

CAUSE NO. 07-03962

STATE OF TEXAS,

Plaintiff,

IN THE DISTRICT COURT OF

VS.

REDUX BEVERAGES, LLC., a Nevada Corp; REDUX, LLC., a California Corp.; KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC. ; TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2; and IMPORT WAREHOUSE, INC.,

Defendants.

DALLAS COUNTY

44<sup>th</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND PERMANENT INJUNCTION AS TO REDUX BEVERAGES, LLC. AND INCORPORATION BY REFERENCE FINAL JUDGMENTS AND PERMANENT INJUNCTIONS AS TO KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC.; TEXAS WHOLESALE VENTURE #1 LTD, d/b/a TEXAS WHOLESALE #2; AND IMPORT WAREHOUSE, INC.**

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), sued REDUX BEVERAGES, LLC., a Nevada Corp.; REDUX, LLC., a California Corp. ("REDUX"); KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC. ("KIMBALL"); TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2 ("TEXAS WHOLESALE"); and IMPORT WAREHOUSE, INC. ("IMPORT WAREHOUSE") ("Defendant"), for violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* ("TFDCA").

1. The Court has signed a separate Final Judgment and Agreed Permanent Injunction as to Defendant KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC.; Defendant TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2; and Defendant IMPORT WAREHOUSE, INC. Each of these three final judgments and agreed permanent injunctions are attached hereto as Exhibits A, B, and C and are incorporated herein for all purposes as if fully set out herein.

2. The State has nonsuited REDUX, LLC., a California Corp., without prejudice.

3. The State filed two motions for summary judgment on January 21, 2009, a Motion for Traditional Partial Summary Judgment against Defendant REDUX BEVERAGES, LLC., and a No Evidence Motion for Summary Judgment Against Defendants REDUX BEVERAGES, LLC., and REDUX, LLC. A hearing on the motions was held on February 27, 2009.

Defendants failed to file a response to either motion for summary judgment and failed to appear by counsel licensed in Texas. After considering the motions and the arguments and authorities presented by the State, the Court issued two orders granting the State's motion for partial summary judgment on liability and the State's no-evidence motion for summary judgment on Defendants' defenses and requested submissions of attorneys fees, investigative costs, and factors for assessing civil penalties. Judgment is therefore rendered in favor of the State against REDUX BEVERAGES, LLC., as follows.

#### **REDUX BEVERAGES, LLC.**

##### **Conclusions of Law:**

4. The Court made the following conclusions of law in regard to Defendant REDUX BEVERAGES, LLC. ("Defendant"):

- A. There are no genuine issues of fact involving the liability of Defendant on the causes of action for violations of §431.021 (a), (e), and (f) of the TFDCA.
- B. Defendant's product Cocaine is a drug within the meaning of §431.002(14) of the TFDCA.
- C. The Food and Drug Administration ("FDA") has found street drug alternatives to be unapproved new drugs and misbranded drugs under the Federal Food, Drug, and Cosmetic Act as stated in its Guidance for Industry on Street Drug Alternatives.
- D. Defendant's product Cocaine is a "new drug" within the meaning of

§431.002(25) of the TFDCA because Defendant's product Cocaine is not generally recognized as safe and effective for its intended uses.

- E. Because Defendant's product Cocaine is a new drug pursuant to §431.114 (a)(1) of the TFDCA, Defendant cannot sell, deliver, offer for sale, hold for sale or give away its product Cocaine unless it is approved by FDA or FDA has approved an investigational exemption for the new drug.
- F. Defendant's product Cocaine is an unapproved new drug since it is a new drug that has not been approved by FDA and it is not an investigational new drug.
- G. Section 431.114 (a)(1) of the TFDCA prohibits the introduction of Cocaine, a new drug, into commerce in Texas since an approved new drug application has not been submitted to the federal Food and Drug Administration for such drug.
- H. The introduction or delivery for introduction into commerce of any article in violation of §431.114 of the TFDCA is prohibited under §431.021 (e) of the TFDCA.
- I. Defendant's product Cocaine violates §431.021 (e) of the TFDCA every time that it is introduced or delivered for introduction into commerce into Texas.
- J. Defendant's product Cocaine was introduced into commerce or delivered for introduction into commerce in Texas 7,500 times when 7,500 cases of the product Cocaine was held, offered for sale, or sold in Texas in violation of §431.021 (e) of the TFDCA.
- K. Defendant's product Cocaine is misbranded under the terms of §431.112 of the TFDCA.
- L. Defendant's product Cocaine violates §431.021 (a) of the TFDCA every time that it is introduced or delivered for introduction into commerce into Texas.
- M. Defendant's product Cocaine was introduced into commerce or delivered for

introduction into commerce in Texas 7,500 times when 7,500 cases of the product Cocaine was held, offered for sale, or sold in Texas in violation of §431.021 (a) of the TFDCA.

