NO. 2016-19440

THE STATE OF TEXAS,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**OF HARRIS COUNTY, TEXAS**
	§	
v.	§	
	§	295th **JUDICIAL DISTRICT**
JAM'S SMOKE SHOP	§	
a/k/a JESSIE FLORES,	§	
individually and d/b/a	§	
JAM SMOKE SHOP;	§	
THE REAL PROPERTY KNOWN AS	§	
1319 F.M. 1960 W.,	§	
HOUSTON, TEXAS;	§	
ELLA PLAZA LP; and	§	
ELLA PLAZA GP LLC,	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General of Texas, Ken Paxton and the County Attorney of Harris County, Texas, Vince Ryan, files this petition complaining of Defendants **JAM'S SMOKE SHOP a/k/a JESSIE FLORES, individually, and d/b/a JAM SMOKE SHOP; THE REAL PROPERTY KNOWN AS 1319 F.M. 1960 W., HOUSTON, TEXAS; ELLA PLAZA LP;** and **ELLA PLAZA GP LLC** and seek a temporary restraining order and temporary and permanent injunctive relief to stop the sale of dangerous synthetic drugs in order to protect the public as follows:

I. DISCOVERY

1. Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively pleads 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, and Harris County Attorney Vince Ryan, through the Harris County Attorney's Office, 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 and the Harris County Attorney's Office 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. Plaintiff has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition.

5. Plaintiff 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. 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 and Safety Code and constitutes a common nuisance as defined by Texas Civil Practice and Remedies Code § 125.0015(4). Therefore, Defendants' conduct is subject to abatement under Texas Civil Practice and Remedies Code § 125.002.

7. Prior to hearing on the Plaintiff's Application for Temporary Restraining Order, Defendants were provided with written notice of the hearing with a copy of the Plaintiff's Petition. In the event Defendants do not appear for the hearing on the Plaintiff's 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, the danger to public health, and the potential for evidence to be hidden or destroyed—that immediate and irreparable injury, loss, or damage would occur as a result of delay.

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

VII. DEFENDANTS

12. Defendant **Jam's Smoke Shop** a/k/a **Jessie Flores**, individually, and doing business as **Jam Smoke Shop**, is an individual who resides in Harris County at 3219 Tidewater Drive, Houston, Texas 77045. Mr. Flores regularly conducts business in Harris County at 1319 F.M.

1960 W., Suite 109, Houston, Texas 77090 under the d/b/a "Jam Smoke Shop" (a/k/a "Jam's Smoke Shop"). Mr. Flores may be served with process at 3219 Tidewater Drive, Houston, Texas 77045, Harris County or wherever he may be found.

13. Defendant **The Real Property Known as 1319 F.M. 1960 W., Houston, Texas ("Property")** is sued *in rem*. This property is owned by Ella Plaza LP, and may be served by serving Ella Plaza LP's general partner, Ella Plaza GP LLC, at 8323 Culebra Road, Suite 101, San Antonio, Texas 78251-1884.

14. Defendant **Ella Plaza LP** is a Texas limited partnership whose principal place of business is located at 8323 Culebra Road, Suite 101, San Antonio, Texas 78251-1884. Defendant Ella Plaza LP may be served with process by serving its registered agent, Dharamdas Nankani, at 8323 Culebra Road, Suite 101, San Antonio, Texas 78251-1884.

15. Defendant **Ella Plaza GP LLC** is a Texas limited liability company whose principal place of business is located at 8323 Culebra Road, Suite 101, San Antonio, Texas 78251-1884. Defendant Ella Plaza GP LLC may be served with process by serving its registered agent, Dharamdas Nankani, at 8323 Culebra Road, Suite 101, San Antonio, Texas 78251-1884. Defendant Ella Plaza GP LLC is the general partner of Ella Plaza LP.

16. For purposes of this petition, the following definitions apply:

(a) "**Individual Defendant**" means Jessie Flores d/b/a Jam Smoke Shop (a/k/a Jam's Smoke Shop).

