CONFIRMED FILE DATE: 6/2/2016

P11

NO. 2016-19440

THE STATE OF TEXAS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**OF HARRIS COUNTY, TEXAS**
	§	
v.	§	
	§	**295th JUDICIAL DISTRICT**
JESSIE FLORES,	§	
Individually and d/b/a	§	
JAM SMOKE SHOP a/k/a	§	
JAM'S SMOKE SHOP, ET AL.,	§	
	§	
Defendants.	§	

FILED
Chris Daniel
District Clerk
JUN 02 2016
Time: 7:38 am
Harris County, Texas
By _____
Deputy

CHARGE OF THE COURT

Members of the Jury:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do no post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions:

1. Do not let bias, prejudice, or sympathy play any part in your decision.

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RECORDER'S MEMORANDUM
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at the time of imaging

2. Base your answers only on the evidence admitted in court and on the law that is in these instruction and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence [unless you are told otherwise]. Whenever a question requires an answer other than "yes" or "no", your answer must be based on a preponderance of the evidence [unless you are told otherwise].

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no". A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

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A fact may be established by direct evidence, by circumstantial evidence, or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw that act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

An important part of your function is to WEIGH AND EVALUATE the evidence and the testimony of each witness and documents admitted into evidence by the Judge. In exercising this function the jury may and should consider the conduct and demeanor of the witnesses, their bias, interest, prejudice or lack of such qualities, and may and should determine the witness' credibility under the facts and circumstances of this case. You may accept part of a witness' testimony and reject part of it; you may accept all of it or reject all of it, and you may accept all of one witness' testimony and reject the testimony of other witnesses, although you must not do this arbitrarily.

You have heard the testimony from persons described as EXPERTS. Persons who by education, training, and experience have become experts in some field may state their opinions on matters in that field and may also state their reasons for their opinions. Expert opinion testimony should be judged as any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness' education experience, the reasons given for the opinion, and all other evidence in the case.

In answering questions about money, answer each question separately in accordance with the evidence. Do not increase or reduce the amount in one answer because of your answer to any other question about money. Do not speculate about what the ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

A party's conduct includes the conduct of another who acts with the party's authority or apparent authority.

Authority for another to act for a party must arise from the party's agreement that the other act on behalf and for the benefit of the party. If a party so authorizes another to perform an act, that other party is also authorized to do whatever else is proper, usual, and necessary to perform the act expressly authorized.

Apparent authority exists if a party (1) knowingly permits another to hold himself out as having authority, or (2) through lack of ordinary care, bestows on another such indication of authority that leads a reasonably prudent person to rely on the apparent existence of authority to his detriment. Only the acts of the party sought to be charged with responsibility for the conduct of another may be considered in determining whether apparent authority exists.

A party's conduct includes conduct of others that the party has ratified. Ratification may be express or implied.

Implied ratification occurs if a party, though he may have been unaware of unauthorized conduct taken on his behalf at the time it occurred, retains the benefits of the transaction

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involving the unauthorized conduct after he acquired full knowledge of the unauthorized conduct. Implied ratification results in the ratification of the entire transaction.

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DEFINITIONS

1. A "common nuisance" exists when a person maintains a place to which persons habitually go for the delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481, Health and Safety Code ("Texas Controlled Substances Act"), knowingly tolerates the activity, and furthermore fails to make reasonable attempts to abate the activity.

2. "Controlled substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Penalty Group 2-A of the Texas Controlled Substances Act, Chapter 481, Texas Controlled Substances Act. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance.

3. "Controlled substance analogue" means:

   (a) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Penalty Group 2-A; or

   (b) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Penalty Group 2-A.

4. "Defendant Flores" means Jessie Flores, individually and doing business as Jam Smoke Shop also known as Jam's Smoke Shop.

