



## I. DISCOVERY

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively plead that this case is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 for the following reasons:

- (a) The relief sought by Plaintiffs includes non-monetary injunctive relief.
- (b) Plaintiffs' claim for monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees—is in excess of \$100,000.

## II. JURISDICTION AND STATUTORY AUTHORITY

2. This enforcement action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, jointly with Harris County Attorney Vince Ryan in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by § 17.47 and § 17.48 of the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41 *et seq.*, upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, § 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief. This action is brought jointly by the Consumer Protection Division of the Office of Attorney General and the Harris County Attorney's Office pursuant to § 17.48 of the DTPA.

In addition, this suit is brought by the Office of Attorney General, Harris County Attorney's Office, and the City of Houston against Defendants to enjoin and abate a common

nuisance pursuant to Tex. Civ. Prac. & Rem. Code §§ 125.001-125.047. Verification of the petition or proof of personal injury need not be shown by Plaintiffs under Tex. Civ. Prac. & Rem. Code § 125.002(a).

### III. PUBLIC INTEREST AND NOTICE

3. Plaintiff, the State of Texas, has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition. Plaintiff, the State of Texas, has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas by selling synthetic cannabinoids to consumers without disclosing that these substances are illegal and potentially dangerous to their health. These proceedings are in the public interest. *See* DTPA § 17.47(a).

4. The conduct of Defendants in selling controlled substances to consumers from retail stores in violation of Chapter 481 of the Texas Health & Safety Code also constitutes a common nuisance as defined by Tex. Civ. Prac. & Rem. Code § 125.0015(4) and is subject to abatement under Tex. Civ. Prac. & Rem. Code § 125.002.

5. Prior to hearing on the Plaintiffs' Application for Temporary Restraining Order, Defendants were provided with written notice of the hearing with a copy of the Plaintiffs' Petition. In the event Defendants do not appear for the hearing on the Plaintiffs' Application for Temporary Restraining Order, the Court is statutorily authorized to issue the Temporary Restraining Order *ex parte*. Pre-suit notice is not required under DTPA § 17.47(a) because there is good cause to believe due to the seriousness of the allegations and the danger to public health, immediate relief is necessary without delay. *Id.*

#### IV. VENUE

6. Venue of this suit lies in Harris County, Texas, under the DTPA § 17.47(b), for the following reasons:

- (a) The transactions forming the basis of this suit occurred in Harris County, Texas.
- (b) Defendants have done business in Harris County, Texas.
- (c) Defendants' principal places of business are in Harris County, Texas.

7. Venue is mandatory in Harris County under Tex. Civ. Prac. & Rem. Code § 125.002 because the nuisance to be enjoined is maintained in Harris County, Texas.

#### V. TRADE AND COMMERCE

8. At all times described below, Defendants and their agents have engaged in conduct constituting "trade" and "commerce," defined in § 17.45(6) of the DTPA, as follows:

"Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

#### VI. CLAIM FOR RELIEF

9. Plaintiffs seek monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees—in excess of \$100,000 and could exceed \$1,000,000. Plaintiffs also seek nonmonetary, injunctive relief.

## VII. DEFENDANTS

10. Defendant 2709 Broadway, Inc., is a Texas corporation that maintains a place of business at 2709 Broadway, Houston, Texas 77017. Defendant may be served with process by serving its registered agent and President, Layth Omran, at 2709 Broadway, Houston, Texas 77017.

11. Defendant the Real Property Known as 2709 Broadway, Houston, Texas (“Property”) is sued *in rem*. This Property is owned by Defendant TazTaz Group, Inc., a Texas corporation that may be served with process by serving its registered agent and President, Ali Ahmad, at 900 Almeda Genoa Rd., Houston, Texas 77047.

12. Defendant TazTaz Group, Inc., is a Texas corporation that owns the property located at 2709 Broadway, Houston, Texas 77017. Defendant may be served with process by serving its registered agent and President, Ali Ahmad, at 900 Almeda Genoa Rd., Houston, Texas 77047

13. Defendant Layth Omran, is an individual residing in Harris County, Texas. Defendant Omran is president and sole officer and director of 2709 Broadway, Inc. Defendant may be served with process at 7200 Almeda Rd. Apt. 723, Houston, Texas 77054 or wherever he may be found.

