



## 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 includes non-monetary injunctive relief.
- (b) The claims 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, 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—Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), 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.

3. In addition this suit is brought by the Office of Attorney General, the Harris County Attorney’s Office, and the City of Houston against Defendants to enjoin and abate a common nuisance pursuant to Texas Civil Practice & Remedies Code §§ 125.001–125.047. Verification of the petition or proof of personal injury need not be shown by the State under Texas Civil Practice & Remedies Code § 125.002(a).

### III. PUBLIC INTEREST AND NOTICE

4. Plaintiffs have reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition.

5. Plaintiffs have 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. Therefore, these proceedings are in the public interest. *See* DTPA § 17.47(a).

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

7. 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 that such an emergency exists—due to the seriousness of the allegations and the danger to public health—that immediate and irreparable injury, loss, or damage would occur as a result of delay. *Id.*

### IV. VENUE

8. 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.

9. In addition, venue is mandatory in Harris County under Texas Civil Practice & Remedies Code § 125.002 because the nuisance to be enjoined is maintained by Defendants in Harris County, Texas.

## V. TRADE AND COMMERCE

10. 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

11. 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

12. Defendant **Jaber Global, Inc** ("Jaber Global"), doing business as "**Brothers Market & Meat Mart**" and "**Brothers Market**" is a Texas corporation that maintains a place of business in Harris County at 2909 Hillcroft St., Suite 325, Houston, Texas 77057-5815. Defendant may be served with process by serving its registered agent, director, and president, Mohamed Jaber at 2909 Hillcroft St., Suite 325, Houston, Texas 77057-5815.

13. Defendant **The 47 Alibaba Inc** ("47 Alibaba"), doing business as "**Brothers Market & Meat Mart**" and "**Brothers Market**" is a Texas corporation that maintains a place of business in Harris County at 3134 E. Crosstimbers St., Houston, Texas 77093-8810. Defendant may be served

with process by serving its registered agent, director, and president, Nemeh Jaber, at 3134 E. Crosstimbers St., Houston, Texas 77093-8810.

14. Defendant **Brothers Market** is an unincorporated business doing business as “**Brothers Market & Meat Mart**” and “**Brothers Market**” having its principal place of business in Harris County, Texas, at 3134 E. Crosstimbers St., Houston, Texas 77093-8810. Defendant may be served with process by serving its owner, Louis Poutous, in Harris County, at 3134 E. Crosstimbers St., Houston, Texas 77093-8810.

15. Defendant **The Real Property Known as 3134 E. Crosstimbers St., Houston, Texas** is sued *in rem*. This property is owned by Defendant Sawsan Mahmoud Jaber who may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever she may be found.

16. Defendant **Ali Jaber Faiz**, aka Ali Abuzahriya, is an individual residing in Harris County. Defendant may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever he may be found.

17. Defendant **Omar Jaber** is an individual residing in Harris County. Defendant may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever he may be found.

18. Defendant **Sawsan Mahmoud Jaber**, aka Sawsaw Abuzahriya aka Sawsaw Abuzahriya Jaber, is an individual residing in Harris County. Defendant may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever she may be found.

19. Defendant **Mohamed Jaber** is an individual residing in Harris County. Defendant may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever he may be found.

20. Defendant **Nemeh Jaber**, aka Nemeh Abuzahriya Jaber aka Nema Abuzahriya, is an individual residing in Harris County. Defendant may be served with process at 8015 Clearwater Crossing, Humble, Texas 77396-3453, Harris County or wherever he may be found.

21. Defendant **Louis Poutous** is an individual residing in Harris County who is named as a defendant in his individual capacity and in his capacity as a sole proprietor of Brothers Market. Defendant may be served at 2412 Terry St., Houston, Texas 77009-7969, Harris County or wherever he may be found.

22. For purpose of this petition, the following definitions apply:

- (a) “**Individual Defendants**” means Ali Jaber Faiz, Omar Jaber, Sawsan Mahmoud Jaber, Mohamed Jaber, Nemeh Jaber, and Louis Poutous.
- (b) “**In Rem Defendants**” means all real properties named as *in rem* defendants in this lawsuit.
- (c) “**Entity Defendants**” means Jaber Global, 47 Alibaba, and Brothers Market.