(b) "**In Rem Defendant**" means the real property named as *in rem* defendant in this lawsuit.

(c) "**Landlord Defendants**" means Ella Plaza LP and Ella Plaza GP LLC.

VIII. ACTS OF AGENTS

17. 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.

18. 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. The chemical structure of the designer drug is purposefully altered by designer drug manufacturers (often overseas) in order to attempt to circumvent controlled substance drug laws.

19. Synthetic marijuana is a designer drug, often manufactured overseas, that is marketed as a "safe" and "legal" alternative to marijuana.[1] Synthetic marijuana is not marijuana at all but a dried leafy substance that is sprayed with powerful, added-in hallucinogenic chemicals (synthetic cannabinoids) that are dangerous and highly addictive to the user.[2] Synthetic marijuana has no medical use.[3] It is consumed like marijuana in that the user generally smokes it in a bowl, bong,

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[1] 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, 80 Fed. Reg. 5042 (Jan. 30, 2015) (temporary placement of three synthetic cannabinoids into schedule I).

[2] Ex. 1, p.1; Ex. 2, 80 Fed. Reg. at 5043.

[3] Ex. 2, 80 Fed. Reg. at 5043.

water pipe, or by rolling it into a cigarette.[4] The added chemicals are intended to mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana.[5]

20. 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.[6] 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.[7] 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.[8] According to the federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.[9]

21. Poison control centers report[10] that users of synthetic marijuana report symptoms such as:

- Severe paranoia, agitation and anxiety;
- Psychotic episodes;

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[4] Ex. 1, p. 3.

[5] *Id.*; Ex. 2, 80 Fed. Reg. at 5043

[6] 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).

[7] Ex. 2, 80 Fed. Reg. at 5043; Ex. 4, *Alerts: Synthetic Marijuana*, AMERICAN ASSOCIATION OF POISON CONTROL CENTERS, http://www.aapcc.org/alerts/synthetic marijuana (last visited May 21, 2015).

[8] Ex.1, p. 2; Ex. 3, p. 1.

[9] Ex. 1.

[10] 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).

- 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; and
- Suicidal thoughts and other harmful thoughts and actions.

22. The American Association of Poison Control Centers has reported thousands of instances of exposure to synthetic marijuana each year.[11] In Texas, there has been an uptick in reported overdoses on synthetic marijuana.[12] 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;[13]
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss.[14]

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[11] Ex. 4.

[12] 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.myfoxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area.

[13] 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.

[14] Ex. 9.

- Three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011;[15]
- An 18-year old Amarillo man died after smoking synthetic marijuana;[16]
- 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;[17]
- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood;[18]
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;[19]
- 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.[20]
- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana;[21]

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[15] 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/.

[16] 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.

[17] Ex. 12.

[18] 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/.

[19] Ex. 6.

[20] 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.nim.nih.gov/pubmed/24762846.

[21] 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.

- 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;[22]
- A man in Houston had a psychotic break on a "bad batch" of synthetic marijuana and stabbed, beat, and fatally choked his girlfriend;[23]
- Two men in Houston, after smoking synthetic marijuana, attacked and shot at the hosts of a neighborhood barbeque fundraiser;[24]
- A 27-year old man, described by witnesses as driving erratically and speeding, killed a woman when he drove his car up onto a sidewalk; he then kept driving until he hit another vehicle, and police found synthetic marijuana in his car; [25] and
- In Dallas, Texas, emergency services received approximately 192 emergency calls related to synthetic marijuana between December 1, 2015, and January 7, 2016.[26]

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[22] 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.

[23] Ex. 15B, Brian Rodgers, *"Synthetic Marijuana" is Blamed in Death*, HOUSTON CHRONICLE, July 9, 2015, at B2.