5. A "Penalty Group 2-A" controlled substance 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, 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.

   a. "Core component" is one of the following: azaindole, benzimidazole, benzothiazole, carbazole, imidazole, indane, indazole, indene, indole, pyrazole, pyrazolopyridine, pyridine, or pyrrole.

   b. "Group A component" is one of the following: adamantane, benzene, cycloalkylmethyl, isoquinoline, methylpiperazine, naphthalene, phenyl, quinoline, tetrahydronaphthalene, tetramethylcyclopropane, amino oxobutane, amino dimethyl oxobutane, amino phenyl oxopropane, methyl methoxy oxobutane, methoxy dimethyl oxobutane, methoxy phenyl oxopropane, or an amino acid

   c. "Link component" is one of the following functional groups: carboxamide, carboxylate, hydrazide, methanone (ketone), ethanone, methanediyl (methylene bridge), or methine.

6. "Person" means any individual, partnership, corporation, association, or other group, however organized.

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7. "Trade or commerce" means the advertising, offering for sale, sale, lease, or distribution of any good or service; and includes any trade commerce directly or indirectly affecting the people of this state.

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QUESTION No. 1

Did Defendant Flores engage in any false, misleading, or deceptive act or practice in the conduct of trade or commerce?

Under the Texas Deceptive Trade Practices—Consumer Protection Act ("DTPA"), false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are unlawful and subject to action by the Consumer Protection Division of the Office of the Attorney General of Texas.

"False, misleading, or deceptive acts or practices" includes the following:

(a) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(b) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(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;

(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; and

(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; 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:

i. Making a deceptive representation or designation about the synthetic substance, and

ii. Causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested.

Please answer in the blank with a "yes" or "no": YES

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If you answered "yes" to QUESTION No. 1 then answer QUESTION No. 2.

QUESTION No. 2

How many times do you find that Defendant Flores engaged in the acts or practices upon which you based your answers to Question No. 1?

You are instructed to first determine the number of occasions of each act or practice, based upon your answer to Questions 1.

The total amount of this calculation, to be entered below, will be the total number of violations committed for each act or practice against each consumer.

Total number of violations: 439

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If you answered "yes" to QUESTION No. 1 and QUESTION No. 2, then answer QUESTION No. 3.

QUESTION No. 3

What sum of money should be assessed against Defendant Flores as civil penalties for the acts or practices on which you based your answer(s) to QUESTIONS No. 1 and 2?

You are hereby instructed that civil penalties may be assessed against the Defendant for every act or practice.

A "civil penalty" means an amount not more than $20,000.00 ***per violation*** that you may in your discretion award as punishment of the wrongdoer and as a warning and example to the wrongdoer and others to deter the same or similar conduct in the future.

A civil penalty is a sum of money payable to and for the benefit of a governmental unit, of which the law exacts payment by way of punishment for doing some act that is prohibited, or omitting to do some act that is required to be done.

A civil penalty is not compensation for actual pecuniary loss.

In determining the amount of a penalty, if any, the jury shall consider:

- the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;
- the history of previous violations;
- the amount necessary to deter future violations;
- the economic effect on the person against whom the penalty is to be assessed;
- knowledge of the illegality of the act or practice; and
- any other matter that justice may require.

Please answer in dollars and cents the total amount of civil penalties to be imposed (in other words, for each act or practice, the number of violations determined in QUESTION No. 2 multiplied by the per violation civil penalty):

$ 878,000.00

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When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.

Presiding Juror

The presiding juror has these duties:

(a) Have complete charge read aloud if it will be helpful to your deliberations.

(b) Preside over you deliberations. This means the presiding juror will manage the discussions and see that you follow the instructions.

(c) Give written questions or comments to the bailiff who will give them to the judge.

(d) Write down the answers you agree on.

(e) Get the signatures for the verdict certificate.

(f) Notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate

1. You may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you cannot have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.

2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.

   If 11 jurors agree on every answer, those 11 jurors sign the verdict.

   If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 who agree on **every** answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

Caroline Baker

Judge Presiding

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Verdict Certificate

Check one:

✓ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all 12 of us.

Signature of Presiding Juror

NAVEEN PAWAR
Printed name of Presiding Juror

_____ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

_____ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	Juror's Signatures	Juror's Printed Names
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		

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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 June 8, 2016

Certified Document Number: 70478193 Total Pages: 11

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