### **VIII. ACTS OF AGENTS**

23. 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.***

24. 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.

25. 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>

26. 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

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<sup>1</sup> Ex. 1, *DrugFacts: K2/Spice (“Synthetic Marijuana”)*, NATIONAL INSTITUTE ON DRUG ABUSE (lasted updated Dec. 2012), <http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana>; Ex. 2, 78 Fed. Reg. 28735 (May 16, 2013) (temporary placement of three synthetic cannabinoids, including XLR11, into schedule I); Ex. 2A, 80 Fed. Reg. 27854 (May 15, 2015) (extension of temporary scheduling of XLR11).

<sup>2</sup> Ex. 1, p.1; Ex. 2, 78 Fed. Reg. at 28,736.

<sup>3</sup> Ex. 2, 78 Fed. Reg. at 28,735–36.

<sup>4</sup> Ex. 1, p. 3.

<sup>5</sup> *Id.*; Ex. 2, 78 Fed. Reg. at 28,736.

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>

27. 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, *Synthetic Drugs (a.k.a K2, Spice, Bath Salts, etc.)*, THE WHITE HOUSE: OFFICE OF NATIONAL DRUG CONTROL POLICY, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited May 21, 2015).

<sup>7</sup> Ex. 2, 78 Fed. Reg. at 28,736; Ex. 4, *Alerts: Synthetic Marijuana*, AMERICAN ASSOCIATION OF POISON CONTROL CENTERS, <http://www.aapc.org/alerts/synthetic-marijuana> (last visited May 21, 2015).

<sup>8</sup> Ex.1, p. 2; Ex. 3, p. 1.

<sup>9</sup> Ex. 1.

<sup>10</sup> Ex. 4; Ex. 5, *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK, <http://www.poisoncontrol.org/news/topics/synthetic-marijuana.cfm> (last visited May 21, 2015).

28. 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>

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<sup>11</sup> Ex. 4.

<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, 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-seek-solution-to-synthetic-marijuana>. See also Ex. 9, Ashley Johnson, *Synthetic Marijuana Becomes Growing Concern in Houston Area*, FOX 26 HOUSTON (March 12, 2015), <http://www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area>.

<sup>13</sup> Ex. 8, *Teenage Girl Suffered Strokes, Brain Damage After Smoking Synthetic Marijuana*, 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.

<sup>15</sup> Ex. 10, *Texas Teens Had Heart Attacks After Smoking Synthetic Marijuana*, FOX NEWS (Nov. 8, 2011), <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>.

- 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>
- 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> and

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<sup>17</sup> Ex. 12.

<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.

<sup>20</sup> Ex. 15, K.A. Meijer et al., *Abstract: Smoking Synthetic Marijuana Leads to Self-Mutilation Requiring Bilateral Amputations*, ORTHOPEDICS, 2014 Apr. 37(4):e391-4, available at <http://www.ncbi.nlm.nih.gov/pubmed/24762846>.

<sup>21</sup> Ex. 14, Koutaro Hasegawa et al., *Abstract: Postmortem Distribution of AB-CHMINACA, 5-fluoro-AMB, and Diphenidine in Body Fluids and Solid Tissues in Fatal Poisoning Case*, 33 FORENSIC TOXICOLOGY 45 (2015), available at <http://link.springer.com/article/10.1007%2Fs11419-014-0245-6>.

<sup>22</sup> Ex. 15A, *More than 60 Sickened in Austin by K-2: Media Reports*, TEXOMA'S HOMEPAGE.COM (June 5, 2015), <http://www.texomashomepage.com/story/d/story/more-than-60-sickened-in-austin-by-k2-media-report/25480/qZ6kxnvJaU2GTJjx5L7g9g>.

