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.	§	

FILED
Chris Daniel
District Clerk
MAR 28 2016
Time: 3:15pm
Harris County, Texas
By: Deputy

TEMPORARY RESTRAINING ORDER

Plaintiff, the STATE OF TEXAS, has filed an original petition in this cause seeking a Temporary and Permanent Injunction and in the same petition presented an Application for a Temporary Restraining Order. Based on the findings below, the Application for Temporary Restraining Order is GRANTED.

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. Plaintiff provided Defendants with notice of the hearing on Plaintiff's Application for Temporary Restraining Order.

With respect to the Plaintiff's claims under the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§17.41–17.63, ("DTPA"), this Court **FINDS** that there is good cause to believe Defendants have engaged in and are likely to engage in acts and practices that violate §§ 17.46(a) and (b) of the DTPA. The Court **FINDS** that this action is in the public interest and a Temporary Restraining Order should be issued to restrain

and prevent the continuing acts and practices of Defendants that may be violating the DTPA. DTPA § 17.47(b). The Court **FINDS** from the evidence set forth in Plaintiff's Original Petition, the affidavits, and attached exhibits, that unless Defendants are immediately restrained from the acts prohibited below, Defendants will continue to commit such acts before notice can be given and a hearing can be held on Plaintiff's request for a temporary injunction. The State will suffer the following immediate and irreparable injury, loss or damage: interference with the public health, safety, peace, comfort and convenience of its citizens caused by the Defendants' sale of dangerous synthetic drugs from a retail establishment. This injury is irreparable because the sale dangerous synthetic drugs is harmful to the public and is unlawful. Issuance of a temporary restraining order is in the public interest. The Court **FINDS** that there is good cause to believe irreparable loss or injury would occur unless Defendants are immediately enjoined. DTPA § 17.47(a). The Court **FINDS** this Temporary Restraining Order may be issued without bond posted by the State. DTPA § 17.47(b).

With respect to the Plaintiff's claims to abate a common nuisance under Chapter 125 of the Texas Civil Practice & Remedies Code, the Court **FINDS** Plaintiff is likely to succeed on the merits under § 125.002 and that a temporary restraining order is necessary to prevent the Defendants from maintaining a common nuisance. The Court further **FINDS** that the State is not required to post a bond in support of injunctive relief, and the State is not required to verify the allegations in support of its petition to abate the nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(a); Tex. Civ. Prac. & Rem. Code § 6.002.

I. DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendants" shall mean JAM'S SMOKE SHOP a/k/a JESSIE FLORES, individually, and doing business as JAM SMOKE SHOP.

2. "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. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance, as defined in Tex. Health & Safety Code § 481.002(5).

3. "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 Tex. Health & Safety Code § 481.002(6).

4. "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.

5. "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."

6. "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.

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

8. "Subject Products" means products seized by law enforcement from Defendants' store at 1319 F.M. 1960 W., Suite 109, Houston, Texas on March 4, 2016, March 18, 2016, and March 24, 2016, including the following named products: Babaji Burning Essence and Super Nova.

II. PRESERVATION OF EVIDENCE

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 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.

b) Deleting, concealing, destroying, altering or removing from the jurisdiction of this Court any video recordings and surveillance depicting the interior and/or exterior of the store location at 1319 F.M. 1960 W., Suite 109, Houston, Texas.

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 Temporary Restraining Order by personal service or otherwise, shall not fail to operate and maintain surveillance cameras monitoring the store location at 1319 F.M. 1960 W., Suite 109, Houston, Texas. The cameras shall capture the interior and exterior of the business, including but not limited to the area where the cashier is located, and be capable of recording. The recordings shall be maintained and operated any time the business is open to the public and shall display the date and time of the recording. The Defendants shall not fail to provide Plaintiffs' counsel with the recordings within 24 hours of request to review and copy the recording.

III. PROHIBITED BUSINESS CONDUCT

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

b) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, 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;

c) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing or offering to purchase any products labeled as potpourri, incense, bath salts, or herbal cigarettes, that contain a Controlled Substance, a Controlled Substance Analogue, or an Illicit Synthetic Drug as defined herein;

d) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, 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;

e) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, 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;

f) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, 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;

g) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, 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;

h) Failing to provide a copy of this Temporary Restraining Order to all employees and agents of Defendants and a signed receipt that the employees and agents have read and understand its terms.

IV. EXPEDITED DISCOVERY

IT IS ORDERED that within three days of this Order, Defendants shall produce to Plaintiff's counsel, Stephanie Eberhardt, at 808 Travis, Suite 1520, Houston, Texas 77002, the following documents: all invoices for Subject Products; all price lists for Subject Products; all documents reflecting communications regarding Subject Products. Before the hearing on Plaintiff's application for temporary injunction, as scheduled below, Defendants shall appear for deposition upon two days' written notice from the Plaintiff of the date, place and time for the deposition.

V. CONCLUSION

IT IS ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14th) day after entry or until further order of this Court.

The Clerk of the above-entitled Court shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order.

This Order shall be effective without the execution and filing of a bond because Plaintiff, the State of Texas, is exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and DTPA § 17.47(b).

A temporary injunction hearing is set for April 11 2016 at 11:30 o'clock, A.m.

Signed this 28 day of March, 2016 at 3:16pm o'clock, P.m.

JUDGE PRESIDING

ENTRY REQUESTED BY:

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