## VIII. ACTS OF AGENTS

14. Whenever in this petition it is alleged that Defendants did any act, it is meant that

(a) the named Defendants performed or participated in the act, or

(b) the named Defendants’ officers, successors in interest, agents, partners, trustees or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

## IX. FACTUAL BACKGROUND

### A. Overview of the Synthetic Marijuana Problem.

15. Since 2010, the United States has experienced an epidemic of so-called designer drugs. Designer drugs are substances that mimic the effects of controlled substances such as marijuana, cocaine, and amphetamines, but their chemical structure has been modified so that their actual chemical composition is not banned as a controlled substance. The chemical structure of the designer drug is purposefully altered by designer drug manufacturers (often overseas) in order to circumvent controlled substance drug laws. As the legislature passes new laws to ban these newly created substances, the manufacturers simply tweak the chemical structure again so that they are no longer a controlled substance and can be marketed legally.

16. Synthetic marijuana is a designer drug, often manufactured overseas, that is marketed as a “safe” and “legal” alternative to marijuana.<sup>1</sup> Synthetic marijuana is not marijuana at all but a dried leafy substance that is sprayed with powerful, added-in hallucinogenic chemicals that are dangerous and highly addictive to the user.<sup>2</sup> Synthetic marijuana has no medical use.<sup>3</sup> It is consumed like marijuana in that the user generally smokes it in a bowl, bong, water pipe, or by rolling it into a cigarette.<sup>4</sup> The added chemicals are intended to mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana.<sup>5</sup>

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<sup>1</sup> Ex. 1, p. 2, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana); Ex. 2, pp. 4-8, [www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4](http://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4).

<sup>2</sup> Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

<sup>3</sup> Ex. 2, p. 5, [www.federalregister.gov/articles/2015/01/30/2015-01776](http://www.federalregister.gov/articles/2015/01/30/2015-01776).

<sup>4</sup> (All exhibits are attached to the Original Petition and incorporated herein.) Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

<sup>5</sup> Ex. 1, p. 3; Ex. 2, p. 4, [www.federalregister.gov/articles/2015/01/30/2015-01776/](http://www.federalregister.gov/articles/2015/01/30/2015-01776/).

17. Synthetic marijuana is often labeled innocently as “incense” and “potpourri” and the packaging may contain the statement “not for human consumption” although the intended purpose is in fact for the product to be consumed by a human.<sup>6</sup> Typically, it is sold in retail smoke shops or head shops in small colorful packets with names such as “Kush” or “spice” or “K2” or “Scooby Snax” and costs between \$20 and \$25 per packet.<sup>7</sup> The packaging is intended to target young people, who may be afraid of the legal consequences and/or association with illegal drugs but want a “legal” high.<sup>8</sup> According to the federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.<sup>9</sup>

18. Poison control centers report<sup>10</sup> that users of synthetic marijuana report symptoms such as:

- Severe paranoia, agitation and anxiety;
- Psychotic episodes;
- Racing heartbeat and high blood pressure (in a few cases associated with heart attacks);
- Nausea and vomiting;
- Muscle spasms, seizures and tremors;
- Intense hallucinations and psychotic episodes;
- Suicidal thoughts and other harmful thoughts and actions.

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<sup>6</sup> Ex. 3, [www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts](http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts).

<sup>7</sup> Ex. 2, p. 5; Ex. 4, p. 1, [www.aapc.org/alerts/synthetic marijuana](http://www.aapc.org/alerts/synthetic-marijuana).

<sup>8</sup> Ex. 1, p. 2, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

Ex. 3, p. 1.

<sup>9</sup> Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

<sup>10</sup> Ex. 4, [www.aapcc.org/alerts/synthetic-marijuana](http://www.aapcc.org/alerts/synthetic-marijuana); Ex. 5, *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK (last visited Apr. 24, 2015).