- A man in Houston had a psychotic break on a “bad batch” of synthetic marijuana and stabbed, beat, and fatally choked his girlfriend.<sup>23</sup>

***B. Defendants Sell Synthetic Marijuana At Brothers Market & Meat Mart, 3134 E. Crosstimbers Street, Houston, Texas In Harris County.***

29. The Individual Defendants and the Entity Defendants own and operate the store known as “Brothers Market & Meat Mart” and “Brothers Mart” in Harris County. Based upon Texas Comptroller franchise tax reports, Secretary of State filings, assumed name records, and Harris County Appraisal District Records, the Individual and Entity Defendants are currently doing business at the location 3134 E. Crosstimbers Street, Houston, Texas, in Harris County.<sup>24</sup> Defendant Nemeah Jaber is the president and sole director of The 47 Alibaba.<sup>25</sup> Defendant Mohamed Jaber is the president and sole director of Jaber Global.<sup>26</sup> Defendant Louis Poutous is the owner of the sole proprietorship Brothers Market.<sup>27</sup>

30. Defendant Sawsan Mahmoud Jaber owns and controls the real property at 3134 E. Crosstimbers Street, Houston, Texas.<sup>28</sup>

***C. Undercover Buys of Synthetic Marijuana at Defendants’ Business.***

31. On October 28, 2014, the Houston Police Department Narcotics Division assisted with the service of a federal search warrant at the business located at 3134 E. Crosstimbers, Houston,

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<sup>23</sup> Ex. 15B, Brian Rodgers, “Synthetic Marijuana” is Blamed in Death, HOUSTON CHRONICLE, July 9, 2015, at B2.

<sup>24</sup> See Ex. 16–24.

<sup>25</sup> Ex. 17, Texas Secretary of State Record Certified Filings, The 47 Alibaba Inc.

<sup>26</sup> Ex. 16, Texas Secretary of State Record Certified Filings, Jabar Global Inc.

<sup>27</sup> Ex. 19, Harris County Assumed Name Records, Brothers Market, Louis Poutous, Oct. 30, 2015.

<sup>28</sup> Ex. 18, Harris County Appraisal District, Real Property Account Information, 3134 E Crosstimbers St., Houston, TX 77093-8810.

Texas.<sup>29</sup> Inside the cash register booth at Brothers Market and Meat Mart, officers discovered and seized a plastic garbage bag containing individual foil packages believed to contained synthetic marijuana and two firearms.<sup>30</sup> Defendant Ali Jaber Faiz was in the cash register booth at the time of the search.<sup>31</sup>

32. On October 22, 2015, approximately a year later, Officer J. G. and Undercover Officers K. E. and M. R. with the Narcotics Division of the Houston Police Department conducted an undercover narcotics investigation that resulted in a controlled buy of approximately fifteen grams of synthetic marijuana from Brothers Market & Meat Mart.<sup>32</sup> Officer K. E. entered the business and observed two clerks behind the counter—a male clerk later identified as Defendant Omar Jaber and a female clerk.<sup>33</sup> Defendant Omar Jaber was handling sales at the counter.<sup>34</sup> Officer K. E. observed a customer ask Defendant Omar Jaber for “Strawberry,” and Defendant Omar Jaber handed the customer something in a brown paper bag.<sup>35</sup> Officer K. E. stepped up to the counter and asked for “Strawberry.”<sup>36</sup> Defendant Omar Jaber handed Officer K. E. a brown paper bag

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<sup>29</sup> Ex. 26, Houston Police Department Incident Report #1374188-14 for October 28, 2014, Federal Search Warrant seizure of Kush at 3134 E Crosstimbers St. That same day, officers executed a simultaneous search warrant at 3141 E. Crosstimbers (KP Super Market), located across the street from Brothers Market and Meat Mart. Ex. 25, Houston Police Department Incident Report #1374284-14 for October 28, 2014, Federal Search Warrant seizure of Kush at 3141 E Crosstimbers St. At the KP Food Mart, officers seized two gym bags filled with approximately 10 pounds of synthetic marijuana and a cardboard box filled with 3.3 pounds of synthetic marijuana. *Id.*

<sup>30</sup> Ex. 26.

