

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
VS.	§	TARRANT COUNTY
	§	
LIEM NGUYEN d/b/a TIEM THUOC	§	
BAC & CHAM CLAU,	§	
Defendant.	§	____ JUDICIAL DISTRICT

FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott (“State”), and LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU, (“Defendant”), having consented to the entry of this Final Judgment and Permanent Injunction, and before any testimony is taken in this case and without Defendant admitting to any violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* (“TFDCA”); the Texas Medical Practices Act, TEX. OCCUPATIONS CODE ANN. § 151.001 *et seq.*; Chapter 205 of the TEX. OCCUPATIONS CODE ANN § 205.001 *et seq.*; or the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.21 *et seq.* (“DTPA”); or any other law, have jointly moved that the Court enter this Judgment.

LIEM NGUYEN stipulates that he is not licensed as a physician by the Texas State Board of Medical Examiners and that he is not licensed as an acupuncturist by the Texas Board of Acupuncture Examiners.

LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU stipulates that the State of Texas’ agreement to and the Court’s approval of this Final Judgment are expressly premised

upon Defendant's compliance with Defendant's stipulations 1) to cease offering and performance of acupuncture, unless the services are performed by an acupuncturist licensed by the Texas Board of Acupuncture Examiners; 2) to cease the manufacturing, marketing, selling, and advertising of any drugs, unless the drugs are approved by FDA; 3) to build a new facility to manufacture foods, including dietary supplements, in which the retail area is separate from the manufacturing area; and 4) to destroy the detained products under the supervision of the Texas Department of State Health Services; and that these stipulations are specifically relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU stipulates to the amount of civil penalties, attorneys fees, and investigative costs listed in paragraphs 9, 10, and 11 below, if Defendants fail to comply with paragraph 14 below.

LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU stipulates that Defendant's indebtedness to the State of Texas for civil penalties, identified in paragraph 9 below, for violations of the TDPTA and TFDCA, having been found by this court to constitute a civil fine or penalty to and for a governmental unit and not compensation for actual pecuniary loss, would be a debt that would be nondischargeable in a subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11 and that, in the event a voluntary or involuntary chapter 7 or chapter 11 bankruptcy proceeding is commenced against debtor, the debtor stipulates that he shall not contest either directly or indirectly future attempts, if any, by the State of Texas to have such debt declared nondischargeable in accordance with 11 U.S.C. § 523(a)(7).

Defendant LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU consents and agrees to the entry of this Judgment and that the terms of said agreement are fair, just and

equitable. Defendant further agrees that Plaintiff's execution of this Judgment does not constitute an approval by the Plaintiff of his business practices.

The Court, after reading the pleadings and stipulations of the parties and it appearing to the Court that all parties agree to and have approved its entry of this Judgment, makes the following orders under the provisions of the TFDCA and the DTPA. The Court is of the opinion that, in view of these findings, said agreement should be and is hereby in all things approved, and accordingly that this Judgment should be entered.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:

1. This Court has jurisdiction, through the TFDCA and the DTPA, over the subject matter and over all parties to this action.
2. Plaintiff's Original Petition states a claim for relief against LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU.
3. Venue of this matter is proper in Tarrant County by virtue of the fact that Defendant is or was engaged in the business of operating a health-related clinic and manufacturing, offering for sale, and selling foods, including dietary supplements, in Texas.
4. By entering into this Judgment, Defendant admits no wrongdoing and this Judgment does not constitute any evidence or admission of any kind regarding any issues set forth herein, nor does it acknowledge that Defendant has engaged in any unlawful activity, nor shall it be construed as evidence that Defendant has engaged in any methods, acts, practices, uses or solicitations declared to be unlawful under the TFDCA and the DTPA. Defendant does not admit the truth of any alleged facts, any of the characterizations of Defendant's alleged conduct, or any of the conclusions in Plaintiff's Original Petition, or any amended pleadings pertaining to

this matter.

5. Nothing in this Final Judgment and Agreed Permanent Injunction is intended to limit, modify, broaden or otherwise alter the rights and responsibilities of the Defendant to comply with applicable federal or state regulation or statute, including but not limited to Chapter 431 of the Texas Food, Drug and Cosmetic Act or the Chapter 17 of the Deceptive Trade Practices Act.

