

I. STIPULATIONS AND FINDINGS

1. By their duly authorized signatures, Plaintiffs and Defendants (“Parties”) stipulate to the Court the following:

a. They understand the terms of this Agreed Partial Temporary Injunction and have had the opportunity to engage and confer with legal counsel;

b. They are authorized to sign and enter into this Agreed Partial Temporary Injunction and agree to the terms of this Agreed Partial Temporary Injunction;

c. They have waived all rights of appeal from this Agreed Partial Temporary Injunction;

d. They actively participated in the negotiations leading up to this Agreed Partial Temporary Injunction and are aware of the duties placed upon them by it and are desirous and capable of carrying out those duties in full;

e. They acknowledge receipt of copies of this Agreed Partial Temporary Injunction and have full and actual notice of the terms of this Agreed Partial Temporary Injunction;

f. The issuance and service of a writ of injunction is waived; and

g. The terms of this Agreed Partial Temporary Injunction are sufficiently detailed and specific to be enforceable by the Court in conformance with Texas Rule of Civil Procedure 683 and Chapter 125 of the Texas Civil Practice and Remedies Code.

2. The Parties further agree that this Agreed Partial Temporary Injunction does not constitute a final judgment of this matter and discovery and final trial of the remaining issues in this case as set forth in the State’s pleadings will proceed.

3. This Agreed Temporary Injunction shall not serve as an admission by Defendants of any fact alleged in Plaintiffs’ Original Petition and Application for Temporary Restraining Order and

Application for Temporary Injunction or of any fact set forth in this Agreed Partial Temporary Injunction.

4. Defendants agree (a) to discontinue operations and vacate the premises of Defendants' store located at 1340 Westheimer, Houston, Texas, within 30 days of the Court's entry of the Agreed Partial Temporary Injunction, and (b) Defendants' failure to vacate the premises at 1340 Westheimer, Houston, Texas, within 30 days of the Court's entry shall constitute a violation of this Agreed Partial Temporary Injunction.

5. This Court **FINDS** it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in the District Court is proper.

6. This Court **FINDS** this temporary injunction may be issued without requiring the State to post a bond. Tex. Bus. & Com. Code § 17.47(b).

7. The Parties agree and this Court **FINDS** the City of Houston is a home rule municipal corporation with a charter providing for lawsuit by the City without requiring the City to post a bond. City of Houston Charter, Article IX, Section 8.

8. Based upon these findings and the agreement of the Parties as evidenced by their respective signatures below and the signatures of their respective attorneys, the Court is of the opinion that a temporary injunction as set forth below in this Agreed Partial Temporary Injunction should be granted.

II. DEFINITIONS

9. For purposes of this Agreed Partial Temporary Injunction, the following definitions shall apply:

a. "Defendants" shall mean FANTASY SMOKING AND ACCESSORIES A/K/A SHEER INSANITY, INC.; GLEN COHEN; and JUDY COHEN.

b. “Controlled substance” means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, 2, 2A, 3, or 4. Tex. Health & Safety Code § 481.002(5). The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance. *Id.*

c. “Controlled Substance Analogue” means (A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2, or 2A, or (B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, 2 or 2-A, as defined in Texas Health and Safety Code § 481.002(6).

d. “Illicit Synthetic Drug” means (as defined in City of Houston Ordinance No. 2014-913):

(i) Any vegetative material, or herbal or plant material, however constituted, designed, intended, marketed, manufactured, or engineered, that contains any quantity of a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product;

(ii) Any vegetative material, or herbal or plant material, with packaging or labeling that indicates, suggests, or implies that the substance is a substitute for or otherwise mimics the pharmacological effects of marijuana, a controlled substance or a controlled substance analogue as defined by § 481.002 of the Texas Health and Safety Code; and

(iii) Any vegetative material, or herbal or plant material offered for sale or sold with verbal or written representations regarding the purpose, methods, use, or effect of the substance that indicates, suggests, or implies that the substance mimics the pharmacological effects of marijuana, a controlled substance as defined by § 481.002 of the Texas Health and

Safety Code.