<sup>31</sup> Ex. 26. Defendant Ali Jaber Faiz was charged with possession of a firearm by a felon. *Id.*

<sup>32</sup> Ex. 27, Houston Police Department Incident Report #1363626-15 for October 22, 2015, Undercover buy of Kush at 3134 E Crosstimbers St.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

with an unmarked pink colored bag inside and told Officer K. E. that it was \$25.<sup>37</sup> Officer K. E. mentioned that he thought it was \$20.<sup>38</sup> Defendant Omar Jaber said it was “10xxx” and “Climax” (Klimax is a brand of synthetic marijuana).<sup>39</sup> Officer K. E. paid Defendant Omar Jaber \$25.00 and left the store.<sup>40</sup> Officer K. E. turned over the bag to Officer J. G., who tagged it into evidence.<sup>41</sup> The bag was sent to the Houston Forensic Science Center Controlled Substance Section for testing.<sup>42</sup> The laboratory report revealed that pink foil packet with plant substances contained a chemical known as “XLR11.”<sup>43</sup> XLR11 is a drug that acts as a potent agent for cannabinoid receptors and has been listed as a Texas Schedule I substance effective August 23, 2013. 38 Tex. Reg. 4928 (Aug. 2, 2013). XLR11, also known as [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, is also a Penalty Group 2-A drug under Texas law. *See* Texas Health & Safety Code § 481.1031(b)(5).

33. On October 22, 2015, Officer J. G. with the Narcotics Division of the Houston Police Department conducted a Texas Alcoholic Beverage Commission (T.A.B.C.) and City of Houston Ordinance inspection of “Brothers Market & Meat Mart,” located at 3134 E. Crosstimbers Road,

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Ex. 28, Houston Forensic Science Center Lab Report for Houston Police Department Incident Report #1363626-15 and Affidavit.

Houston, Texas.<sup>44</sup> Officer J. G. identified the person behind the counter as Defendant Omar Jaber.<sup>45</sup> Officer J. G. told Defendant Omar Jaber that he was completing a T.A.B.C. and City of Houston Ordinance inspection and was also educating convenience store owners on the City of Houston kush ordinance.<sup>46</sup> Officer J. G. asked Defendant Omar Jaber if there were any synthetic cannabinoids or synthetic urine in the store or behind the counter, and he replied, “No.” Officer J. G. asked if he could look around the store.<sup>47</sup> Defendant Omar Jaber replied, “Yeah, sure.”<sup>48</sup> Officer J. G. looked around the clerk’s counter and saw a pink backpack in plain view on the floor; he also observed numerous packages of what Officer J. G. knew to be synthetic marijuana.<sup>49</sup> Officer J. G. asked Defendant Omar Jaber who the synthetic marijuana packages belonged to.<sup>50</sup> Defendant Omar Jaber denied that they were his and stated that the synthetic marijuana packages belonged to his father, Defendant Ali Jaber Faiz.<sup>51</sup> Defendant Omar Jaber also stated that his father was trying to get rid of the old stock of synthetic marijuana, that the synthetic marijuana packages usually sold for \$15–\$25 depending on the size of the bag, and that customers ask for it as “fake weed.”<sup>52</sup> Officer J. G. took the backpack with the synthetic marijuana packets and tagged it into

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<sup>44</sup> Ex. 29, Houston Police Department Incident Report #1363335-15 for October 22, 2015, TABC/City of Houston inspection at 3134 E Crosstimbers St.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

evidence.<sup>53</sup> The backpack contained approximately 40 separate packages of synthetic marijuana, and the synthetic marijuana weighed approximately 1.3 pounds.<sup>54</sup> The packages were labeled variously “10xxx Klimax gummy bear potpourri,” “10xxx Klimax coconut potpourri,” “Blue Diamond,” and “King Kush Exotic Herbal potpourri.”<sup>55</sup> The packages were sent to the Houston Forensic Science Center Controlled Substance Section for testing.<sup>56</sup> The laboratory report revealed that plant substances in the packages contained a chemical known as “XLR11.”<sup>57</sup> XLR11 is a drug that acts as a potent agent for cannabinoid receptors and has been listed as a Texas Schedule I substance effective August 23, 2013. 38 Tex. Reg. 4928 (Aug. 2, 2013). XLR11, also known as [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, is also a Penalty Group 2-A drug under Texas law. *See* Texas Health & Safety Code § 481.1031(b)(5).