6. The following definitions shall be used in construing this Judgment:
- A. “Advertising” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.
 - B. “Adulterate” a drug or food means to manufacture, hold, prepare, or use a drug or food in violation of § 431.111 or § 431.081 of the Texas Food, Drug and Cosmetic Act.
 - C. “False advertising” of a food or drug means advertising that is false, deceptive, or misleading in any particular.
 - D. “FDA” means the Federal Food and Drug Administration.
 - E. “Federal Act” means the Federal Food, Drug and Cosmetic Act.
 - F. “Labeling” means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.
 - G. “Misbrand” a food or drug means any violation of §431.082 of the Texas Health and Safety Code or §431.112 of the Texas Health and Safety Code, including but not limited to, labeling for a drug if it is false or misleading in any particular; labeling of a drug without adequate directions for use; advertising of a drug if the advertising is false or misleading in any particular; or if a drug is sold, distributed, or used in violation of federal regulations.
 - H. “New drug” means any drug that the composition of is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of the drug and that is not cleared by marketing by the FDA.

7. **IT IS FURTHER ORDERED THAT LIEM NGUYEN d/b/a TIEM THUOC**

BAC & CHAM CLAU and his agents, servants, employees, assigns and any other person acting in concert or participation with or on behalf of LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU and all such persons or entities shall not in the future:

- A. Represent that LIEM NGUYEN is a physician who can treat persons for diseases and illness in Texas when he is not licensed as a physician by the Texas State Board of Medical Examiners;
- B. Fail to disclose that LIEM NGUYEN is not a physician licensed to practice medicine in Texas and therefore cannot legally treat persons for diseases and illness;
- C. Practice medicine in Texas without a license from the Texas State Board of Medical Examiners;
- D. Represent that LIEM NGUYEN is an acupuncturist who can treat persons with acupuncture in Texas when he is not licensed by the Texas State Board of Acupuncture Examiners;
- E. Practice acupuncture in Texas without a license from the Texas State Board of Acupuncture Examiners;
- F. Cause confusion or misunderstanding as to the approval of foods, including dietary supplements in Texas, and/or drugs manufactured and sold by Defendant;
- G. Represent that Defendant's foods, including dietary supplements in Texas, have benefits which they do not have;
- H. Produce, prepare, pack, repack, or hold foods, including dietary supplements in Texas, under unsanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered diseased, unwholesome, or injurious to health;
- I. Produce, prepare, pack, repack, or hold drugs under unsanitary conditions whereby they may have become contaminated with filth, or whereby they may have been rendered diseased, unwholesome, or injurious to health;
- J. Represent that Defendant's foods, including dietary supplements in Texas, are of a particular standard, quality, or grade, if they are of another;
- K. Represent that Defendant's drugs are of a particular standard, quality, or grade, if they are of another;

- L. Introduce into commerce a food, including a dietary supplement in Texas, that is adulterated or misbranded;
- M. Deliver for introduction into commerce a food, including a dietary supplement in Texas, that is adulterated or misbranded;
- N. Distribute in commerce of a consumer commodity that has a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter;
- O. Manufacture within this state food, including a dietary supplement in Texas, that is adulterated or misbranded;
- P. Engage in the manufacture of food, including a dietary supplement in Texas, without first obtaining a license from the state;
- Q. Engage in the wholesale distribution of drugs without filing a licensing statement with the Texas Department of State Health Services;
- R. Introduce into commerce a new drug not approved by the FDA;
- S. Falsely advertise foods, including dietary supplements in Texas, and unapproved drugs in Texas;
- T. Introduce into commerce a misbranded or adulterated drug;
- U. Misbrand or adulterate a food, including dietary supplements, or a drug in commerce;
- V. Advertise unapproved new drugs because FDA has not approved their sale;
- W. Introduce into commerce drugs whose labeling fails to bear adequate directions for the uses for which these drugs are being promoted in Texas, unless the drug has been exempted from those requirements by regulations adopted by the Secretary of the United States Department of Health and Human Services; and
- X. Introduce into commerce any food, including a dietary supplement in Texas, whose labeling is false or misleading and fails to prominently display information and statements required by regulations promulgated under the authority of the TFDCA in such a manner to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

8. **IT IS FURTHER ORDERED THAT** LIEM NGUYEN d/b/a TIEM THUOC

BAC & CHAM CLAU, within 30 days of this Order being signed by the Court, shall at his own

expense destroy, under supervision by the Texas Department of State Health Services, all detained product.

