

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Plaintiffs	§	
v.	§	
	§	BEXAR COUNTY, TEXAS
YANETT SALINAS, and	§	
HECTOR SALINAS GOMEZ,	§	
d/b/a MAIN OPTICAL	§	
Defendants	§	166 TH JUDICIAL DISTRICT

FINAL JUDGMENT
AND AGREED PERMANENT INJUNCTION

On this ____ day of _____, 2007, came on for hearing the above entitled and numbered cause in which the STATE OF TEXAS is Plaintiff and YANETT SALINAS and HECTOR SALINAS GOMEZ d/b/a MAIN OPTICAL are Defendants. Through their respective attorneys of record, the parties wish to make the following stipulations and agree to the entry of this final judgment. Defendants YANETT SALINAS and HECTOR SALINAS GOMEZ d/b/a MAIN OPTICAL each stipulate that:

- (1) the parties have compromised and settled Plaintiff's claim for damages, court costs, and civil penalties;
- (2) Plaintiff and Defendants agree to and do not contest the entry of this judgment;
- (3) Defendants' indebtedness to the State of Texas for the civil penalties identified below for violations of the Texas Deceptive Trade Practices Act ("DTPA"), the Fairness to Contact Lens Consumers Act ("FCLCA"), the Texas Food, Drug and Cosmetic Act ("TFDCA"), the Texas Optometry Act ("TOA"), and the Contact Lens Prescription Act ("CLPA") have been found by this court to constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss;

(4) the indebtedness for the civil penalties identified below is nondischargeable in any subsequently filed bankruptcy proceeding under either Chapter 7 or Chapter 11; and

(5) in the event a voluntary or involuntary chapter 7 or chapter 11 bankruptcy proceeding is commenced against any Defendant, the Defendants shall not contest either directly or indirectly any future attempts by the State of Texas to have such debt declared nondischargeable in accordance with 11 U.S.C. § 523(a)(7).

INJUNCTIVE RELIEF

The court then proceeded to read the pleadings and stipulations of the parties, and it appearing to the court that all parties agree to the entry of this judgment and that they have approved its entry by the signatures of their attorneys below,

IT IS THEREFORE ORDERED, ADJUDGED and DECREED by this Court that YANETT SALINAS and HECTOR SALINAS GOMEZ d/b/a MAIN OPTICAL, or any other assumed name they may use, their officers, agents, servants, employees and any other person in active concert or participation with them who receive actual notice of this injunction by personal service or otherwise, ARE HEREBY PERMANENTLY ENJOINED FROM:

A) selling, giving away, delivering or dispensing contact lenses to a person without receiving from the person or the person's prescriber, a valid prescription which meets the requirements of 25 TAC §128.5;

B) promoting, representing or advertising, directly or indirectly, that contact lenses can be sold by Defendants without a valid prescription which meets the requirements of 25 TAC §128.5;

C) designating, labeling, denominating, placing or using signs or nomenclature directly on the packages containing the contact lenses or on store windows or walls, or using words or

symbols to describe contact lenses, which directly or indirectly identify or describe them as products which can be sold without a prescription, such prohibition including but not limited to the use of words such as “non-prescription”, “no-script cosmetic”, and “non-regulated”;

D) Selling, offering for sale, promoting, advertising, distributing into trade and commerce, or delivering for distribution into trade and commerce, contact lenses without a valid prescription which meets the requirements of 25 TAC §128.5;

E) selling contact lenses labeled as not to be sold individually;

F) selling or distributing contact lenses at wholesale to any other person or business entity for resale without obtaining a duly issued license from the Department of State Health Services (“DSHS”) as a device distributor;

G) selling, giving away, delivering or dispensing prescription eyeglasses to a person without receiving from the person or the person’s prescriber, a valid prescription issued pursuant to the requirements of the Texas Optometry Act, TEX. OCC. CODE §351.001, *et seq.*;

H) posting deceptive or misleading advertisements for the sale of eyeglasses and contact lenses;

I) posting or publishing any advertising for contact lenses which does not contain language indicating that an eye doctor’s prescription is required to purchase prescription eyeglasses and contact lenses;

J) engaging in the unlicensed practice of optometry by examining eyes by any means in order to determine or measure the powers of vision of the human eye, examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa, or prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision;

K) representing, directly or indirectly, that Defendants are in the practice of optometry, including but not limited to, giving or pretending to give eye examinations or representing that Defendants are optometrists or ophthalmologists if they are not duly licensed as such;

L) Repackaging contact lenses;

M) Altering in any way the original manufacturer's packaging for contact lenses;

N) Selling, offering for sale, promoting, advertising, distributing into trade and commerce, or delivering for distribution into trade and commerce, any misbranded, adulterated, or unapproved class III medical device, including but not limited to contact lenses and prescription eyeglasses, in violation of Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(b);

O) misbranding or adulterating any medical device, including but not limited to contact lenses and prescription eyeglasses, in violation of Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(a);

P) Representing, directly or by implication, that this court or the Attorney General has approved any good or service sold or offered for sale by Defendants, or have approved any of Defendants' business practices; or

Q) Interfering with, preventing, or in any way obstructing DSHS agents from reasonably inspecting, copying, or photographing all business records and business premises of Defendants and all devices found therein, pursuant to TEX. HEALTH & SAFETY CODE §431.042, 431.043, and 431.044.