34. Based on the results of the lab testing, Defendant Omar Jaber was charged with First and Second Degree Felonies for Possession of a Controlled Substance with Intent to Deliver, and Defendant Ali Jaber Faiz was charged with a Second Degree Felony for Possession of a Controlled Substance with Intent to Deliver. *See* Tex. Health & Safety Code § 481.113(c),(d). HPD officers executed the arrest warrants against Defendants Ali Jaber Faiz and Omar Jaber on November 2, 2015.<sup>58</sup> When HPD officers arrested Defendant Ali Jaber Faiz, he unlawfully possessed a firearm

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Ex. 30, Houston Forensic Science Center Lab Report for Houston Police Department Incident Report #1363335-15 and Affidavit.

<sup>58</sup> Ex. 29.

and had a bag of “Joker”—synthetic marijuana—on his person.<sup>59</sup> During the execution of the arrest warrants, officers also discovered 128.6 grams of synthetic marijuana behind the counter at Brothers Market & Meat Mart.

35. Under Texas law, it is a crime to deliver or possess a synthetic cannabinoid, and synthetic cannabinoids are classified as Penalty Group 2-A drugs. Tex. Health & Safety Code §§ 481.1031, 481.113, 481.1161. XLR11, the synthetic cannabinoid found by HPD at Brothers Market & Meat Mart, has also been identified by Texas Department of Health & Human Services and the federal Drug Enforcement Administration (DEA) as a Schedule I controlled substance (the most dangerous). 38 Tex. Reg. 4928 (Aug. 2, 2013); 21 CFR part 1308. 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. Under Texas and federal law, it is a crime to manufacture, distribute, dispense or possess a Schedule I drug or synthetic cannabinoid. Tex. Health & Safety Code §§ 481.1031, 481.1161, 481.113, 481.119; 21 U.S.C. §§ 841, 844.

36. In addition, in 2014, the City of Houston passed Ordinance § 28-572 outlawing synthetic marijuana including the product labeled as “Kush.”<sup>60</sup> Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

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<sup>59</sup> *Id.*

<sup>60</sup> Ex. 31, City of Houston Kush Ordinance.

37. The Texas Legislature has recently amended the Penalty Group 2-A definition of the Texas Controlled Substances Act such that XLR11 is now more specifically defined as a Penalty Group 2-A drug.<sup>61</sup>

38. The Texas Legislature has also recently amended the DTPA to make it a per se DTPA laundry list violation to make a deceptive representation or designation about synthetic marijuana or cause confusion or misunderstanding as to the effects of synthetic marijuana when consumed or ingested. DTPA § 17.46(b)(30).

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

39. By selling, offering for sale, and distributing synthetic marijuana, including “Kush” and “Klimax,” 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. *See* DTPA § 17.46(a).

40. The packaging of the synthetic marijuana sold by Defendants is deceptive. The packaging of the Kush and Klimax products falsely state that the products are “pot pourri” and “herbal” without disclosing that they contain dangerous and illegal hallucinogenic chemicals. The “Kush” packets falsely state the product is not “designed intended or suggested [sic]” to be used for human consumption in any capacity” when in fact that is precisely the intention and purpose of the

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<sup>61</sup> Tex. Health & Safety Code § 481.1031(b)(5):

(b) Penalty Group 2-A consists of any material, compound, mixture, or preparation that contains any quantity of a natural or synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this subsection or contained within one of the structural classes defined in this subsection:

...

(5) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including . . . .”

XLR11 is a compound having the following components: indole (core), methanone (link), and tetramethylcyclopropone (group A) in accordance with Tex. Health & Safety Code § 481.1031(b)(5). Ex. 28.

product. The manufacturer of these products and the Defendants rely upon these transparently false statements to provide them with “cover” should their illegal distribution of these products be identified by law enforcement. Defendants also sold synthetic marijuana in plain bags without any markings, which is per se deceptive. The packaging contains no ingredient lists or warnings of any kind. There is no mention that the key ingredient, XLR11, is a highly addictive and dangerous chemical and Schedule I drug. The lack of identifying packaging is itself misleading due to its failure to disclose the dangers of the substance. By selling synthetic marijuana at their store, Defendants deliberately mislead consumers into believing that these products are legal and safe.