[24] Ex. 15C, Dylan Baddour, *Man Attacks, Shoots Grieving Family in Rage Over BBQ Chicken*, HOUSTON CHRONICLE (Sept. 9, 2015), http://www.chron.com/news/houston-texas/houston/article/Man-attacks-shoots-grieving-family-in-rage-over-6493362.php.

[25] Ex. 15D, Dylan Baddour, *Suspect in Fatal Wreck Carried "Synthetic Marijuana"*, HOUSTON CHRONICLE (Oct. 22, 2015), http://www.chron.com/houston/article/Suspect-in-fatal-wreck-carried-synthetic-6584058.php.

[26] Ex. 15E, Robert Wilonsky, *Police, Paramedics Dealing with Sharp Rise in 911 Calls Related to K2 Use in Downtown Dallas*, THE DALLAS MORNING NEWS: CRIME BLOG (Jan. 22, 2016), http://crimeblog.dallasnews.com/2016/01/police-paramedics-dealing-with-sharp-rise-in-911-calls-related-to-k2-use-in-downtown-dallas.html/.

B. The Individual Defendant Sells Synthetic Marijuana At Jam Smoke Shop, 1319 F.M. 1960 W., Houston, Texas In Harris County.

23. The Individual Defendant, Jessie Flores, owns and operates the store known as "Jam Smoke Shop" a/k/a "Jam's Smoke Shop" in Harris County.[27] Based upon Texas sales tax reports, Jessie Flores is currently doing business at the location 1319 F.M. 1960 W., Houston, Texas, in Harris County.[28] Defendant Jessie Flores is the owner of the sole proprietorship Jam Smoke Shop.[29]

24. Defendant Ella Plaza LP owns the real property at 1319 F.M. 1960 W., Houston, Texas.[30] Defendant Ella Plaza GP LLC is the general partner of Defendant Ella Plaza LP.[31]

C. Undercover Buys of Synthetic Marijuana at Jam's Smoke Shop.

25. On March 4, 2016, members of the Harris County Sheriff's Office Narcotics Task Force conducted a narcotics investigation at the business located at 1319 F.M. 1960 W., Suite 109, Houston, Texas.[32] The investigation resulted in a controlled buy of approximately fourteen grams of synthetic marijuana from Jam's Smoke Shop.[33] Officer N. S. entered the business and observed a male employee behind the check-out counter assisting several customers.[34] Office N. S. observed

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[27] Ex. 16, Assumed Name Record for Jam Smoke Shop, Harris County District Clerk.

[28] *See* Ex. 17, Texas Comptroller Sales Tax Permit Search Jam Smoke Shop (Individual Defendant misidentifies the location as 16940 Ella Blvd. Ste. 109).

[29] Ex. 16.

[30] Ex. 18, Harris County Appraisal District, Real Property Account Information, 1319 F.M. 1960 W., Houston, TX 77090; Ex. 19, Texas Secretary of State Record Certified Filings, Ella Plaza LP.

[31] Ex. 20, Texas Secretary of State Record Certified Filings, Ella Plaza GP LLC.

[32] Ex. 21, Harris County Sheriff's Office Incident Report #16-36401 for March 6, 2016.

[33] *Id.*

[34] *Id.*

customers purchase "Kush" and other items.[35] Officer N. S. made contact with the male employee and asked for types of "Kush" they sold.[36] The male employee told Officer N. S. that "sacks" were $5 and then displayed a small clear baggie filled with an unknown amount of synthetic marijuana.[37] The male employee further stated that "We have a pack of red or blue too."[38] The male employee then reached in a drawer—located in the vicinity of the cash register—and retrieved a package of "Babaji Burning Essence."[39] Officer N. S. stated that "The red is fine."[40] The male employee placed a package of red "Babaji Burning Essence" on top of the counter and stated, "It usually cost thirty-five but it is going to be thirty."[41] Officer N. S. handed the male employee $30.00 and left the store.[42] The package of red "Babaji Burning Essence" was observed to be labeled, "Not Intended for Human Consumption!"[43] Officer N. S. labeled and submitted the item into evidence.[44] The bag was sent to the Harris County Institute of Forensic Sciences for testing.[45] The

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[35] *Id.* Ex. 23, Harris County Sheriff's Office Incident Report #16-31973, Undercover buy of Kush at 10010 La Porte Freeway.

