing a minimum retail price for the sale of contact lenses to consumers.

INTRODUCTION

1. Contact lenses are sold only by prescription from a licensed eye care professional, such as an ophthalmologist or optometrist.

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2. The sale of contact lenses begins with an eye examination performed by an eye care professional. After determining the health of the eye, the prescription strength, and measurements of the eye, the eye care professional performs a fitting to match a lens to the patient's prescription and dimensions of the eye. When the examination and fitting have been completed, the eye care professional may issue a prescription for contact lenses.

3. Under the 2004 federal Fairness to Contact Lens Consumers Act, 15 U.S.C. §§ 7601 through 7610, a contact lens prescription must include, among other information, the name of the manufacturer of the lens and the trade or brand name of the lens. 15 U.S.C. § 7610(3)(H).

4. An eye care professional may sell, as well as prescribe, contact lenses. To promote competition, however, the Fairness to Contact Lens Consumers Act requires that the prescribing eye care professional provide patients with a copy of their prescription so that the patient can purchase contact lenses from the retailer of the patient's own choice. 15 U.S.C. § 7601(a).

5. Since the prescription must specify the name of the manufacturer of the lenses prescribed, a retailer may not substitute a different brand of contact lens even if the substitute is equivalent in all other respects. Thus, competition between brands at the retail level is foreclosed. Manufacturers, therefore, compete for the patronage of eye care professionals rather than consumers.

6. Contact lenses are sold in packs of as few as six lenses and as many as thirty lenses. Consumers dispose of lenses after the designated time period for wear, usually between one day and thirty days.

7. Because consumers must replace their contact lenses as often as daily, they must make repeated purchases. Warehouse stores and clubs like Walmart and Costco Wholesale Corporation, as well as online sellers like 1-800 Contacts, obtain much of their business from customers who make repeated purchases. These sellers, referred to as alternative or discount sellers, often sell Johnson & Johnson contact lenses at lower prices than eye care professionals do.

8. Although eye care professionals receive a separate fee for fitting and prescribing contact lenses, many eye care professionals have complained to Johnson & Johnson about discount sellers' lower prices for lenses.

9. In the summer of 2014, responding to eye care professionals' requests that it limit competition from "discounters," Johnson & Johnson implemented a Resale Price Maintenance Policy, which fixed minimum retail prices for all retail sellers of Johnson & Johnson contact lenses.

10. The Resale Price Maintenance Policy effectively prevented retailers from offering competitive discount pricing of lenses to consumers.

11. Costco objected to Johnson & Johnson's Resale Price Maintenance Policy. Among its objections, Costco asserted that Johnson & Johnson's Resale Price Maintenance Policy denied Costco the ability to offer its customers the discount pricing that its customers expected.

12. Johnson & Johnson did not want to lose Costco as a retail distributor of Johnson & Johnson lenses. Accordingly, during the summer and fall of 2014, Johnson & Johnson engaged in negotiations with Costco that resulted in resale price agreements

between Johnson & Johnson and Costco: Johnson & Johnson agreed to a series of revisions to its Resale Price Maintenance Policy, and Costco agreed to continue selling Johnson & Johnson lenses under the revised policy.

13. Historically, the United States Supreme Court has viewed resale price maintenance policies as a *per se* violation of Section 1 of the Sherman Antitrust Act if the policy was the result of an *agreement* between manufacturer and vendor to fix a minimum resale price. See *Dr. Miles, Medical Co. v. John D. Park and Sons Co.*, 220 U.S. 373 (1911). In Maryland, the General Assembly has directed Maryland courts to interpret State antitrust law similarly to federal courts' interpretation of federal antitrust law.

14. Case law established that a manufacturer could *unilaterally* institute a resale price maintenance policy and terminate retailers who violated the policy. However, securing a retailer's compliance with such a policy through an agreement was a *per se* violation of Section 1 of the Sherman Act. *U.S. v. Colgate & Co.* 250 U.S. 300, 1919; *U.S. v. Parke, Davis & Co.*, 362 U.S. 29 (1960).

15. In 2007, in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 887 (2007), the Supreme Court overturned almost one hundred years of precedent when it held that minimum resale price maintenance agreements are no longer *per se* illegal under federal law. Instead, the Court held that federal law requires that such agreements must be evaluated under a reasonableness standard.