(iv) The term “Illicit Synthetic Drug” shall include mitragyna speciose, mitragynine, kratom, and salvia divinorum.

e. “Herbal Incense” (as defined in City of Houston Ordinance No. 2014-913) means aromatic plant material, whether referred to as potpourri or otherwise, that is distributed in a loose, leafy, powder, or granular form or in a compressed block or blocks that can be crushed to result in a powder or granular form, and can be placed into a pipe, cigarette paper, or other drug paraphernalia for purposes of ingestion by smoking, inhaling or other method, regardless of how the substance is labeled or marketed, including, but not limited to, whether or not such product is labeled as “not for human consumption.”

f. “Sell” and “sale” include offer for sale, advertise for sale, display for sale, keep for the purpose of sale, deliver, transfer, solicit and offer to buy, and every disposition for value.

g. “Ingestible Product” means a product that is intended to be inhaled, ingested, swallowed, or otherwise introduced into the human body.

h. “Subject Products” means products seized by law enforcement from Defendants’ store at 1340 Westheimer, Houston, Texas as identified in Houston Police Department Report, dated November 13, 2015, a redacted copy of which is attached to this Order.

i. City of Houston Ordinance No. 2014-913 means the City of Houston Ordinance No. 2014-913 (attached) all amendments thereto, codified as Chapter 28 of Article XVII of the City of Houston Code of Ordinances.

III. PRESERVATION OF EVIDENCE

10. **IT IS ORDERED** that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting

directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this Order by personal service or otherwise, are hereby prohibited from the following:

a. Transferring, concealing, destroying, altering or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to the wholesale or retail purchase or sale, delivery, possession, manufacture, or use of any Ingestible Products containing Controlled Substances or Controlled Substance Analogues or Illicit Synthetic Drugs as defined herein, that are currently or hereafter in the possession, custody or control of any Defendant, except in response to further orders or subpoenas in this cause.

IV. PROHIBITED BUSINESS CONDUCT

11. **IT IS ORDERED** that the Defendants and their officers, agents, servants, employees, and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this order by personal service or otherwise, are hereby enjoined from engaging in the following conduct until further order of this Court:

a. Selling, offering for sale, distributing, offering to distribute, manufacturing, delivering, transferring, holding, storing, possessing, packaging, purchasing or offering to purchase any i) Controlled Substance or Controlled Substance Analogue or Illicit Synthetic Drug or ii) Ingestible Product or Herbal Incense containing a Controlled Substance or Controlled Substance Analogue or Illicit Synthetic Drug;

b. Selling, offering for sale, distributing, offering to distribute, manufacturing, delivering, transferring, holding, storing, possessing, packaging, purchasing or offering to

purchase any products labeled or described as potpourri, incense, bath salts, herbal cigarettes, or kratom cannabis oil that contain a Controlled Substance, a Controlled Substance Analogue, or an Illicit Synthetic Drug as defined herein;

c. Selling, offering for sale, distributing, offering to distribute, manufacturing, delivering, transferring, holding, storing, possessing, packaging, purchasing or offering to purchase any Ingestible Products labeled as “not for human consumption” when the product is intended to be used by consumers to inhale, ingest, or introduce into the human body;

d. Selling, offering for sale, distributing, offering to distribute, delivering, manufacturing, transferring, holding, storing, possessing, packaging, purchasing or offering to purchase any Ingestible Products labeled as “legal” when Defendants know or have reason to suspect the products contain a Controlled Substance, a Controlled Substance Analogue, or Illicit Synthetic Drug, as defined herein;

e. Selling, offering for sale, distributing, offering to distribute, delivering, manufacturing, transferring, holding, storing, possessing, packaging, purchasing or offering to purchase any Ingestible Products labeled as “lab certified” unless Defendants know that the product is certified by an actual, bona-fide laboratory, the operations and practices of which are certified by a generally-recognized third-party accreditation organization;

f. Selling, offering for sale, distributing, offering to distribute, delivering, manufacturing, transferring, holding, storing, possessing, packaging, purchasing or offering to purchase any Ingestible Products that do not contain the name and location of the manufacturer or distributor on the package labeling;

g. Failing to comply with the City of Houston Ordinance 2014-913;

h. Maintaining a Common Nuisance as defined by Texas Civil Practice and Remedies Code § 125.0015;

i. Failing to provide a copy of this Agreed Partial Temporary Injunction to all employees and agents of Defendants and a signed receipt that the employees and agents have read and understand its terms; and

j. Failing to maintain a notarized trespass affidavit while operating at the premises for the FANTASY SMOKING AND ACCESSORIES A/K/A SHEER INSANITY, INC. store at 1340 Westheimer, Houston, Texas with the Houston Police Department and to post an enlarged copy of the trespass affidavit in a prominent place inside the store.