19. The American Association of Poison Control Centers has reported thousands of instances of exposure to synthetic marijuana each year.<sup>11</sup> In Texas, there has been an uptick in reported overdoses on synthetic marijuana.<sup>12</sup> Throughout the United States, including Texas, reports of synthetic marijuana use have been linked to overdoses and other serious injuries, including bizarre and violent self-mutilations, and deaths:

- 17-year old girl became paralyzed and permanently brain damaged from suffering multiple strokes and violent hallucinations after smoking synthetic marijuana;<sup>13</sup>
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss.<sup>14</sup>
- Three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011.<sup>15</sup>
- An 18-year old Amarillo man died after smoking synthetic marijuana;<sup>16</sup>
- Police have received multiple reports of users high on synthetic marijuana standing in the middle of the street, disoriented, and with no recollection how they got there.<sup>17</sup>

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<sup>11</sup> Ex. 4, [www.aapcc.org/alerts/synthetic-marijuana](http://www.aapcc.org/alerts/synthetic-marijuana).

<sup>12</sup> Ex. 6, David Winograd, *Nearly 120 People Overdose on Synthetic Marijuana in 5-Day Period*, TIME (May 6, 2014), <http://time.com/89835/synthetic-marijuana-overdoses-k2/>; see also Ex. 7, Kirstin Tate, *Synthetic Marijuana Hospitalizes 45 In Texas*, BREITBART (May 5, 2014), <http://www.breitbart.com/texas/2014/05/05/synthetic-marijuana-hospitalizes-45-smokers-in-texas/>. Ex. 12, *East Texas Police Seek Solution to Synthetic Marijuana Problem*, [www.news-journal.com](http://www.news-journal.com). See also [www.myfoxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area](http://www.myfoxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area).

<sup>13</sup> Ex. 8, FOX NEWS (Feb. 5, 2013), <http://www.foxnews.com/health/2013/02/05/teenage-girl-suffered-strokes-brain-damage-after-smoking-synthetic-marijuana>.

<sup>14</sup> Ex. 9, *Synthetic marijuana concern in Houston area*, [www.myfoxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area](http://www.myfoxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area).

<sup>15</sup> Ex. 10, [www.foxnews.com/health/2011/11/08/texas-teens-had-heart-attacks-after-smoking-k2/](http://www.foxnews.com/health/2011/11/08/texas-teens-had-heart-attacks-after-smoking-k2/).

<sup>16</sup> Ex. 11, Abby Haglage, *When Synthetic Pot Kills*, THE DAILY BEAST (Nov. 21, 2013), <http://www.thedailybeast.com/articles/2013/11/21/when-synthetic-pot-kills.html>.

- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood.<sup>18</sup>
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period.<sup>19</sup>
- A patient presented at an emergency room with self-inflicted fourth-degree burns to his hands and forearms, leading to amputation, due to synthetic marijuana known as Black Diamond.<sup>20</sup>
- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana.<sup>21</sup>
- More than 60 people in Austin, Texas were recently reported to have been sickened by a synthetic drug, known as K-2, including reports of seizures, convulsions and extremely violent behavior.<sup>22</sup>
- A Harris County man recently pled guilty to brutally beating, stabbing and choking his girlfriend to death in front of her children after he smoked a “bad batch” of synthetic

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<sup>17</sup> Ex. 12, Sara Thomas, *East Texas police seek solution to synthetic marijuana problem*, LONGVIEW NEWS JOURNAL (May 8, 2014), <http://www.news-journal.com/news/2014/mar/08/east-texas-police-look-for-solution-to-synthetic-marij/>

<sup>18</sup> Ex. 13, *Synthetic pot blamed for death of U.S. soldier deployed to Ebola zone*, CBS NEWS (Apr. 17, 2015), <http://www.cbsnews.com/news/synthetic-pot-blamed-for-death-of-fort-hood-soldier-deployed-to-ebola-zone/>.

<sup>19</sup> Ex. 6, <http://time.com/89835/synthetic-marijuana-overdoses-k2/>.

<sup>20</sup> Ex. 15, Smoking synthetic marijuana leads to self-mutilation requiring bilateral amputations.

<sup>21</sup> Ex. 14, Postmortem distribution of AB-CHMINACA, 5-fluoro-AMB, and diphenidine in body fluids and solid tissues in fatal poisoning case.