16. In 2009, in response to the *Leegin* case, the Maryland General Assembly enacted Chapter 43 of the 2009 Laws of Maryland, which amended the Maryland Antitrust Act to provide that an agreement establishing a minimum retail price is an unreasonable

restraint of trade and, thus, *per se* illegal in Maryland. Md. Code Ann., Com. Law § 11-204(b). Such agreements, although no longer *per se* illegal under federal law, once again became *per se* illegal in Maryland.

17. Thus, to be legal in Maryland, a resale price maintenance policy must result from the purely unilateral decision of a manufacturer, without negotiation as to its terms, and must be enforced unilaterally.

18. Johnson & Johnson's Resale Price Maintenance Policy, which was the result of an agreement with Costco, is thus *per se* illegal.

PLAINTIFF

19. Plaintiff, the State of Maryland, is a sovereign state of the United States of America. The State of Maryland sues to obtain equitable relief and civil penalties pursuant to § 11-209(a) of the Commercial Law Article.

DEFENDANT

20. Defendant Johnson & Johnson is a Florida corporation with its headquarters in Jacksonville, Florida. Johnson & Johnson is the largest manufacturer of contact lenses in the United States. It sells more than 40% of all lenses sold in the United States and in Maryland.

JURISDICTION AND VENUE

21. This Complaint is filed and these proceedings are initiated pursuant to the Maryland Antitrust Act, Md. Code Ann., Com. Law § 11-209(a) (2005), to obtain

injunctive relief and civil penalties for Johnson & Johnson's violations of § 11-204(a)(1) of the Commercial Law Article.

COUNT-ANTITRUST VIOLATION, UNREASONABLE
RESTRAINT OF TRADE OR COMMERCE

22. There are four leading manufacturers of contact lenses: Johnson & Johnson, Alcon, Bausch & Lomb, and Cooper Vision. Together, these manufacturers sell over 90% of all contact lenses in the United States. These manufacturers compete for sales to retailers in the wholesale contact lens market.

23. Retail sellers of contact lenses include eye care professionals and discount sellers such as "big box" stores like Walmart, buying clubs like Costco, and online sellers like 1-800 Contacts. Both retail outlets and eye care professionals purchase lenses at wholesale prices directly from manufacturers or through authorized distributors.

24. Costco is a club store that has its principal office in Seattle, Washington. There are ten Costco stores in Maryland, each of which sells contact lenses.

25. Sam's Club, which has twelve Maryland stores, and BJ's Wholesale Club, which has eight Maryland locations, also sell contact lenses and both operate similarly to Costco.

26. Club store consumers buy a membership that permits access to a club store location that offers lower prices on products than are available at non-club retail stores.

27. Because contact lens prescriptions from an eye care professional specify a specific manufacturer, there is limited *interbrand* competition for the retail sale of contact lenses.

28. However, there is significant *intra*brand competition at the retail level. Eye care professionals and discount sellers all compete with each other to sell lenses to consumers once a prescription has been issued.

29. Before the institution of Johnson & Johnson's Resale Price Maintenance Policy, discount sellers often sold lenses at lower prices than eye care professionals.

30. Upset by this competition, some eye care professionals asked Johnson & Johnson and the other lens manufacturers to impose a resale price maintenance policy on all retail contact lens sellers. In a letter distributed in June, 2014, a Johnson & Johnson executive thanked eye care professionals who prescribed Johnson & Johnson lenses for their feedback on Johnson & Johnson's business practices and stated that Johnson & Johnson was initiating a resale price maintenance policy it called a unilateral pricing policy ("UPP").

31. In a June 2014, announcement to its customers, Johnson & Johnson stated that it would institute a UPP as to one type of lens beginning in July of that year, and that it would extend the policy to all of its lenses in August of 2014. The UPP established a minimum price at which each type of lens could be sold and stated, "Under this policy, Johnson & Johnson and its authorized distributors will cease to supply UPP products to any reseller who advertises or sells UPP products to patients at a price below the UPP price. . . ." (Exhibit 1)

32. Costco objected to Johnson & Johnson's minimum price rules from their inception because Costco had been selling Johnson & Johnson contact lenses to its members for prices lower than the minimum price that Johnson & Johnson was now

imposing. Johnson & Johnson's rules required Costco to raise its retail prices to club members.

33. In light of Costco's objections, beginning in July, 2014, Johnson & Johnson executives and Costco executives held a series of meetings and phone calls to discuss changes to the pricing policy. During these discussions, Costco asserted that Johnson & Johnson's pricing policy was contrary to Costco's business model. Johnson & Johnson indicated that alternative options might be available for Costco. These options included lenses packaged exclusively for club stores and gift cards to offset higher prices caused by the new pricing policy.

