

STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

vs.

NUECES COUNTY, TEXAS

SILVERIO J. SALINAS,
Defendant.

117th JUDICIAL DISTRICT

FINAL JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott ("State"), sued Defendant SILVERIO J. SALINAS ("Defendant"), for injunctive relief and civil penalties for violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* ("TFDCA") and the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* ("DTPA").

The State filed a Motion for Summary Judgment against Defendant on October 30, 2012. A hearing by submission on the motion was held on November 20, 2012. Defendant failed to file a response to the motion for summary judgment. After considering the motion and the arguments and authorities presented by the State, the Court issued an order granting the State's motion for final summary judgment. Judgment is therefore rendered in favor of the State. The Court FINDS that it has jurisdiction over the subject matter and over Defendant Silverio J. Salinas, through the TFDCA and the DTPA. The Court further FINDS that Plaintiff's Original Petition states a claim for relief against Silverio J. Salinas for violations of the TFDCA and the DTPA, and that Venue of this matter is proper in Nueces County pursuant to §431.047(c) and §431.0585(d) of the TFDCA, and §17.47(b) of the DTPA.

I. DEFINITIONS

IT IS ORDERED, ADJUDGED and DECREED THAT the following definitions shall be used in construing this Judgment:

- A. "Defendant" means Silverio J. Salinas, and his successors, agents, servants, employees, corporations and any other persons in active concert or participation with the Defendant.
- B. "Device" is defined in §431.002 (13) of the Texas Food, Drug, and Cosmetic Act and generally means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is recognized in the official United States Pharmacopoeia National Formulary or any supplement to it; is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or is intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolization for the achievement of any of its principal intended purposes.
- C. "Drug," as defined in §431.002 (14) of the Texas Food, Drug, and Cosmetic Act, 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 403r of the Federal Act. A drug is not a food or device under the TFDCa.
- D. "FDA" means the Federal Food and Drug Administration.
- E. "Food," as defined in §431.002 (16) of the Texas Food, Drug, and Cosmetic Act means articles used for food or drink for man, including dietary supplements, chewing gum, and articles used as components of any such article.
- F. "Label," as defined in §431.002 (21) of the Texas Food, Drug, and Cosmetic Act, means a display of written, printed, or graphic matter upon the immediate container of any article.
- G. "Labeling," as defined in §431.002 (22) of the Texas Food, Drug, and Cosmetic Act, means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.

- H "Misbranded food" means a food that is deemed misbranded as described in § 431.082 of the TFDCA.
- I "Misbranded device" means a device that is deemed misbranded as described in § 431.0112 of the TFDCA.

II. STATUTORY VIOLATIONS

The Court finds that Defendant Silverio J. Salinas has violated the Texas Food, Drug, and Cosmetic Act, and the Texas Deceptive Trade Practices Act as follows:

- A. Defendant Silverio J. Salinas has **nine hundred and fifty-six (956) misbranded food** violations for introducing or delivering misbranded foods in Texas in violation of the §431.021(a) of the TFDCA;
- B. Defendant Silverio J. Salinas has **two violations** for misbranded devices for possessing, purchasing, selling and/or providing services using ionic footbaths for detoxification and a hyperbaric chamber.
- C. Defendant Silverio J. Salinas has **a total of fifteen (15) false advertising violations** for disseminating false advertisements for his foods and unapproved ionic footbaths on his **twelve (12) websites**, and in **three (3) pamphlets** for dietary supplements, which make claims to treat, cure, prevent, or mitigate disease, and are false or misleading in violation of §431.021(f) of the TFDCA;
- D. Defendant Silverio J. Salinas has **one (1) licensing violation** for manufacturing foods without being licensed in Texas, as required by §431.222 of the TFDCA, in violation of §431.021(y) of the TFDCA;
- E. Defendant Silverio J. Salinas caused confusion or misunderstanding as to the approval of the foods and devices manufactured, purchased, possessed, advertised,

sold, or used by him, in violation of 17.46(b)(2) of the DTPA;

- F. Defendant Silverio J. Salinas misrepresented that he is a physician legally permitted to practice medicine in Texas, who can treat persons for diseases and illness, when he does not have such authorization or approval, in violation of 17.46(b)(5) of the DTPA; and
- G. Defendant misrepresents that his foods, including dietary supplements and teas, can treat, cure prevent, or mitigate disease when such claims cannot legally be made for foods, in violation of §17.46(b)(7) of the DTPA.

III. PERMANENT INJUNCTION

The Court enters a permanent injunction and hereby permanently enjoins Defendant Silverio J. Salinas from the following conduct:

IT IS ORDERED THAT Defendant Silverio J. Salinas shall not own, direct, operate, or work for 1) any business in Texas that manufactures, distributes, advertises, offers for sale, or sells any dietary supplements or other foods to treat, cure, prevent, or mitigate diseases; 2) any business in Texas that manufactures, distributes, advertises, offers for sale, or sells services using any device that is an unapproved device and/or is a prescription device without having a practitioner licensed in Texas to authorize possession, supervise its use, use, or order the use of the prescription device; 3) any business in Texas that offers or delivers any health-related services, including counseling or seeing patients that requires licensure, certification, or registration unless Defendant has such license, certificate, or registration; or 4) any business that does 1), 2), or 3) above into Texas.

IT IS FURTHER ORDERED THAT Defendant Silverio J. Salinas shall include the statement "not available for sale in Texas" in all advertisements or offers for sale of dietary supplements, other foods, devices, or health-related services from another state or country through

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direct solicitations, on the internet, or through other social media and that he will block any sales of such products or services, through any means, into Texas if they do not comply with the terms of this judgment and/or violate state or federal law.