V. BOND REQUIRED

12. Defendants shall post a \$2,500 bond or, in lieu of bond, shall make a cash deposit of \$2,500 in the Court's registry as required by Texas Civil Practice and Remedies Code § 125.045(a)(1)–(2),(a-1)(1)–(4). Such bond or cash deposit in lieu of bond will be conditioned upon Defendants' compliance with all terms and conditions of this Agreed Partial Temporary Injunction.

VI. CONCLUSION

13. Upon a finding of a violation of this Agreed Partial Temporary Injunction, the Court may in its discretion enter one or more orders as allowed under Chapter 125 of the Texas Civil Practice and Remedies Code, including, but not limited to, an order:

a. Sentencing one or more Defendants for civil contempt with a fine of not less than \$1,000 or more than \$10,000; and

b. Any other legal remedy available under the laws of the State of Texas. Tex. Civ. Prac. & Rem. Code § 125.045(b) and Tex. Bus. & Com. Code §§ 17.41–17.63.

Court's two week trial docket beginning September

14. Final trial in this cause is hereby set for the ~~day of~~ , 2016, at o'clock . M.

15. The effective date of these Temporary Injunction is the date signed by the Court.

Signed this 4th day of March 2016 at 1:20 o'clock, p.m.

Signed: 
3/4/2016

The Honorable Michael Landrum
District Court Judge
113th Judicial District Court
Harris County, Texas

ENTRY REQUESTED BY:

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy Attorney General for Civil Litigation

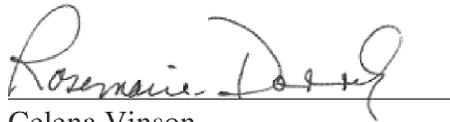
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**ATTORNEY FOR DEFENDANTS FANTASY SMOKING AND ACCESSORIES A/K/A
SHEER FANTASY, INC., GLEN COHEN, and JUDY COHEN**

[Handwritten signature]

FANTASY SMOKING AND ACCESSORIES A/K/A SHEER FANTASY, INC.

By: Glenn Colan (name)

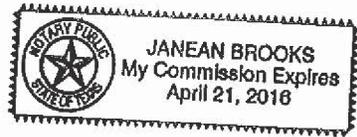
Owner (title)

SUBSCRIBED AND SWORN TO BEFORE ME on this 3rd day of March, 2016,
to certify which witness my hand and official seal.

[Handwritten signature]

NOTARY PUBLIC IN AND FOR

THE STATE OF Texas



My Commission Expires: 4/21/18

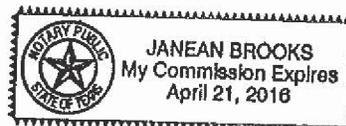
Glen Cohen
GLEN COHEN

SUBSCRIBED AND SWORN TO BEFORE ME on this 3 day of March, 2016,
to certify which witness my hand and official seal.

NOTARY PUBLIC IN AND FOR Janean Brooks

THE STATE OF Texas

My Commission Expires: 4/21/16

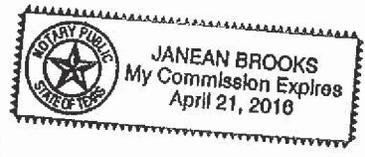


Judy Cohen
JUDY COHEN

SUBSCRIBED AND SWORN TO BEFORE ME on this 3rd day of March, 2016,
to certify which witness my hand and official seal.

Janean Brooks

NOTARY PUBLIC IN AND FOR
THE STATE OF Texas



My Commission Expires: 4/21/16



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this March 4, 2016

Certified Document Number: 69269221 Total Pages: 14

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com