- N. Defendant's representations concerning the product Cocaine constitute advertising under §431.002(1) of the TFDCA.
- O. Defendant's representations concerning the product Cocaine constitute false advertising under §431.182 because any advertising for an unapproved drug is false or misleading.
- P. Defendant's advertising of the product Cocaine violates §431.021 (f) of the TFDCA every time that it is disseminated in Texas.
- Q. Specifically, Defendant's website on October 6, 2006; April 13, 2007; and April 18, 2007 constitutes the dissemination of false advertisements in Texas in violation of §431.021 (f) of the TFDCA.

**Findings of Fact:**

- 5. The court made the following findings of fact in granting summary judgment against REDUX BEVERAGES, LLC. ("Defendant"):
  - A. Defendant named its product Cocaine for an illicit street drug; spelled the name Cocaine on the product label in a white granular substance font resembling the illegal drug cocaine powder; chose the font for the label because it resembled piles of cocaine; promoted Cocaine as an alternative to an illicit street drug; made claims to mimic the effects of controlled substances, named a variation of the product "Cut" Cocaine; and promoted Cocaine for recreational purposes to affect psychological states, such as to get high and to promote euphoria.
  - B. Defendant's product Cocaine is not a drug approved by the Federal Food and Drug Administration.

- C. On its website Defendant made claims that its product Cocaine could cure, mitigate, treat or prevent disease.
- D. On its website Defendants made claims that were false or misleading about the product Cocaine.
- E. Defendant sold its product Cocaine during 2006 and 2007 into Texas and therefore introduced it into commerce in Texas.
- F. The Texas Department of State Health Services detained 7,500 cases of Cocaine in Texas.
- G. Defendant's website advertised the Cocaine product as "the legal alternative," and asked consumers to consider whether they could "handle the rush."
- H. Defendant's website contained photographs of the Cocaine can with a white powder-like font resembling the illicit drug cocaine. The website also advertised "Cut Cocaine" and "Free Cocaine".
- I. Defendant's product Cocaine failed to have adequate directions for use for which the product was intended and promoted.
- J. Defendant's website was available for viewing and was printed or captured in Texas on at least October 6, 2006; April 13, 2007; and April 18, 2007.

**IT IS THEREFORE ORDERED, ADJUDGED and DECREED THAT:**

6. This Court has jurisdiction, through the TFDCA, over the subject matter and over REDUX BEVERAGES, LLC. and the State of Texas.

7. The State's Original Petition states a claim for relief against REDUX BEVERAGES, LLC.

8. Venue of this matter is proper in Dallas County by virtue of the fact that Defendant REDUX BEVERAGES, LLC., is engaged in the business of marketing and selling of its products in Texas and the United States, and the TFDCA allows for any action alleging

violations of this act to be filed in the county where violations occurred, which, in this case, is Dallas County.

9. 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. "Drug" is defined in §431.002 (14) of the TFDCa and generally means articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and articles intended to affect the structure or any function of the body of man, other than foods for which a claim is made in accordance with Section 403(r) of the Federal Act.
  - C. "False advertising" of a drug, or other regulated articles, 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. "Food" means articles used for food or drink for man, chewing gum, and articles used for components of any such article and include dietary supplements in Texas.
  - G. "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.
  - H. "Misbranded drug" means a drug that is described in §431.112 of the TFDCa.
  - I. "New drug" is defined in §431.002 (25) of the TFDCa.