IT IS FURTHER ORDERED THAT Defendant Silverio J. Salinas or any of his agents, servants, employees, assigns or any other person acting in concert or participation with or on behalf of Defendant shall not:

- A. Represent that Silverio J. Salinas is a physician who can treat persons for diseases and illness in Texas when he is not licensed as a physician by the Texas Medical Board;
- B. Represent that Silverio J. Salinas has a status, affiliation, or connection which he does not have by using the title "Doctor," or the abbreviation "Dr.," or "M.D." in connection with his name;
- C. Represent that Silverio J. Salinas has a status, affiliation, or connection which he does not have by using the title, "Doctor of Naturopathy," or "N. D." in Texas in connection with his name since naturopaths cannot legally practice medicine in Texas;
- D. Practice medicine in Texas without a license from the Texas State Board of Medical Examiners;
- E. Use "Dr." or "Doctor" or any wording that implies that Silverio J. Salinas is a physician legally permitted to practice medicine in Texas in any representations or advertising;
- F. Engage in the manufacture or distribution of food, including dietary supplements, in Texas without first obtaining a license from the Texas Department of State Health Services;
- G. Introduce into commerce in Texas a food, including a dietary supplement, that is misbranded by making claims to cure, treat, prevent, or mitigate a disease for a dietary supplement;
- H. Misbrand a food in commerce in Texas;
- I. Manufacture within Texas food that is misbranded;

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- J. Introduce into commerce in Texas an unapproved new drug by making claims to cure, treat, prevent, or mitigate diseases for a dietary supplement;
- K. Manufacture, deliver, offer for sale, hold, sell, or give away in Texas any food whose labels or labeling make claims to cure, treat, prevent or mitigate diseases;
- L. Falsely advertise foods and/or drugs and/or devices in or into Texas;
- M. Introduce or deliver for introduction into commerce in Texas a misbranded device by using a prescription device without a practitioner licensed to possess, supervise, use, or order the use of the device by state law;
- N. Introduce or deliver for introduction into commerce in Texas a misbranded device by making claims for the device that were not approved by FDA;
- O. Introduce into commerce in Texas a device not approved by FDA, including but not limited to ionic footbaths for detoxification;
- P. Use any testimonial to make a claim in or into Texas that a food, including a dietary supplement, can diagnose, mitigate, treat, cure, or prevent disease;
- Q. Represent that any research, study, or publication supports a claim that any of Defendant's dietary supplements or other foods can cure, treat, mitigate, or prevent any disease;
- R. Cause confusion or misunderstanding as to the approval of the foods, dietary supplements, drugs, or devices manufactured, purchased, possessed, or used by Defendant in or into Texas;
- S. Represent in or into Texas that Defendant's foods, dietary supplements, or devices have benefits which they do not have;
- T. Represent in or into Texas that Defendant's foods, dietary supplements, or devices are of a particular standard, quality, or grade, if they are of another;
- U. Fail to disclose that Defendant is not licensed as a physician in Texas and therefore cannot legally treat persons for diseases, conditions, and illness, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; and

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- V. Cause confusion or misunderstanding as to the approval of the foods, dietary supplements, or drugs, manufactured by Defendant in Texas when Defendant is not licensed as a manufacturer or distributor.

IT IS FURTHER ORDERED THAT Silverio J. Salinas shall either terminate all websites owned, operated, direct, or controlled by him, whether in English or in Spanish, that advertise in or into Texas if the websites contain claims for dietary supplements or other foods that they can cure, treat, prevent, or mitigate diseases or prominently place a statement on the website that such " These dietary supplements are not available for sale in or into Texas." and Silverio J. Salinas shall design and implement a method or system that does not allow sales or accept payment for purchases from, in, or into Texas.

IV. CIVIL PENALTIES

IT IS FURTHER ORDERED THAT Defendant Silverio J. Salinas shall pay and deliver Three Hundred and Two Thousand, One Hundred Dollars (**\$302,100.00**) to the Office of the Attorney General as civil penalties pursuant to §431.0585 of the TFDCA and to §17.47(c)(1)(A) of the DTPA. **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.

IT IS FURTHER ORDERED THAT Defendant Silverio J. Salinas shall pay and deliver Forty-Nine Thousand, Eight Hundred and Ninety-Six Dollars and Sixty-Six Cents (**\$49,896.66**) 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).

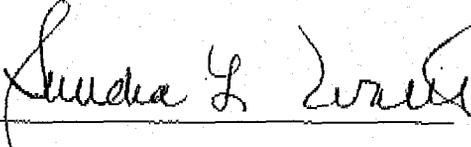
IT IS FURTHER ORDERED THAT Defendant Silverio J. Salinas shall pay and deliver Eleven-Thousand, Six Hundred and Sixty-Seven Dollars and Eighty-Five Cents (**\$11,667.85**) to

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cover the investigative costs of the Texas Department of State Health Services pursuant to §431.047 of the TFDCA and pay Four Thousand, Nine Hundred and Fifty-Five Dollars (\$4,955.00) for licensing fees still owed to this agency.

IT IS FURTHER ORDERED that Defendant shall pay all costs of the Court. The clerk of the Court is authorized to issue such writs of execution or other process necessary to collect and enforce this Judgment. The Court retains jurisdiction to enforce this Judgment. It is agreed and understood that this Judgment shall in no way affect the rights of individual citizens. All relief not granted herein is hereby denied.

Signed this 25th day of November, 2012.


DISTRICT JUDGE

RECEIVED
NOV 16 2012
PATSY PEREZ, DISTRICT CLERK
NUECES COUNTY

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