R) Violating in any way the Contact Lens Prescription Act, TEX. OCC. CODE §353.001(West 2006) *et seq.*, the Federal Fairness to Contact Lens Consumers Act, 15 U.S.C. §7601 (West 2006) *et seq.*, the Texas Optometry Act, TEX. OCC. CODE §351.001 *et seq.*

(West 2006) *et seq.*, the Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.001 (West 2006) *et seq.*, and the Texas Deceptive Trade Practices Act, TEX. BUS. COMM. CODE ANN. §17.41 (West 2006) *et seq.* or the rules and regulations which implement these statutes.

MANDATORY RELIEF

YOU AND EACH OF YOU ARE HEREBY PERMANENTLY ORDERED TO:

A) maintain and retain electronic or paper records of prescriptions, including copies thereof, for a minimum of two years from the last date a contact lens is dispensed based on the prescription, said records to conform to the requirements of 25 T.A.C. §128.5 and to indicate the lot numbers for the containers and any other number needed to specifically identify a specific contact lens to a specific consumer;

B) maintain and retain electronic or paper records of invoices and shipping documents, including copies thereof, showing the purchase of contact lenses by Defendants from their distributors or manufacturer's and the lot numbers for the containers in which the contact lenses are packaged, for a minimum of two years from the last date of the invoice or shipping document;

C) immediately surrender Defendants' contact lens dispenser permit to DSHS should Defendants be found to be in violation of the terms of this injunction by a DSHS investigator and immediately upon receipt of notice by certified mail or in person from a DSHS agent;

D) under supervision of agents for Plaintiff, destroy all contact lenses detained by DSHS agents during the inspections of September 30, 2005 and August 17, 2006;

E) within ninety (90) days after the date of this judgment, destroy or sell to a licensed optometrist, all optometry equipment, and thereafter, refrain from possessing or using optometry equipment.

IT IS FURTHER ORDERED AND ADJUDGED THAT Defendants YANETT SALINAS and HECTOR SALINAS GOMEZ d/b/a MAIN OPTICAL, jointly and severally, shall pay and deliver:

(A) Fifty Thousand Dollars (\$50,000.00) to the Office of the Attorney General as civil penalties for five (5) days of Severity Level Two violation at Ten Thousand Dollars per day as per the Texas Food Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE §431.021(a)(b), 25 T.A.C. §229.261, and DTPA §17.47(c)(1), to be due and payable three years after the entry of this agreed final judgment, provided however, that if the Department does not find any further evidence of violation of this injunction at any inspection which DSHS may hold during this three year period, this \$50,000 civil penalty is waived. Provided further, that if the Department finds evidence that the Defendants are not in substantial compliance with this injunction within this three year period, this \$50,000 civil penalty will be accelerated and will be immediately due and payable as of the date of the first inspection which reveals evidence of non-compliance;

(B) Nine Thousand Two Hundred Dollars (\$9,200.00) to the Office of the Attorney General for attorney fees and costs of court pursuant to the TEX. GOT. CODE, §402.006(c) to be due and payable one hundred twenty (120) days after the entry of this agreed final judgment; and

(C) Three Thousand Dollars (\$3000.00) to the Texas Department of State Health Services for investigative costs pursuant to TEX. HEALTH & SAFETY CODE §431.047(d) to be due and payable one hundred twenty (120) days after the entry of this agreed final judgment.

IT IS FURTHER ORDERED that Defendants will fully reimburse those complainants who may later file complaints with the Office of the Attorney General (OAG) and who purchased contact lenses or glasses from Main Optical without a prescription between the dates of September 5, 2005 and December 1, 2006. OAG acknowledges that the complainants which had valid complaints as of the signing of this order have been refunded.

THIS ORDER shall further constitute a judicial determination that these civil penalties are to and for a governmental unit and are not compensation for actual pecuniary loss.

It is further ORDERED that interest at the rate of 8.25 per cent per year, as per TEX. FIN. CODE §304.003, will accrue on all sums owing beginning one hundred twenty (120) after the date of judgement.

It is further ORDERED that Defendants are assessed all costs herein.

It is further ORDERED that the State of Texas have all writs of execution and other process, without bond, necessary to enforce this judgment.

All relief not granted herein is hereby denied.

Signed this ____ day of _____, 2007.

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

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