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.* (The incident report states that Officer N.E. observed the male employee travel to the back, office area to speak with a second employee to negotiate the price for the red "Babaji Burning Essence" that Officer N. E. purchased during the investigation. Officer N. E. was unable to provide a full description of the second employee.).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] Ex. 22, Harris County Institute of Forensic Sciences Laboratory Report for Harris County Sheriff's Office Incident Report #16-36401.

laboratory report revealed that the red "Babaji Burning Essence" contained a chemical known as "MMB-FUBINACA."[46] MMB-FUBINACA is a synthetic cannabinoid and a Penalty Group 2-A drug under Texas law. *See* Texas Health & Safety Code § 481.1031(b)(5).

26. On March 18, 2016, narcotics officers with the Harris County Sheriff's Department conducted a second undercover investigation at the Jam's Smoke Shop location.[47] An undercover officer purchased a package of synthetic marijuana labeled "Super Nova" for $35.[48] The packet of "Super Nova" was submitted to the Harris County Forensic Sciences Center for testing and also found to contain the chemical known as MMB-FUBINACA, an illegal synthetic cannabinoid.[49] *See* Texas Health & Safety Code § 481.1031(b)(5). On March 24, 2016, narcotics officers with the Harris County Sheriff's Office executed a search warrant at the Jam's Smoke Shop location and seized additional synthetic marijuana packets.

27. In addition to the undercover operation conducted by the Harris County Sheriff's Department, officers with the Drug Enforcement Administration executed a search warrant at Jam's Smoke Shop on or about March 11, 2016, and seized a black bag containing packaged suspected synthetic cannabinoids.

28. 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,

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[46] *Id.*

[47] Ex. 21, Harris County Sheriff's Office Incident Report #16-36401 for March 18, 2016

[48] *Id.*

[49] Ex. 23, Harris County Institute of Forensic Sciences Laboratory Report for Harris County Sheriff's Office Incident Report #16-36401, supplemental report.

481.113, 481.1161. Under Texas and federal law, it is a crime to manufacture, distribute, dispense or possess synthetic cannabinoid. Tex. Health & Safety Code §§ 481.1031, 481.1161, 481.113.

29. In addition, in 2014, the City of Houston passed Ordinance § 28-572 outlawing synthetic marijuana including the product labeled as "Kush."[50] Violation of the ordinance carries a criminal penalty of up to $2000 per violation.

30. The Texas Legislature has recently amended the Penalty Group 2-A definition of the Texas Controlled Substances Act such that MMB-FUBINACA is specifically defined as a Penalty Group 2-A drug.[51]

31. The Texas Legislature has also recently amended the DPTA 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.

32. By selling, offering for sale, and distributing synthetic marijuana, including and "Babaji Burning Essence" and "Super Nova" the Individual Defendant and his agents have, in the conduct

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[50] Ex. 24, City of Houston Kush Ordinance.

[51] 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 . . . :"

MMB-FUBINACA is a compound having the following components: indazole (core), carboxamide (link), and methyl methyl oxobutane (group A) in accordance with Tex. Health & Safety Code § 481.1031(b)(5). Ex. 24.

of trade and commerce, engaged in false, misleading and deceptive acts and practices declared unlawful under the DTPA. *See* DTPA § 17.46(a).

33. The packaging of the synthetic marijuana sold by the Individual Defendant is deceptive. The packaging of the synthetic marijuana products fails to disclose that they contain dangerous and illegal hallucinogenic chemicals. The "Babaji Burning Essence" packets falsely state the product is "Not Intended for Human Consumption" when in fact that is precisely the intention and purpose of the 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. There is no mention that the key ingredient, MMB-FUBINACA, is a highly addictive and dangerous chemical. 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.