34. During these negotiations, on July 31, 2014, Costco received a letter from Johnson & Johnson threatening to terminate Costco's supply if it did not adhere to the new pricing policy.

35. Johnson & Johnson told Costco that it had until August 7, 2014, to bring its prices up to UPP levels or work out an adjustment to the pricing policy so that Costco would not have its supply of lenses cut off.

36. Johnson & Johnson's threats to cut off Costco's supply of contact lenses caused Costco to intensify its efforts to negotiate terms with Johnson & Johnson.

37. In meetings on August 5 and 6, 2014, Johnson & Johnson and Costco negotiated specific terms of an agreement to alter the UPP, such as allowing Costco to offer a \$50.00 store gift card to customers who purchased a year's supply of lenses. Costco was not fully satisfied with this amendment, but agreed to it so that it would not have its supply

of lenses terminated. Johnson & Johnson agreed to alter the terms of its pricing policy to reflect the agreement with Costco.

38. On August 7, 2014, Johnson & Johnson issued amendments to its pricing policy to reflect agreements made at the August 5th and 6th meetings. In particular, Johnson & Johnson agreed to allow Costco and other retailers to offer their members a \$50 gift card to be used for in-store, non-lens products if they bought an annual supply of lenses.

39. In an e-mail exchange on August 21, 2014, between Johnson & Johnson President Laura Angelini and Johnson & Johnson executive Ashley McEvoy, the executives acknowledged that the modifications to Johnson & Johnson's pricing policy were the result of an "agreement" reached with Costco and that Costco would be "implementing the new agreed model." (Exhibit 2)

40. On August 11, 2014, in accord with the agreement it had reached with Johnson & Johnson, Costco raised its prices to consumers to the minimum UPP price. This resulted in price increases on eight separate lens packs. (Exhibit 3).

41. In September, 2014, Costco representatives met with Johnson & Johnson representatives to discuss what Johnson & Johnson said would be a new solution for Costco's concerns about the UPP. The intent of the negotiations was to reach agreement on further revisions to the UPP that would allow Costco to offer additional discounts to its customers.

42. In early October, Costco and Johnson & Johnson agreed to additional modifications to the UPP. These modifications, contained in a "club store retailer amendment" that was subsequently issued by Johnson & Johnson, permitted a club store

to offer an in-store credit of 10% off the purchase price, in the form of a gift card to the customer, when less than an annual supply of lenses is purchased.

43. Discussions between Johnson & Johnson and Costco on additional modifications to the pricing policy continued until January 2015, but they did not result in any further agreements to make adjustments, amendments or other changes to the UPP.

44. In January, 2015, Costco entered into a Qualified Retail Account Agreement (“Account Agreement”). In the Account Agreement, which incorporates the changes negotiated between Johnson & Johnson and Costco to the original UPP announcement, Costco agreed to adhere to the UPP with the negotiated changes, and Johnson & Johnson agreed to continue selling lenses to Costco for resale by Costco.

45. The modifications to Johnson & Johnson’s Resale Price Maintenance Policy were not the product of Johnson & Johnson’s unilateral decision, but rather the result of negotiation and agreement.

46. The modification to Johnson & Johnson’s Resale Price Maintenance Policy resulting from the negotiations between Costco and Johnson & Johnson were also applied to Sam’s Club and BJ’s. Each company entered into similar retail account agreements with Johnson & Johnson.

47. Johnson & Johnson’s Resale Price Maintenance Policy increased costs to Maryland consumers who purchased lenses at buying clubs, mass merchandisers and online sellers.

48. Johnson & Johnson's actions in participating in agreements with Costco that establish a minimum price for the sale of contact lenses constitute an unreasonable restraint of trade or commerce in violation of § 11-204(a)(1) of the Commercial Law Article.

REQUEST FOR RELIEF

WHEREFORE, the State of Maryland respectfully requests that the Court:

- A. Adjudge and decree that Johnson & Johnson has engaged in an unlawful combination in violation of § 11-204(a)(1) of the Commercial Law Article;
- B. Permanently enjoin Johnson & Johnson from implementing or enforcing a resale price maintenance agreement with respect to contact lenses in Maryland;
- C. Award civil penalties in the amount of \$100,000 under § 11-209(a)(4) of the Commercial Law Article.
- D. Award the State of Maryland the cost of suit and reasonable attorney's fees.
- E. Award such other relief as the Court deems proper.