10. **IT IS FURTHER ORDERED THAT REDUX BEVERAGES, LLC.,** and its officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of REDUX BEVERAGES, LLC., and all such persons or entities shall not in the future:

- A. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas the product Cocaine;
- B. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas any product using the name of any illicit or illegal drug or any slang drug term;
- C. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas the product

- Cocaine or any product promoted as an alternative to illicit or illegal drugs;
- D. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas any drug or food, including dietary supplements, into commerce in Texas that is promoted to get high, euphoric, or to induce hallucinations;
  - E. Introduce or deliver for introduction into commerce any drug or food, including dietary supplements, into commerce in Texas using the name Cocaine or any other name for any illicit or illegal drug or any slang drug term;
  - F. Introduce or deliver for introduction into commerce any drug or food, including dietary supplements, into commerce in Texas that are promoted as alternatives to illicit or illegal drugs;
  - G. Introduce or deliver for introduction into commerce any drug or food, including dietary supplements, into commerce in Texas that are promoted to get high, euphoric, or to induce hallucinations;
  - H. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas any food whose labels or labeling depict illicit drugs or associate it with illicit or illegal drugs;
  - I. Introduce into commerce any misbranded drug, including the product Cocaine;
  - J. Introduce into commerce any new drug not approved by FDA;
  - K. Advertise that the product Cocaine or any product using the name of any illicit or illegal drug or any slang drug term or promoted as an alternative to drugs is available for sale in Texas since it is an unapproved new drug and cannot legally be sold in Texas;
  - L. Advertise that the product Cocaine or any food using the name of any illicit or illegal drug or any slang drug term or promoted as an alternative to drugs is available for sale in Texas since it is a misbranded drug and cannot legally be sold

in Texas;

- M. Fail to disclose clearly and conspicuously on any website or in any advertising seen in Texas that the product Cocaine or any food or drug using the name of any illicit or illegal drug or any slang drug term or promoted as a legal alternative to illicit or illegal drugs cannot be sold in Texas;
- N. Falsely advertise the product Cocaine by representing that it is a legal alternative to an illicit or illegal drug when it is not; and
- O. Fail to terminate immediately any distributor or wholesaler of products of REDUX BEVERAGES, LLC., who offer to sale, deliver, sell, or give away to anyone in Texas the product Cocaine or any product using the name of any illicit or illegal drug or any slang drug term or any product promoted as a legal alternative to illicit or illegal drugs.

11. **IT IS FURTHER ORDERED THAT** REDUX BEVERAGES, LLC., shall pay and deliver \$ 825,000.<sup>00</sup> to the Office of the Attorney General as civil penalties pursuant to §431.0585 of the TFDCA. **THIS ORDER** shall further constitute a judicial determination that these civil penalties constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss.

12. **IT IS FURTHER ORDERED THAT** REDUX BEVERAGES, LLC., shall pay and deliver to the Office of the Attorney General \$ 38,523.35 as attorneys fees ~~and~~ ~~investigative costs~~ under §431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c).

13. **IT IS FURTHER ORDERED THAT** REDUX BEVERAGES, LLC., shall pay and deliver \$ 4,380.94 to the Texas Department State Health Services to cover their investigative costs pursuant to §431.047 of the TFDCA.

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

15. The clerk of the Court is authorized to issue such writs of execution or other process

necessary to collect and enforce this Judgment.

16. The Court retains jurisdiction to enforce this Judgment.

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

18. All relief not granted herein is hereby denied.

Signed this 10<sup>th</sup> day of MARCH, 2009.

  
DISTRICT JUDGE

Submitted by:

**Plaintiff State of Texas**

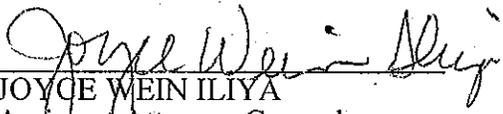
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Assistant Attorney General  
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Attorneys for the State

CAUSE NO. 07-03962

STATE OF TEXAS,

Plaintiff,

IN THE DISTRICT COURT OF

VS.

REDUX BEVERAGES, LLC., a Nevada Corp;  
REDUX, LLC., a California Corp.;  
KIMBALL DISTRIBUTING, INC., f/k/a  
CALVERT DISTRIBUTING, INC.;  
TEXAS WHOLESALE VENTURE # 1 LTD,  
d/b/a TEXAS WHOLESALE # 2;  
and IMPORT WAREHOUSE, INC.,

Defendants.

DALLAS COUNTY

44<sup>th</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AS TO KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING INC.**

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), and Defendant, KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. ("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") or any other law, have jointly moved that the Court enter this Judgment.

KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. consents and agrees to the entry of this Judgment. Defendant further agrees that it will not represent that the State's execution of this Judgment constitutes an approval by the State of its business practices.

The Court, after reading the pleadings and stipulations of the parties and it appearing to the Court that both parties hereto have agreed to and have approved its entry of this Judgment, makes the following orders under the provisions of the TFDCA. 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, over the subject matter and over all parties to this action.