34. 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. The suspicious circumstances of the sale of the synthetic marijuana by Defendants and their agents—hiding it from view, requiring customers to ask for it by name, the lack of any identifying markings on the packaging of certain products, and charging consumers the inflated prices for supposed potpourri and "herbals"[52]—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

[52] The cost of the leafy substances listed as ingredients in a single packet of Kush is approximately 77 cents. The average retail priced charged by Defendants is between $30–$35.

are exposed to the physical dangers of MMB-FUBINACA, as well as serious potential criminal liabilities.

35. Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at the Jam Smoke Shop store located at 1319 FM 1960 W. Suite 109, Houston, Texas. The Individual Defendant, Jessie Flores, has at all relevant times been involved in the day to day operations and management of the Jam Smoke Shop store in Houston, Texas and on information and belief knowingly participated in and/or tolerated the illegal activities described herein. The Landlord and In Rem Defendants have previously been defendants in an earlier nuisance abatement lawsuit for crimes occurring on the property at 1319 FM 1960 W. The Landlord and In Rem Defendants are aware of habitual criminal activity taking place on the premises of 1319 FM 1960 W., and have not taken steps to abate this criminal activity.

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

36. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

37. 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).

38. The Jam Smoke Shop store located at 1319 FM 1960 W. Suite 109, 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 1319 FM 1960 W. location. *Id.*

39. 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. Under § 125.002(e) of the Texas Civil Practice & Remedies Code, the judgment must order that the location where the nuisance was found is closed for one year.

40. 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.

41. 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

42. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

43. The Individual Defendant, as alleged and detailed above, has 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.

44. Additionally, the Individual Defendant, in the course and conduct of trade and commerce, has 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. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

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

46. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiff requests the Court enjoin the 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 Jam Smoke Shop store located at 1319 FM 1960 W. Suite 109, 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, Plaintiff is not required to verify facts in support of the requested injunctive relief to abate the nuisance activity.

47. Plaintiff believes immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is necessary to prevent continuing harm prior to trial.

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

49. Plaintiff further requests 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 Jam's Smoke Shop 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

50. Plaintiff requests 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, Plaintiff requests that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

XIV. TRIAL BY JURY

51. Plaintiff herein requests 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.

XV. CONDITIONS PRECEDENT

52. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

XVI. REQUEST FOR DISCLOSURE

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

XVII. PRAYER

54. Plaintiff prays that Defendants be cited according to law to appear and answer herein.

55. Plaintiff prays 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) Deleting any data or communications pertaining to any suppliers of synthetic cannabinoids on any phones or electronic devices used by any Defendants;

(b) 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;

(c) Selling or offering for sale controlled substances on Defendants' premises, including but not limited to synthetic substances containing MMB-FUBINACA;

(d) Manufacturing, purchasing, distributing, 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 MMB-FUBINACA;

(e) Manufacturing, purchasing, distributing, 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, distributing, 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 or reasonably should have been 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; and

(m) 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.

56. 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.

57. Plaintiff further prays that upon final hearing that this Court order each Defendant to pay the Plaintiff's attorney fees and costs of court pursuant to Texas Government Code § 402.006(c). Plaintiff 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) and (d).

58. Plaintiff further prays that this Court grant all other relief to which the Plaintiff, the State of Texas, is entitled.

Respectfully submitted,

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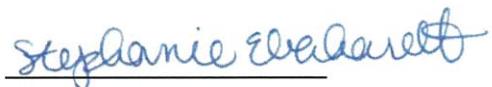

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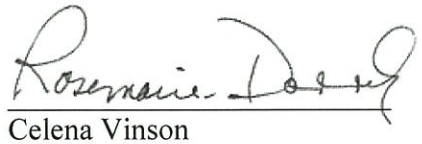

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