

CAUSE NO. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff	§	
	§	
	§	
VS.	§	
	§	
AMAZON NATURAL MEDICINES, INC.	§	
and DON DAVIS, Individually	§	TARRANT COUNTY
	§	
Defendants.	§	____ JUDICIAL DISTRICT

FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General Greg Abbott (“State”), and AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, (“Defendants”), having consented to the entry of this Final Judgment and Permanent Injunction, and before any testimony is taken in this case and without Defendants admitting to any violations of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* (“TFDCA”) 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.

AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, consent and agree to the entry of this Judgment and that the terms of said agreement are fair, just and equitable. Defendants further agree that the State’s execution of this Judgment does not constitute an approval by the State of their business practices.

AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, stipulate that the new drugs sold by Defendants were not approved by the Federal Food and Drug

Administration (“FDA”), as required by federal law.

AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, stipulate that the State of Texas’ agreement to and the Court’s approval of this Final Judgment are expressly premised upon Defendants’ compliance with Defendants’ stipulations 1) to dissolve AMAZON NATURAL MEDICINES, INC.; 2) to cease the manufacturing, marketing, selling, and advertising of all drugs, unless the drugs are approved by FDA; and 3) to destroy the detained drugs 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.

AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, stipulate to the amount of civil penalties, attorneys fees, and investigative costs listed in paragraphs 8, 9, and 10 below, if Defendants fail to comply with paragraph 13 below.

AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, also stipulate that Defendants’ indebtedness to the State of Texas for civil penalties, identified in paragraph 8 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 debtors, the debtors stipulate that they 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).

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 AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually.
3. Venue of this matter is proper in Tarrant County by virtue of the fact that Defendants are engaged in the business of marketing, manufacturing, and selling of unapproved drugs 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 Tarrant County, the county where the violations occurred.
4. By entering into this Judgment, Defendants admit 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 Defendants have engaged in any unlawful activity, nor shall it be construed as evidence that Defendants have engaged in any methods, acts, practices, uses or solicitations declared to be unlawful under the TFDCA and the DTPA. Defendants do not admit the truth of any alleged facts, any of the characterizations of Defendants' alleged conduct, or any of the conclusions in Plaintiff's Original Petition, or any amended pleadings pertaining to this matter.
5. 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. “Adulterated drug” means a drug that violates § 431.111 of the Texas Health and Safety Code, including but not limited to it being prepared, packed or held under insanitary conditions whereby it may have been contaminated or the methods used in manufacturing, processing, packing, or holding the drug do not conform to current good manufacturing practices.
- C. “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.
- D. “False advertising” of a drug, or other regulated articles, means advertising that is false, deceptive, or misleading in any particular.
- E. “FDA” means the Federal Food and Drug Administration.
- F. “Federal Act” means the Federal Food, Drug and Cosmetic Act.
- 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 violates §431.112 of the Texas Health and Safety Code, by one of the following, including but not limited to, labeling that is false or misleading in any particular; a label that lacks the name of the manufacturer, accurate statement of the quantity of the contents, a list of ingredients, and other required contents; label or labeling that lack adequate directions for use or warnings; or if the drug is manufactured, prepared, or processed in an establishment in Texas not registered under Section 510 of the Federal Act.
- I. “New drug” is defined in §431.002 (25) of the Texas Health and Safety Code and generally means any drug that is not recognized as safe and effective for its intended uses and is not approved for marketing by the FDA.