2. The STATE OF TEXAS' Original Petition states a claim for relief against KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC.

3. Venue of this matter is proper in Dallas County by virtue of the fact that Defendant is engaged in the business of marketing and selling of its products in Texas and the United States, and the Texas Food, Drug and Cosmetic Act allows for any action alleging violations of this act to be filed in the county where the violations occurred, which, in this case, is Dallas County.

4. The following definitions shall be used in construing this Judgment:

A. "Drug" is defined in §431.002 (14) of the Texas Health and Safety Code and generally means articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and articles intended to affect the structure or any function of the body of man, other than foods for which a claim is made in accordance with Section 403(r) of the Federal Act.

B. "Food" means articles used for food or drink for man, chewing gum, and articles used for components of any such article.

C. "Illegal drug" means a drug that is listed in Subchapter D of the Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code.

5. **IT IS FURTHER ORDERED THAT KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC.** and its officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. and all such persons or entities shall not in the future:

A. Deliver, offer for sale, hold, sell, or give away the product Cocaine to anyone, including other companies, wholesalers, distributors, and individuals in Texas;

B. Deliver, offer for sale, hold, sell, or give away any drug or food, including dietary supplements, named after illegal drugs to anyone, including other companies,

wholesalers, and distributors, in Texas;

- C. Introduce any drug or food, including dietary supplements, into commerce in Texas using the name Cocaine or the name of any other illegal drug;
- D. Introduce any drug or food, including dietary supplements, into commerce in Texas that is promoted as an alternative to illegal drugs; and
- E. Introduce any food, including dietary supplements, into commerce in Texas that is promoted to get high, euphoric, or to induce hallucinations.

6. Nothing in this Final Judgment and Agreed Permanent Injunction, including, but not limited to, the definition of an illegal drug which is included solely to provide clarity on what illegal drug names are specifically prohibited related to any enforcement action for violations of the terms of this Judgment, prohibits the Texas Department of State Health Services from enforcing the Texas Food, Drug, and Cosmetic Act or any other law that it enforces.

7. **IT IS FURTHER ORDERED THAT** KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. shall pay and deliver Eight Thousand Dollars (\$8,000.00) to the Office of the Attorney General in settlement and compromise of the State's claims under §431.0585 of the TFDCA. This payment by Defendant is made without admission of liability by Defendant and is made by Defendant to settle the litigation.

8. **IT IS FURTHER ORDERED THAT** KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. shall pay and deliver to the Office of the Attorney General One Thousand Dollars (\$1,000.00) in settlement and compromise of the State's claims for attorneys fees and investigative costs under § 431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c). This payment by Defendant is made without admission of liability by Defendant and is made by Defendant to settle the litigation.

9. **IT IS FURTHER ORDERED THAT** KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC. shall pay and deliver One Thousand Dollars (\$1,000.00) to the Texas Department of State Health Services in settlement and compromise of the State's claims for investigative costs pursuant to §431.047 of the TFDCA. This payment by Defendant is

made without admission of liability by Defendant and is made by Defendant to settle the litigation.

10. **IT IS FURTHER ORDERED** that Defendant shall pay Two Hundred Dollars (\$200.00) toward costs of the Court.

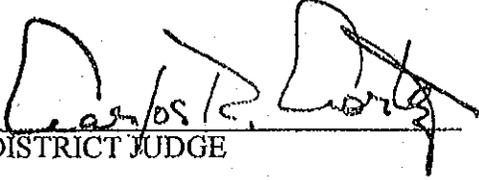
11. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

12. The Court retains jurisdiction to enforce this Judgment.

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

14. All relief not granted herein is hereby denied.

Signed this 10th day of December, 2008.

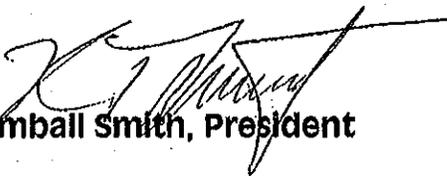
  
DISTRICT JUDGE

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:

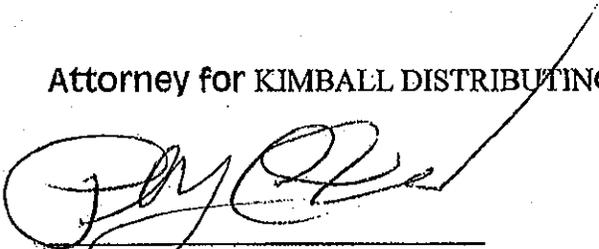
Signed this 1<sup>st</sup> day of December, 2008.