9. **IT IS FURTHER ORDERED THAT** LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU shall pay and deliver Fifteen Thousand Dollars (\$15,000.00) to the Office of the Attorney General as civil penalties pursuant to § 431.0585 of the TFDCa and to DTPA §17.47(c)(1), subject to paragraphs 12 and 13 below.

10. **IT IS FURTHER ORDERED THAT** LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU shall pay and deliver Two Thousand Dollars (\$2,000.00) to the Office of the Attorney General as attorneys fees and investigative costs under § 431.047 of the TFDCa and the TEX. GOVT. CODE § 402.006(c), subject to paragraphs 12 and 13 below.

11. **IT IS FURTHER ORDERED THAT** LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU shall pay Two Thousand Dollars (\$2,000.00) to the Texas Department of State Health Services to cover their investigative costs pursuant to § 431.047 of the TFDCa, subject to paragraphs 12 and 13 below.

12. **IT IS FURTHER ORDERED THAT** ninety-one (91) days following receipt by the State of Texas from LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU of the total sum of Seven Thousand Dollars (\$7,000.00) to the Office of the Attorney General, with Three Thousand Dollars (\$3,000.00) designated as civil penalties; Two Thousand Dollars (\$2,000.00) designated as attorneys fees under §431.047 of the TFDCa and the TEX. GOVT. CODE §402.006(c); and Two Thousand Dollars (\$2,000.00) to Texas Department of State Health Services to cover the investigative costs pursuant to §431.047 of the TFDCa, the State of Texas shall consider the monetary portion of the Final Judgment, as ordered in paragraphs 9, 10, and 11

above, satisfied in full unless the State has evidence that this Final Judgment should be reopened as outlined in paragraph 14 below. The State of Texas then may reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of the Defendants.

13. **IT IS FURTHER ORDERED THAT** LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU agreement to and the Court's approval of this Final Judgment are expressly premised upon the above stipulations, as relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

14. **IT IS FURTHER ORDERED** that if the State of Texas has evidence that the LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU, fail to comply with Defendant's stipulations listed above, the State of Texas may reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of the Defendant. If the Court finds that Defendant failed to comply with the above stipulations relating to payment of the amounts required in paragraph 12 above, or to cease offering and performance of acupuncture, unless the services are performed by an acupuncturist licensed by the Texas Board of Acupuncture Examiners; to cease the manufacturing, marketing, selling, and advertising of any drugs, unless the drugs are approved by FDA; to build a new facility to manufacture foods, including dietary supplements, in which the retail area is separate from the manufacturing area; and to destroy the detained products under the supervision of the Texas Department of State Health Services, the Court shall reinstate the suspended judgment against LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU in favor of the State of Texas, in the amounts listed in paragraphs 9, 10, and 11 above. All other terms of this Final Judgment shall remain in full force

and effect unless otherwise ordered by the Court. For the purposes of reopening or enforcing this Final Judgment, LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU waives any right to contest any of the allegations set forth in Plaintiff's Original Petition filed in this matter.

15. **IT IS FURTHER ORDERED** that the Court's approval of this Final Judgment is expressly premised upon the above stipulations by LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU, as relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

16. **IT IS FURTHER ORDERED** that Defendant shall pay all costs of the Court.

17. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

18. The Court retains jurisdiction to enforce this Judgment.

19. It is agreed and understood that this Judgment shall in no way affect the rights of individual citizens.

20. All relief not granted herein is hereby denied.

Signed this _____ day of _____, 2005.

DISTRICT JUDGE

THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE FOREGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO ITS ENTRY:

Signed this _____ day of _____, 2005.

Defendant LIEM NGUYEN d/b/a TIEM THUOC BAC & CHAM CLAU

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