Dated: February 29, 2016

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland


ELLEN S. COOPER
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A handwritten signature in black ink, appearing to read 'M. Fader', is written over a horizontal line.

MATTHEW J. FADER
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Attorneys for the State of Maryland

EXHIBIT 1

ACUVUE® Brand Contact Lenses Unilateral Price Policy

Effective July 1, 2014 the ACUVUE® OASYS® Brand Contact Lenses six-month supply pack (12 lenses per box) will be subject to a Unilateral Price Policy (UPP). Effective August 1, 2014, the remaining family of products in the ACUVUE® OASYS® Brand, 1-DAY ACUVUE® TruEye® Brand Contact Lenses and 1-DAY ACUVUE® MOIST® Brand Contact Lenses will be subject to this same UPP.

The new Unilateral Pricing Policy will set a minimum price below which no reseller can advertise or sell a particular product. The intent of the policy is to reinvigorate the rich clinical dialogue that is so important to effective patient care, rather than focusing on cost.

Under this policy, Johnson & Johnson Vision Care, Inc. (JJVCI) and its authorized distributors will cease to supply UPP products to any reseller who advertises or sells UPP products to patients at a price below the UPP price listed below:

PRODUCT	UPP PRICE	START DATE
ACUVUE® OASYS® Six-month supply pack (12 lenses per box)	\$67.50	7/1/2014
ACUVUE® OASYS® Annual supply pack (24 lenses per box)	\$110.00	8/1/2014
ACUVUE® OASYS® For Astigmatism Brand Contact Lenses	\$40.00	8/1/2014
ACUVUE® OASYS® For Presbyopia Brand Contact Lenses	\$40.00	8/1/2014
1-DAY ACUVUE® TruEye® Brand Contact Lenses	\$82.50	8/1/2014
1-DAY ACUVUE® MOIST® Brand Contact Lenses (30 lenses per box)	\$33.00	8/1/2014
1-DAY ACUVUE® MOIST® Brand (90 lenses per box)	\$63.50	8/1/2014
1-DAY ACUVUE® MOIST® for Astigmatism Brand Contact Lenses	\$34.50	8/1/2014

Because an advertisement to "beat any price" logically commits a reseller to beat even a price that already is below the UPP Price, JJVCI will regard an advertisement promising to "beat any price" or using similar words to be an advertisement to sell for less than the UPP Price.

JJVCI will regard non-price discounts, such as coupons, gift cards, product giveaways and bundling as price discounting for purposes of determining whether a reseller has advertised or sold a product for less than the UPP Price. For example, if a reseller advertised or sold a product at the UPP price and, in addition, offered a \$5.00 gift card, JJVCI would regard that as a sale below the UPP Price.

This policy is unilateral and does not represent an agreement between JJVCI and its authorized distributors or resellers. As such, this policy is non-negotiable and individual representatives are not authorized to alter, waive, modify or negotiate this policy. Resellers are free to advertise and sell any UPP product at a price of their own choosing, however, violations will result in loss of product supply.

For further questions, please contact the number/email below. Your JJVCI and distributor sales representatives will be unable to discuss this policy beyond reciting the policy and its supporting documents.

customerexperience@its.jn.com, or dial 1.800.874.5278

Revised: 6/16/14

UPP Frequently Asked Questions

These Frequently Asked Questions (FAQs) are intended to clarify how JJVCI interprets its Unilateral Price Policy (UPP). Should you have a question that is not addressed here, or need further clarification on the policy, please contact: customerexperience@jits.jnj.com or dial 1.800.874.5278.

In order to ensure that you receive accurate information regarding the UPP, JJVCI and distributor sales representatives will be unable to discuss the UPP beyond what is written here and will instead direct you to contact the email address or phone number listed above.

General FAQs

1. Why is JJVCI adopting a UPP?
 - a. The intent of the policy is to reinvigorate the rich clinical dialogue that is so important to effective patient care, rather than focusing on cost.
2. To whom does the UPP apply?
 - a. The UPP applies to any person or business selling or advertising JJVCI contact lenses to consumers within the US.
3. How frequently is the UPP updated?
 - a. There are currently no specific plans to regularly update the UPP. However, JJVCI reserves the right to modify the UPP at any time. If a modification is made, you will receive 30 days' notice before the amended UPP takes effect.
4. Am I permitted to sell UPP products above or below the UPP price?
 - a. You are free to sell product you have purchased at any price you choose. However, if you sell product below the UPP price, JJVCI and its authorized distributors will refuse to accept new orders from you. In addition, JJVCI will exercise its right to repurchase your current inventory of products subject to the UPP price. If you sell product at or above the UPP price, JJVCI does not consider this to be a violation of the UPP.