Defendant KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC.

BY:

  
Kimball Smith, President

Attorney for KIMBALL DISTRIBUTING, INC. f/k/a CALVERT DISTRIBUTING, INC.

  
Phillip C. Umphres

Attorney at Law

State Bar No.

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**Plaintiff State of Texas**

**GREG ABBOTT**  
Attorney General of Texas

**KENT C. SULLIVAN**  
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**PAUL D. CARMONA**  
Chief, Consumer Protection and Public Health Division

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Deputy Chief, Consumer Protection and Public Health Division

  
\_\_\_\_\_  
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Attorneys for the State

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STATE OF TEXAS,

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VS.

REDUX BEVERAGES, LLC., a Nevada Corp.; REDUX, LLC., a California Corp.; KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC.; TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2; and IMPORT WAREHOUSE, INC.,

Defendants.

DALLAS COUNTY

44<sup>th</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AS TO TEXAS WHOLESALE VENTURE #1 LTD. d/b/a/ TEXAS WHOLESALE #2**

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), and Defendant, TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 ("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") or any other law, have jointly moved that the Court enter this Judgment.

TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 consents and agrees to the entry of this Judgment and agrees that the terms of said agreement are fair, just and equitable. Defendant further agrees that the State's execution of this Judgment does not constitute an approval by the State of its business practices.

TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 stipulates that any food, including a dietary supplement, labeled as "Cocaine" or using the name of any illegal drug cannot be legally sold in Texas.

**STATE'S  
EXHIBIT**

3

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. 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, over the subject matter and over all parties to this action.
2. The STATE OF TEXAS' Original Petition states a claim for relief against TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2.
3. Venue of this matter is proper in Dallas County by virtue of the fact that Defendant is engaged in the business of marketing and selling of its products in Texas and the United States, and the Texas Food, Drug and Cosmetic Act allows for any action alleging violations of this act to be filed in the county where violations occurred, which, in this case, is Dallas County.
4. The Court finds that the product Cocaine cannot legally be sold in Texas.
5. The following definitions shall be used in construing this Judgment:
  - A. "Drug" is defined in §431.002 (14) of the Texas Health and Safety Code and generally means articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and articles intended to affect the structure or any function of the body of man, other than foods for which a claim is made in accordance with Section 403(r) of the Federal Act.
  - B. "Food" means articles used for food or drink for man, chewing gum, and articles used for components of any such article.
  - C. "Illegal drug" means a drug that is covered by Subchapter D of the Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code.
6. **IT IS FURTHER ORDERED THAT TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 and its officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of TEXAS**

WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2, and all such persons or entities shall not in the future:

- A. Deliver, offer for sale, hold, sell, or give away the product Cocaine to anyone, including other companies, wholesalers, distributors, and individuals in Texas;
- B. Deliver, offer for sale, hold, sell, or give away any drug or food, including dietary supplements, named after illegal drugs to anyone, including other companies, wholesalers, and distributors, in Texas;
- C. Introduce any drug or food, including dietary supplements, into commerce in Texas using the name Cocaine or any other name for any illegal drug;
- D. Introduce any food, including dietary supplements, into commerce in Texas that are promoted as alternatives to illegal drugs; and
- E. Introduce any food, including dietary supplements, into commerce in Texas that are promoted to get high, euphoric, or to induce hallucinations.

7. Nothing in this Final Judgment and Agreed Permanent Injunction, including, but not limited to, the definition of an illegal drug which is included solely to provide clarity on what illegal drug names are specifically prohibited related to any enforcement action for violations of the terms of this Judgment, prohibits the Texas Department of State Health Services from enforcing the Texas Food, Drug, and Cosmetic Act or any other law that it enforces.

8. **IT IS FURTHER ORDERED THAT** TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 shall pay and deliver Six Thousand Dollars (\$6,000.00) to the Office of the Attorney General as civil penalties pursuant to §431.0585 of the TFDCA. **THIS ORDER** shall further constitute a judicial determination that these civil penalties constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss.

9. **IT IS FURTHER ORDERED THAT** TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2 shall pay and deliver to the Office of the Attorney General

One Thousand Dollars (\$1,000.00) as attorneys fees and investigative costs under §431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c).