6. **IT IS FURTHER ORDERED THAT** Defendants and their officers, agents, servants, employees, subsidiaries, assigns and any other person acting in concert or participation with or on behalf of AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually,

and all such persons or entities shall not in the future:

- a. Manufacture any drug in Texas without being licensed or registered as required by federal and state law;
- b. Manufacture any drug in Texas without an approved new drug application having been submitted to FDA for each drug manufactured;
- c. Sell, deliver, offer for sale, hold for sale, or give away any drug in Texas unless the drug has been approved by FDA;
- d. Introduce into commerce a misbranded drug by manufacturing, advertising, offering to sell, and sell a drug that has not been approved by the FDA;
- e. Falsely advertise or falsely represent that a drug or dietary supplement is effective for treating diseases of the body, such as, cancer, when FDA has not approved these drugs;
- f. 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;
- g. Introduce into commerce an adulterated drug that has been produce, prepare, pack, repack, or hold drugs under unsanitary conditions;
- h. Represent that Defendants' drugs have benefits which they do not have; and
- i. Cause confusion as to the approval of a good by representing to consumers that a product from Brazil can reduce or cure cancer when FDA has not approved this product as a drug.

7. **IT IS FURTHER ORDERED THAT** AMAZON NATURAL
MEDICINES, INC., and DON DAVIS, Individually, shall destroy all detained product at

their own expense, under the supervision of the Texas Department of State Health Services.

8. **IT IS FURTHER ORDERED THAT** AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, 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) A. **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, subject to paragraphs 11-12 below.

9. **IT IS FURTHER ORDERED THAT** AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, shall pay and deliver to the Office of the Attorney General Two Thousand Dollars (\$2,000.00) as attorneys fees and investigative costs under § 431.047 of the TFDCA and the TEX. GOVT. CODE § 402.006(c), subject to paragraphs 11-12 below.

10. **IT IS FURTHER ORDERED THAT** AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, shall pay and deliver Two Thousand Dollars (\$2,000.00) to the Texas Department State Health Services to cover their investigative costs pursuant to § 431.047 of the TFDCA, subject to paragraphs 11-12 below.

11. **IT IS FURTHER ORDERED THAT** ninety-one (91) days following receipt by the State of Texas from AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, 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 8, 9, and 10 above, satisfied in full unless the State has evidence that this Final Judgment should be reopened as outlined in paragraph 13 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.

12. **IT IS FURTHER ORDERED THAT** AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, 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.

13. **IT IS FURTHER ORDERED** that if the State of Texas has evidence that the AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, fail to comply with Defendants' 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 Defendants. If the Court finds that Defendants failed to comply with the above stipulations relating to payment of the amounts required in paragraph 11 above, or to dissolve AMAZON NATURAL MEDICINES, INC.; to cease the manufacturing, marketing, selling, and advertising of all drugs, unless the drugs are approved by FDA; or to destroy the detained drugs under the supervision of the Texas

Department of State Health Services, the Court shall reinstate the suspended judgment against AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, in favor of the State of Texas, in the amounts listed in paragraphs 8, 9, and 10 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, AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, waive any right to contest any of the allegations set forth in Plaintiff's Original Petition filed in this matter.

14. **IT IS FURTHER ORDERED** that the Court's approval of this Final Judgment is expressly premised upon the above stipulations by AMAZON NATURAL MEDICINES, INC., and DON DAVIS, Individually, as relied upon by the State of Texas in negotiating and agreeing to the terms of this Final Judgment.

15. **IT IS FURTHER ORDERED** that Defendants shall pay all costs of the Court.

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

17. The Court retains jurisdiction to enforce this Judgment.

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

19. 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.

**Defendants AMAZON NATURAL MEDICINES, INC., and DON DAVIS,
Individually**

AMAZON NATURAL MEDICINES, INC..

By: _____
DON DAVIS, President

By: _____
DON DAVIS, Individually

Date: _____

Plaintiff State of Texas

GREG ABBOTT
Attorney General of Texas

BARRY MCBEE
First Assistant Attorney General

ED D. BURBACK
Deputy Attorney General for Litigation

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

JOYCE WEIN ILIYA
Assistant Attorney General
Consumer Protection and Public Health Division
State Bar No. 00784319
1600 Pacific Avenue, Suite 1700
Dallas, Texas 75201-3513
(214) 969-7639, ext. 111
Facsimile: (214) 969-7615

Attorneys for the State