<sup>22</sup> Ex. 15A, <http://www.texomashomepage.com/story/d/story/more-than-60-sickened-in-austin-by-k2-media-report/25480/qZ6kxnvJaU2GTJjx5L7g9g>.

marijuana known as “Kush.”<sup>23</sup> Officers found the man straddling the victim and trying to pull her teeth and tongue out with pliers. *Id.*

***Houston City Ordinance Prohibiting Sale of Synthetic Drugs.***

The dangers of synthetic marijuana have been widely reported and the subject of a recent ordinance by the City of Houston. In October 2014, the City of Houston passed Ordinance No. 2015-913, outlawing the sale of synthetic drugs in the City of Houston. (Ex. 26) The City Council found that synthetic cannabinoids are being sold in retail outlets as household products such as “herbal incense” and labeled “not for human consumption” to “mask their intended purpose” and avoid regulatory oversight. (Ex. 26) The Council found these substances endanger the public health and cited a 2013 study that found synthetic drugs are the second most widely used illicit drug (after marijuana) among tenth graders. (Ex. 26) The Council also noted that businesses that sell illicit synthetic drugs often conceal them from public display, that the drugs are often marketed as a safe and legal substitute to marijuana, and that manufacturers continually reconfigure the banned substances to produce new ones to avoid prosecution. Section 28-572 prohibits the sale, the display, the marketing, or offering for sale of synthetic drugs in the City of Houston. (Ex. 26) Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

***B. Defendants Sell Synthetic Marijuana At 2709 Broadway, Houston, Texas in Harris County.***

20. Defendant 2709 Broadway, Inc. owns and operates a convenience store at 2709 Broadway, Houston, Texas 77017, which is in the City of Houston and Harris County. (Ex. 16 & 17)

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<sup>23</sup> Ex. 15B, “Synthetic Marijuana is blamed in death”, Houston Chronicle, July 9, 2015, [houstonchronicle.com](http://houstonchronicle.com).

21. Defendant Layth Omran is the president and sole officer and director of 2709 Broadway, Inc. (Ex. 18) On information and belief, Defendant Omran personally engaged in the acts and practices leading to the violations described below and controls 2709 Broadway, Inc. as sole director and officer. (Ex. 16-18)

22. Defendant TazTaz Group, Inc. owns and controls the property at 2709 Broadway, Houston, Texas. (Ex. 19)

***Sale of Synthetic Marijuana at Defendants' Convenience Store***

23. On July 22, 2015, members of the Houston Police Department Narcotics Division conducted an undercover operation to purchase synthetic marijuana at the convenience store at 2709 Broadway in Houston, Texas. As a result of the operation, the store clerk sold and the officers obtained a packet of a product of suspected synthetic marijuana for \$15 labeled "Diablo. (Ex. 20)

24. On July 22, 2015, following the undercover buy, officers from the Houston Police Department Narcotics Division conducted an inspection of the store at 2709 Broadway, Houston, Texas. (Ex. 22) The officers made contact with the store clerk, stated they were there to perform an inspection and asked if there was anything the officers needed to know about before conducting the inspection. (Ex. 22) The employee at first denied there was anything illegal in the store and then changed his mind and led the officers to a back storage room and opened up a plain white plastic bag filled with packets of synthetic marijuana. (Ex. 22) The officers asked the employee if there was any other synthetic marijuana in the store, and the employee advised the officers that there was an additional bag behind the sodas. (Ex. 22) The store clerk advised that he sold 50-75 packages of the synthetic marijuana per day. (Ex. 22)

25. The officers also observed a small box containing receipts near the synthetic marijuana which contained writing with the numbers 1 and 2 on them. (Ex. 22) The employee informed the

officers that the number “1” was for a small package and the number “2” meant that a large package was sold. The employee then elaborated on the process of purchasing synthetic marijuana at the store stating the following:

- A customer would go to the store clerk at the front of the store and ask for a packet of “Kush” and the clerk would direct the customer to him at the back of the store.
- The employee would then look at the receipt that was initialed by the clerk and retrieve a packet of Kush from behind the cooler area and deliver it to the customer. (Ex. 22)

During the inspection, the officers observed a large hole in a back wall behind what appeared to be a breaker box that lead to the outside of the store. (Ex. 22) The stool that the employee had been sitting on was positioned right next to the whole in the wall. It appeared to the officers that due to the position of the stool, location of the synthetic marijuana and box of receipts, that the employee was also dispensing the packets through this location. These facts were later corroborated with the employee’s verbal statements of how he would deliver the synthetic marijuana.