10. **IT IS FURTHER ORDERED THAT TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2** shall pay and deliver Three Thousand Dollars (\$3,000.00) to the Texas Department State Health Services to cover their investigative costs pursuant to §431.047 of the TFDCA.

11. **IT IS FURTHER ORDERED** that Defendant shall pay up to \$200.00 of the costs of the Court.

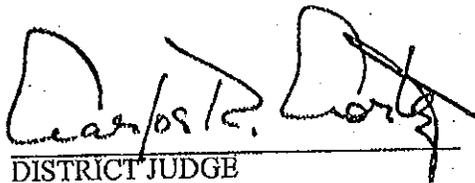
12. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

13. The Court retains jurisdiction to enforce this Judgment.

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

15. All relief not granted herein is hereby denied.

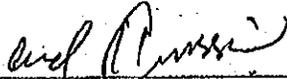
Signed this 30th day of December, 2008.

  
DISTRICT JUDGE

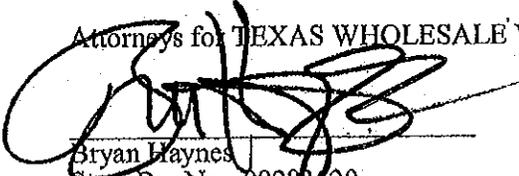
THE UNDERSIGNED, WHO HAVE THE AUTHORITY TO CONSENT AND SIGN ON BEHALF OF THE PARTIES IN THIS ACTION, HEREBY CONSENT TO THE FORM AND CONTENTS OF THE F. REGOING FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AND TO IT'S ENTRY:

Signed this 19 day of December, 2008.

Defendant TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2

By:   
Mohammad Hussain Wazirali, President

Attorneys for TEXAS WHOLESALE VENTURE #1 LTD. d/b/a TEXAS WHOLESALE #2

  
Bryan Haynes  
State Bar No.: 09280520  
Locke Liddell & Sapp LLP  
2200 Ross Avenue  
Suite 2200  
Dallas, Texas 75201-6776  
Phone: 214-740-8554  
Fax: 214-756-8485

Date: 12-29-08

**Plaintiff State of Texas**

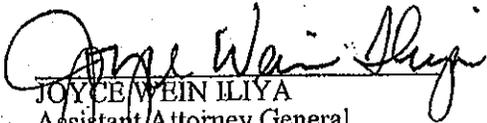
GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

JEFF L. ROSE  
Deputy First Assistant Attorney General

PAUL D. CARMONA  
Chief, Consumer Protection and Public Health Division

D. ESTHER CHAVEZ  
Deputy Chief, Consumer Protection and Public Health Division

  
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Assistant Attorney General  
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State Bar No. 00784319  
1412 Main St, Suite 810  
Dallas, Texas 75202  
(214) 969-7639, ext. 8811  
Facsimile: (214) 969-7615  
Attorneys for the State

CAUSE NO. 07-03962

STATE OF TEXAS,

Plaintiff,

IN THE DISTRICT COURT OF

VS.

RBDUX BEVERAGES, LLC., a Nevada Corp; REDUX, LLC., a California Corp.; KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC.; TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2; and IMPORT WAREHOUSE, INC.,

Defendants.

DALLAS COUNTY

44<sup>th</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION AS TO IMPORT WAREHOUSE, INC.**

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), and Defendant, IMPORT WAREHOUSE, INC. ("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") or any other law, have jointly moved that the Court enter this Judgment.

IMPORT WAREHOUSE, INC. consents and agrees to the entry of this Judgment and agrees that the terms of said agreement are fair, just and equitable. Defendant further agrees that the State's execution of this Judgment does not constitute an approval by the State of its business practices.

IMPORT WAREHOUSE, INC. stipulates that any food, including a dietary supplement, labeled as "Cocaine" or using the name of any illegal drug cannot be legally sold in Texas.

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. 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, over the subject matter and over all parties to this action.

2. The STATE OF TEXAS' Original Petition states a claim for relief against IMPORT WAREHOUSE, INC.

3. Venue of this matter is proper in Dallas County by virtue of the fact that Defendant is engaged in the business of marketing and selling of its products in Texas and the United States, and the Texas Food, Drug and Cosmetic Act allows for any action alleging violations of this act to be filed in the county where the violations occurred, which, in this case, is Dallas County.