Policy FAQs

1. How does JJVCI determine if a UPP violation has occurred?
 - a. A violation has occurred if the final per unit purchase price following all discounts and redeemed rebates (excluding JJVCI Issued Professional Service Recovery Reimbursement offers), but prior to sales tax and shipping costs, is below the UPP price or if the advertised price is below the UPP price. Shipping discounts or free shipping offers are permissible under this policy and are not counted against the final per unit purchase price.
 2. Does the UPP apply to advertised prices as well?
 - a. Yes, the UPP covers both the advertised price and the final sale price.
 3. How do you define the advertised price?
 - a. The advertised price point is the lowest per unit price point listed in store or in advertising materials. These materials include, but are not limited to, website "As Low As" pricing, coupons, free standing inserts, website in-cart pricing, third party affiliate advertising, and mailers.
 4. Are rebates or discounts permitted under this policy?
 - a. Yes. Rebates and discounts are permitted as long as the per unit purchase price after the rebate or discount is applied remains equal to or above the UPP price.
For example, if you sell a box of 1-DAY ACUVUE MOIST® for Astigmatism Brand with a 10% discount off of an original price of \$40.00, the final price to the customer would be \$36.00. This is above the UPP of \$34.50 and would not violate the UPP. If you offered a 15% discount off of a \$40.00 price, this would be a violation because the final price to the consumer would be \$34.00.
- NOTE:** Professional Service Recovery Reimbursement offers issued by JJVCI to refit patients following product discontinuations are excluded when calculating final per unit purchase price.
5. Is Co-Promotion or Co-Advertising with other items considered a violation?
 - a. No. Co-Promotion or Co-Advertising with other items is allowed under this policy as long as the price applied to the JJVCI product(s) specifically stated on the receipt is not below the UPP Price, and the price on the other product(s) or service is not contingent upon the purchase of JJVCI UPP Products.

6. Is "Bundling" allowed with Acuvue Brand Contact Lens UPP Products?

Bundling an Acuvue Brand Contact Lens UPP Product with another product or service is allowed if all of the following conditions are met:

- a. The price of the UPP product remains equal to or above the UPP price after subtracting the total bundle savings value. *The total bundle savings value is the sum of the discounts on all products and services included in the bundled offer.*
- b. The bundled offer explicitly states the total bundle savings value. *If the offer includes a fixed percentage discount, the total bundled savings value for the offer must be capped at an amount that would not violate the UPP, and this cap must be explicitly stated.*
- c. The price of the UPP product is clearly stated on the customer receipt.
- d. All bundled products and services must be purchased, and their associated discounts redeemed, at the time of sale of the UPP product.
- e. The bundled offer cannot include "free" products or services.

7. How do Vision Insurance benefits / Health Care Plan reimbursements impact UPP Pricing?

- a. Vision Insurance benefits and/or Health Care Plan reimbursement is a payment method and not a price discount, and therefore is not considered in determining if a retail price violates the UPP.

8. What happens if I violate the UPP?

- a. Once JJVCI determines to its sole satisfaction that a violation of the UPP has occurred, JJVCI will send a warning letter (via FedEx with signature required) indicating the nature of the violation. If you fail to correct the pricing within 7 days of receiving the letter (or at any time thereafter), JJVCI will cease to supply UPP products to your account.

9. Will a discontinuation of product shipments apply to all JJVCI products?

- a. No. JJVCI will only stop shipping products covered by the UPP. All non-UPP JJVCI products will continue to ship.

10. What if my violation was unintentional or due to a misunderstanding of the UPP?

- a. You are responsible for the accuracy of your pricing, understanding and complying with this policy. JJVCI will determine to its sole satisfaction whether a violation has occurred.

Revised: 6/16/14

CONFIDENTIAL. This pricing information is confidential and intended only for the eye care professional office receiving this letter. It is subject to any existing confidentiality provisions you have agreed to with Johnson & Johnson Vision Care, Inc. or your distributor. It may not be shared with third parties outside of your office.