26. After completing the inspection, the officers confiscated the synthetic marijuana, weighed it and submitted it to the Houston Police Department Lock Box. The first large bag synthetic marijuana packets weighed approximately 4.15 pounds and the second bag weighed approximately 116 grams (approximately 150-200 packets seized). (Ex. 22)

27. The packets have brightly colored labeling with names such as “Klimax potpourri,” “Diablo,” “Geeked Up,” and “White Tiger.” (Ex. 23 and Ex. 20) A sampling of the packets was sent to the Houston Forensic Science Center Controlled Substance Section for testing. (Ex. 24)

28. The testing and lab report revealed that the sample packets obtained from the store at 2709 Broadway labeled “White Tiger” and “Geeked Up” and “Super Nova” contain a chemical known

as “XLR11”. (Ex. 23, 24) XLR11 is a synthetic cannabinoid and controlled substance (as defined under §481.002 of the Texas Health & Safety Code (Texas Controlled Substances Act)). It has been listed as a Texas Schedule 1 controlled substance (most dangerous) since August 2013. 38 Tex. Reg. 4928. (Ex. 25) Under Texas and federal law, it is a crime to manufacture, distribute, dispense or possess a Schedule I drug, such as XLR11. Tex. Health & Safety Code §§ 481.119; 21 U.S.C. §§ 841, 844.

29. A Schedule I drug is a drug or substance that i) has a high potential for abuse; ii) has no currently accepted medical use in treatment; and iii) there is a lack of accepted safety for use of the drug or other substance under medical supervision. Tex. Health & Safety Code §481.035; 21 U.S.C § 812. Other Schedule I drugs include heroin, LSD, MDMA (ecstasy) and marijuana. (Ex. 26) Under Texas and federal law, it is a crime to manufacture, distribute, dispense or possess a Schedule I drug or synthetic cannabinoid such as XLR11. Tex. Health & Safety Code §§ 481.119; 21 U.S.C. §§ 841, 844.

30. The testing and lab report also revealed that the packet labeled as “Klimax potpourri” obtained from the store at 2709 Broadway contained “AB-CHMINACA.” (Ex. 24; Ex. 23 (photo of item 2.1.1.)) AB-CHMINACA is a controlled substance and a synthetic cannabinoid that also has been identified by Texas Health & Human Services and the federal Drug Enforcement Administration (DEA) as a Schedule I drug. (Ex. 27); 40 Tex. Reg. 2007, Apr. 3, 2015; 21 CFR part 1308.<sup>24</sup> Under Texas and federal law, it is a crime to deliver or possess

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<sup>24</sup> <https://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4>; [www.ncbi.nlm.nih.gov/pubmed/25730924](http://www.ncbi.nlm.nih.gov/pubmed/25730924).

Schedule I drug, such as AB-CHMINACA. Tex. Health & Safety Code §§481.119; 21 U.S.C. §§ 841, 844.

***C. Defendants Have Engaged In False, Misleading and Deceptive Trade Practices And Maintain A Common Nuisance.***

31. By selling, offering for sale, and distributing synthetic marijuana, Defendants and their agents have, in the conduct of trade and commerce, engaged in false, misleading and deceptive acts and practices declared unlawful under the DTPA. The 2709 Broadway location also constitutes a common nuisance as defined by Texas law. (See §§38-43 *infra*)

32. The packaging of the synthetic marijuana products obtained by the officers from the store at 2709 Broadway (Ex. 23) make a number of false and misleading statements designed to mislead the consumer into believing the product is safe and legal.