4. The following definitions shall be used in construing this Judgment:

A. "Drug" is defined in §431.002 (14) of the Texas Health and Safety Code and generally means articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man and articles intended to affect the structure or any function of the body of man, other than foods for which a claim is made in accordance with Section 403(r) of the Federal Act.

B. "Food" means articles used for food or drink for man, chewing gum, and articles used for components of any such article.

C. "Illegal drug" means a drug that is covered by Subchapter D of the Controlled Substances Act, Chapter 481 of the Texas Health and Safety Code.

5. **IT IS FURTHER ORDERED THAT IMPORT WAREHOUSE, INC.** and its officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of IMPORT WAREHOUSE, INC. and all such persons or entities shall not in the future:

A. Deliver, offer for sale, hold, sell, or give away the product Cocaine to anyone, including other companies, wholesalers, distributors, and retailers, in Texas;

B. Deliver, offer for sale, hold, sell, or give away any drug or food, including dietary supplements, named after illegal drugs to anyone, including other companies,

wholesalers, distributors, and retailers, in Texas;

- C. Introduce any drug or food, including dietary supplements, into commerce in Texas using the name Cocaine or any other name for any illegal drug;
- D. Introduce any food, including dietary supplements, into commerce in Texas that are promoted as alternatives to illegal drugs; and
- E. Introduce any food, including dietary supplements, into commerce in Texas that are promoted to get high, euphoric, or to induce hallucinations.

6. The definition of an illegal drug which is included solely to provide clarity on what illegal drug names are specifically prohibited related to any enforcement action for violations of the terms of this Judgment does not prohibit the Texas Department of State Health Services from enforcing the Texas Food, Drug, and Cosmetic Act or any other law that it enforces.

7. **IT IS FURTHER ORDERED THAT** IMPORT WAREHOUSE, INC., shall pay and deliver Five Thousand Dollars (\$5,000.00) to the Office of the Attorney General as civil penalties pursuant to § 431.0585 of the TFDCA for violations related to Cocaine. **THIS ORDER** shall further constitute a judicial determination that these civil penalties constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss.

8. **IT IS FURTHER ORDERED THAT** IMPORT WAREHOUSE, INC. shall pay and deliver to the Office of the Attorney General One Thousand Dollars (\$1,000.00) as attorneys fees and investigative costs under § 431.047 of the TFDCA and the TEX. GOVT. CODE §402.006(c).

9. **IT IS FURTHER ORDERED THAT** IMPORT WAREHOUSE, INC. shall pay and deliver One Thousand Five Hundred Dollars (\$1,500.00) to the Texas Department State Health Services to cover their investigative costs pursuant to § 431.047 of the TFDCA.

10. **IT IS FURTHER ORDERED** that Defendant shall pay up to Two Hundred Dollars (\$200.00) towards costs of the Court.

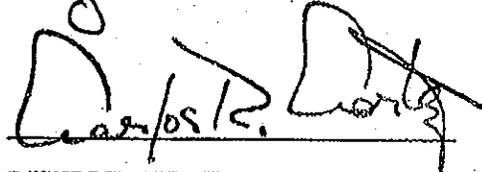
11. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment.

12. The Court retains jurisdiction to enforce this Judgment.

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

14. All relief not granted herein is hereby denied.

Signed this 10th day of January, 2008 ARC

A handwritten signature in black ink, appearing to read "D. J. [unclear]", written over a horizontal line.

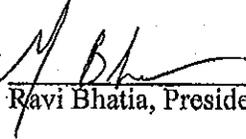
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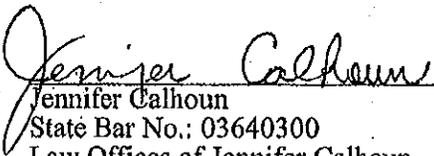
Signed this 9th day of December, 2008.

Defendant IMPORT WAREHOUSE, INC.

By:

  
Ravi Bhatia, President

Attorneys for IMPORT WAREHOUSE, INC.

  
Jennifer Calhoun

State Bar No.: 03640300

Law Offices of Jennifer Calhoun

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Suite 618

Dallas, Texas 75206

Phone: 214-365-0656

Fax: 214-365-1657

Date: 1-5-09

**Plaintiff State of Texas**

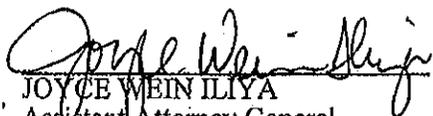
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