41. Defendants knew or should have known 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. Despite having been subjected to the seizure of synthetic marijuana from the store in 2014, Defendants resumed their illegal activities and continued to sell synthetic marijuana from their retail store. The suspicious circumstances of the sale of the synthetic marijuana by Defendants and their agents—keeping it in their store room, hiding it from view, requiring customers to ask for it by name, the lack of any identifying markings on the packaging of certain products, misleading law enforcement about the presence of synthetic marijuana in the store, and charging consumers the inflated prices for supposed potpourri and “herbals”<sup>62</sup>—all confirm that Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers. Unsuspecting consumers who purchase these products from Defendants are exposed to the physical dangers of XLR11, as well as serious potential criminal liabilities.

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<sup>62</sup> The cost of the leafy substances listed as ingredients in a single packet of Kush is approximately 77 cents. The average retail price charged by Defendants is between \$15–\$25.

42. Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at the Brothers Market & Meat Mart store located at 3134 E. Crosstimbers St., Houston, Texas. The Individual Defendants have at all relevant times been involved in the day to day operations and management of the 3134 E. Crosstimbers St., Houston, Texas store and on information and belief knowingly participated in and/or tolerated the illegal activities described herein.

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

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

44. 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).

45. The Brothers Market & Meat Mart store at 3134 E. Crosstimbers St., 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 State to request 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). Plaintiff requests 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 3134 E. Crosstimbers St. location. *Id.*

46. Based upon § 125.002 of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the Plaintiff, 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.

47. Pursuant to § 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 § 125.002(d) of the Texas Civil Practice and Remedies Code, 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.

48. 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 §§ 17.41–17.63**

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

50. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, engaged in false, misleading, or deceptive acts or practices in violation of § 17.46(a) of the Texas Business and Commerce Code.

51. 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); and
- (f) In the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:
  - i) Making a deceptive representation or designation about the synthetic substance, in violation of the DTPA, § 17.46(b)(30)(A), and
  - ii) Causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested, in violation of the DTPA, § 17.46(b)(30)(B).

**XII. THE CORPORATE FICTION MUST BE DISREGARDED.**

52. Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph of this Petition.

53. The owners and shareholders of the Defendant corporate entities should be held personally liable for the acts of the corporations as the corporations are the alter egos of the shareholders, the

corporations have been used for an illegal purpose, and the corporations have been used as a sham to perpetuate a fraud.

54. Plaintiffs have reason to believe the Defendants are engaging in illegal activities that tend to deceive others and injure the public and are using the corporate shield to protect themselves from individual liability. In addition, on information and belief, the individual Defendants are the alter ego of their respective corporate entities.

### **XIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

55. 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.

56. 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 Brothers Market & Meat Mart at 3134 Crosstimbers St., 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). Under § 125.002(a) of the Texas Civil Practice and Remedies Code, Plaintiffs are not required to verify facts in support of the requested injunctive relief to abate the nuisance activity .

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

58. 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).

59. Plaintiffs further request the Court find Plaintiffs are 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 Brothers Market & Meat Mart 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).

**XIV. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING**

60. Plaintiffs request leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiffs request that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

**XV. TRIAL BY JURY**

61. Plaintiffs herein request a jury trial and tender 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.

**XVI. CONDITIONS PRECEDENT**

62. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

## **XVII. REQUEST FOR DISCLOSURE**

63. 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.

## **XVIII. PRAYER**

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

65. Plaintiffs pray that the TEMPORARY RESTRAINING ORDER be issued, 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, including Kush, 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) Selling or offering for sale controlled substances on Defendants' premises, including but not limited to synthetic substances containing XLR11;
- (c) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any products containing controlled substances or synthetic cannabinoids, including but not limited to synthetic substances containing XLR11;

- (d) 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;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;

- (j) 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;
- (k) 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; and
- (l) Failing to preserve video surveillance of the Defendants' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request.

66. 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 a total of \$20,000 per each violation;

67. Plaintiffs further pray that upon final hearing that this Court order each Defendant to pay the Plaintiffs' attorney fees and costs of court pursuant to Texas Government Code § 402.006(c). Plaintiffs further prays for recovery of reasonable attorneys' fees, investigative costs, court costs, witness fees, and deposition fees pursuant to Texas Civil Practice & Remedies Code § 125.003(b),(d).

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

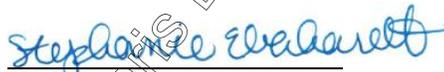
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