33. For example, the “Klimax potpourri” product lists the ingredients as “various herbs”—which are not identified—without any mention that the contents also include the key ingredient—AB-CHMINACA, a highly addictive and dangerous chemical and Schedule I drug. (Ex. 23 &

24) The packaging also misleadingly states the product does not contain assorted synthetic cannabinoids, such as JWH-018, AM2201, HU-210, without any mention that the package *does* contain the synthetic cannabinoid, AB-CHMINACA, an illegal Schedule 1 drug. (Ex. 23, 24)

The statements on the Klimax packaging, “This Product is Not To Be Burned or Smoked!” and “Not intended for human consumption” (Ex. 23) are simply absurdities. There can be little doubt the product is intended to be burned, smoked and ingested into the human body. (Ex. 23) These statements are added to provide “cover” for the seller and perhaps the user if they are confronted by law enforcement.

34. The packaging of the “Super Nova” product is equally misleading. (Ex. 23) Nowhere does the product packaging state what the product actually is. (Ex. 23) The manufacturer does not even pretend it is potpourri or incense; however, the packaging does state “this product” (still unidentified) “has been certified by laboratory analysis, and does not contain JWH-18, JWH-73-JWH-200, CP47; CP497-, HU-210 or any other chemical and/or plant ingredients prohibited by state or federal law.” (Ex. 23) The statement is false as confirmed by the lab testing that found the contents in fact contain XLR11, a highly addictive, dangerous and illegal Schedule I drug. (Ex. 24)

35. Similarly, the “White Tiger” packaging falsely states that “[t]his produce does not contain any prohibited ingredients” when in fact the product contains the illegal drug XLR11. (Ex. 23, 24) And the “Geeked Up” product falsely states that it is “for fragrance purposes only” and is “legal incense” when in fact in the product also contains the illegal drug XLR11. (Ex. 23, 24)

36. By selling these and other synthetic marijuana products at their convenience store, Defendants deliberately mislead consumers into believing that these products are legal and safe. Defendants know or should know the actual content of the products they are selling to consumers is illegal and dangerous, and they deliberately fail to disclose this information in order to induce consumers to buy the products. The suspicious circumstances of the sale of these products by Defendants and their agents—keeping it hidden in their store room, hiding it from view, requiring customers to ask for it by name, and charging the inflated price for unidentified products and “incense” and “potpourri”<sup>25</sup>—confirm that Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers.

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<sup>25</sup> The retail priced charged by Defendants for a single packet of “Diablo” is \$15.

Unsuspecting consumers who purchase these products from Defendants are exposed to the physical dangers of AB-CHMINACA and XLR11, as well as serious potential criminal liabilities.

37. Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at the store at 2709 Broadway Houston, Texas. On information and belief, Defendant Omran as sole director and officer of 2709 Broadway Inc., has at all relevant times been involved in the day to day operations and management of the 2709 Broadway store and on information and belief knowingly participated in and/or tolerated the illegal activities described herein. Delivery, sale and possession of controlled substances are illegal activities that are outside the corporate veil. In the alternative, the corporate fiction of the Defendant corporate entities must be disregarded in this case and Defendant Omran must be held personally liable for the acts of the corporate entities because under Texas law the corporate structure may not be used to protect a crime, circumvent the law, justify a wrong, perpetuate a fraud, or allow continuance of a common nuisance.

**X. COMMON NUISANCE**  
**TEX. CIV. PRAC. & REM. CODE §§ 125.001-125.047**

38. The Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph of this petition.

39. Chapter 125 of the Texas Civil Practice & Remedies Code defines a common nuisance. Section 125.0015(a) states “[a] person who maintains a property to which persons habitually go for [certain] purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The purposes that give rise to a common nuisance include “delivery, possession, manufacture or use of a controlled

substance in violation of Chapter 481 of the [Texas] Health & Safety Code.” Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4).