ACUVUE® Brand Contact Lenses are indicated for vision correction. As with any contact lens, eye problems, including corneal ulcers, can develop. Some wearers may experience mild irritation, itching or discomfort. Lenses should not be prescribed if patients have any eye infection, or experience eye discomfort, excessive tearing, vision changes, redness or other eye problems. Consult the package insert for complete information. Complete information is also available from VISTAKON® Division of Johnson & Johnson Vision Care, Inc., by calling 1-800-843-2020 or by visiting acuvueprofessional.com. ACUVUE®, ACUVUE® ADVANCE®, MOIST®, TrueEye®, ACUVUE® 2®, ACUVUE® OASYS®, and VISTAKON® are trademarks of Johnson & Johnson Vision Care, Inc.

The third-party trademarks used herein are owned by their respective companies.

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ACUVUE®
BRAND CONTACT LENSES
INNOVATION FOR HEALTHY VISION™

EXHIBIT 2

From: McEvoy, Ashley [JJCUS]
To: Marques, Roberto [CPCUS]; Pappas, Caitlin [CONUS]
CC: Angelini, Laura [VISUS]
Sent: 8/21/2014 7:32:04 PM
Subject: FW: Costco Cash Card_Credit Details
Attachments: IMG_2707.jpg

Keeping you in the loop. We have reached an agreement with Costco which is a good solution. There may still be some noise with them because they are not fans of our UPP policy but we are partnering on a productive path forward.

From: Angelini, Laura [VISUS]
Sent: Thursday, August 21, 2014 12:41 PM
To: Hollin, Rob [MEDGB]; McEvoy, Ashley [JJCUS]
Subject: FW: Costco Cash Card_Credit Details

Ash, Rob,

Costco implementing the newly agreed model.

Thanks. Best regards,

Laura

Laura Angelini

President, Johnson & Johnson Vision Care, Inc.

7500 Centurion Parkway, Suite 100

Jacksonville, FL 32256

T: +1-904-443-1012

M: +1 908-432-6221

Email: langel@its.jnj.com <mailto:langelin@its.jnj.com>

Confidentiality Notice

This message is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the person responsible for delivering the message solely to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone.

From: Venner, David [VISUS]
Sent: Thursday, August 21, 2014 10:59 AM
To: Herrmann, David [VISUS]; Angelini, Laura [VISUS]; Henderson, Jacqueline [MEDCA]; Ryno,

Matthew [VISUS]; Marques, Antonio [VISUS]
Subject: Fwd: Costco Cash Card Credit Details

FYI

Sent from my iPhone

Begin forwarded message:

From: "Fujioaka, Jeff [VISUS]" <JFujioaka@its.jnj.com>
Date: August 21, 2014, 10:43:34 AM EDT
To: "Dody, Janice [VISUS]" <jdody1@ITS.JNJ.com>, "Venner, David [VISUS]" <DVenner@its.jnj.com>
Subject: Costco Cash Card_Credit Details

Janice, Dave,

Just received from the field...

EXHIBIT 3

VISTAKON MANDATED PRICE INCREASES

	2014	2014			
Item	COSTCO PRICE TO CONSUMERS PRE-POLICY	COSTCO PRICE TO CONSUMERS AFTER POLICY	COSTCO CASH CARD	NET	PERCENTAGE INCREASE
Oasys 12 (2014 sell = 6pk times 2 for comparison)	\$51.66	\$67.50	\$6.75	\$60.75	17.6%
Oasys 24pk	\$97.93	\$110.00	\$11.00	\$99.00	1.1%
1-Day Moist 90pk	\$59.87	\$63.50	\$6.35	\$57.15	-4.5%
1-Day Moist 30pk	\$21.99	\$33.00	\$3.30	\$29.70	35.1%
1-Day Acuvue TruEye 90pk	\$66.77	\$82.50	\$8.25	\$74.25	11.2%
1-Day Moist for Astigmatism 30pk	\$27.87	\$34.50	\$3.45	\$31.05	11.4%
Acuvue Oasys for Presbyopia	\$31.87	\$40.00	\$4.00	\$36.00	13.0%
Acuvue Oasys for Astigmatism	\$29.86	\$40.00	\$4.00	\$36.00	20.6%

POLICY PRICES EFFECTIVE AUGUST 1, 2014, EXCEPT OASYS PRICE EFFECTIVE JULY 1, 2014

CASH CARDS CAN NOT BE USED TO REDUCE PURCHASE PRICE OF VISTAKON LENSES; ONLY ON OTHER PURCHASES; VISTAKON PROHIBITS THE ADVERTISING OF AVAILABILITY OF CASH CARDS