40. The store at 2709 Broadway, Houston, Texas constitutes a common nuisance under Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4) because persons habitually go to this store to purchase and possess a controlled substance in violation of Chapter 481 of the Texas Health & Safety Code. Defendants own, maintain, operate, or use the stores and knowingly tolerate the nuisance activity and further fail to make reasonable attempts to abate the nuisance activity. Tex. Civ. Prac. & Rem. Code § 125.002(b); § 125.0015(a)(4). This action is brought by the Plaintiffs for injunctive relief to abate this nuisance and enjoin Defendants from maintaining or participating in the nuisance and for any other reasonable requirements to prevent the use of these stores as a common nuisance. Tex. Civ. Prac. & Rem. Code, § 125.002(b),(e). Plaintiffs request that upon issuance of injunctive relief each of Defendants be ordered to post a bond in the name of the State to be forfeited to the State in the event of a violation by Defendants of the injunction. Tex. Civ. Prac. & Rem. Code § 125.003. The bond must be payable to the State of Texas, be in the amount set by the Court, but no less than \$5000 nor more than \$10,000, have sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly allow a common nuisance to exist at the 2709 Broadway location. *Id.*

41. Based upon Section 125.002 of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the Plaintiffs, the Court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance. The Court may include in the order reasonable requirements to prevent the use or maintenance of the place as a nuisance. The judgment must order that the location where the nuisance was found is closed for one year.

42. Pursuant to Section 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this Court be violated, the State may sue upon the bond and upon showing a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to the State and the location where the nuisance was found should be closed for one year. In addition, in accordance with Tex. Civ. Prac. & Rem. Code §125.002(d), a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt: a) a fine of not less than \$1000 nor more than \$10,000; b) confinement in jail for a term of not less than 10 nor more than 30 days; and c) both a fine and confinement. If a Defendant violates the temporary or permanent injunction, under §125.045(b), the Court may make additional orders to abate the nuisance.

43. On violation of the bond or injunction, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture. *Id.*

**XI. VIOLATIONS OF THE DTPA  
TEX. BUS. & COM. CODE § 17.41 ET SEQ.**

44. The Plaintiff State of Texas incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

45. Defendants, in the course and conduct of trade and commerce, have directly or indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA by:

- (a) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA, § 17.46(b)(2);

- (b) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA, § 17.46(b)(3);
- (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA, § 17.46(b)(5);
- (d) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of the DTPA, § 17.46(b)(7);
- (e) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of the DTPA. § 17.46(b)(24).

**XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

46. Plaintiffs have reason to believe that the Defendants are engaging in, have engaged in, or are about to engage in acts and practices declared to be unlawful under the DTPA. Plaintiffs believe these proceedings to be in the public interest. Therefore, pursuant to DTPA § 17.47(a) and §17.60(4), Plaintiffs request relief by way of a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as set forth in the Prayer.

47. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiffs request the Court enjoin Defendants from maintaining or participating in the common nuisance described herein, *i.e.*, delivery and possession of controlled substances in violation of Chapter 481 of the Texas Health & Safety Code at the store at 2709 Broadway, Houston, Texas, and order such requirements as to prevent the ongoing nuisance activity in Harris County, Texas. Tex. Civ. Prac. & Rem. § 125.002(b)(e). Plaintiffs are not required to verify facts in support of injunctive relief to abate the nuisance activity. Tex. Civ. Prac. & Rem. § 125.002 (a).

48. Plaintiffs believe immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is necessary to prevent continuing harm prior to trial.

49. The Court shall issue such injunctive relief without requiring a bond from the Plaintiffs. DTPA § 17.47(b); Tex. Civ. Prac. & Rem. Code § 6.001(a).

50. Plaintiffs further request the Court find Plaintiff is likely to succeed on the merits on its claim for common nuisance and include in the Court's temporary injunction order (i) reasonable requirements to prevent the use or maintenance of the 2709 Broadway store as a nuisance, and (ii) require that Defendants execute a bond of not less than \$5,000 nor more than \$10,000, payable to the State, with sufficient sureties and conditioned that Defendants will not maintain a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.045(a).

### **XIII. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING**

51. Plaintiffs request they be permitted to obtain expedited discovery prior to any scheduled Temporary Injunction hearing. Specifically, Plaintiffs request Defendants be ordered to provide i) access to all surveillance videos of the 2709 Broadway location; ii) all invoices and payments related to purchase and sale of synthetic marijuana; iii) contact information of the Defendants'

supplier of synthetic marijuana; and iv) contact information of Defendants' employees. Plaintiffs also request leave of this Court to conduct depositions of Defendants and Defendants' employees prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiff requests that the filing and service requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

#### **XIV. TRIAL BY JURY**

52. Plaintiffs herein request a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. 216 and the Tex. Gov't Code § 51.604.

#### **XV. CONDITIONS PRECEDENT**

53. All conditions precedent to Plaintiffs' claim for relief have been performed or have occurred.

#### **XVI. REQUEST FOR DISCLOSURE**

54. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendants disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

#### **XVII. PRAYER**

55. Plaintiffs pray that Defendants be cited according to law to appear and answer herein.

56. Plaintiffs pray that the TEMPORARY RESTRAINING ORDER be entered, and that after due notice and hearing, a TEMPORARY INJUNCTION be issued, and upon final hearing a PERMANENT INJUNCTION be issued, restraining, and enjoining Defendants, Defendants' officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all Defendants—from engaging in the following acts or practices without further order of the Court:

- (a) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to the purchase and sale of synthetic cannabinoids that are currently or hereafter in any of the Defendants' possession, custody or control except in response to further orders or subpoenas in this cause;
- (b) Failing to preserve previously recorded video surveillance coverage of the store location at 2709 Broadway or allowing recording over previously recorded video surveillance;
- (c) Selling or offering for sale controlled substances on Defendants' premises;
- (d) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any products containing controlled substances or synthetic cannabinoids;
- (e) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any product that is labeled “not for human consumption” or words to that effect when the purpose of the product is for consumers to

inhale, ingest, or introduce the product into the human body to mimic the effects of controlled substances;

- (f) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any product that is intended for human consumption and contains deceptive labeling that falsely implies the product is legal when it is not;
- (g) Representing, directly or indirectly, that goods have characteristics, ingredients, uses, or benefits, which they do not have by advertising, offering to sell, or selling any products labeled household products, such as potpourri, incense, or bath salts, when the products contain synthetic substances that mimic the effects of drugs and/or controlled substances;
- (h) Offering for sale or selling products intended to serve as alternatives to controlled substances to stimulate, sedate, or cause hallucinations or euphoria when introduced into the body, such as through inhalation or ingestion;
- (i) Offering for sale or selling products that are false, misleading, or deceptive because the labeling lacks the name and address of the manufacturer, packer or distributor, the ingredients, the net quantity of contents in terms of weight or mass in both pound and metric units; and a statement of the identity of the commodity;
- (j) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods by advertising, offering to sell, or selling

any products with synthetic substances that mimic the effects of controlled substances;

- (k) Failing to disclose information regarding possible side-effects, such as paranoia, hallucinations, pains like a heart attack or rapid heartbeat, seizures, panic, passing out, and suicidal thoughts, from using products with synthetic substances that mimic the effects of drugs and/or controlled substances, which information was known at the time of the transaction, if such failure to disclose was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;
- (l) Failing to cooperate with authorized representatives of the State and Harris County, including law enforcement representatives, in locating and impounding all synthetic marijuana products in Defendants' custody, care and control or located on Defendants' premises and preserving all documents related to purchase and sale of synthetic marijuana products in Defendants' custody, care or control.

57. Plaintiff, the State of Texas, further pray that this Court award judgment for the Plaintiff ordering Defendants to pay civil penalties to the State of Texas for each violation of the DTPA up to \$20,000 per violation;

58. Plaintiffs further pray that upon final hearing that this Court order each Defendant to pay to the Plaintiffs' attorney fees and costs of court pursuant to the Tex. Govt. Code Ann. § 402.006(c). Plaintiffs further pray for recovery of reasonable attorneys' fees, investigative costs,

court costs, witness fees, and deposition fees pursuant to Tex. Civ. Prac. & Rem. Code § 125.003(b),(d).

59. Plaintiffs further pray that this Court grant all other relief to which the Plaintiffs, the State of Texas and City of Houston, are entitled.

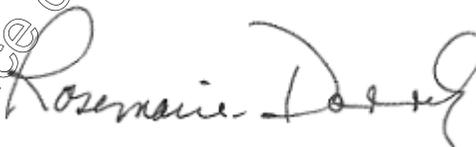
Respectfully submitted,

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