

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 by the State includes non-monetary injunctive relief.
- (b) The State's claim 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, jointly with Harris County Attorney Vince Ryan 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 Act, Tex. Bus. & Com. Code §§ 17.41 *et seq.*, 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.

In addition this suit is brought by the Office of Attorney General and Harris County Attorney's Office against Defendants to enjoin and abate a common nuisance pursuant to Tex. Civ. Prac. & Rem. Code §§ 125.001-125.047. Verification of the petition or proof of personal injury need not be shown by the State under Tex. Civ. Prac. & Rem. Code § 125.002(a).

III. PUBLIC INTEREST AND NOTICE

3. Plaintiff, the State of Texas, has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition. 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. These proceedings are in the public interest. *See* DTPA § 17.47(a).

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

5. 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 due to the seriousness of the allegations and the danger to public health, immediate relief is necessary without delay. *Id.*

IV. VENUE

6. 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.

7. Venue is mandatory in Harris County under Tex. Civ. Prac. & Rem. Code § 125.002 because the nuisance to be enjoined is maintained by Defendants in Harris County, Texas.

V. TRADE AND COMMERCE

8. 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

9. 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

10. Defendant Katz Boutique 1, Inc., is a Texas corporation that maintains a place of business at 1710 Highway 6 South, Suite G, Houston, Texas. Defendant may be served with process by serving its registered agent and President, Bao Quoc Nguyen, at 1710 Highway 6 South, Suite G, Houston, Texas 77077.

11. Defendant Katz Boutique 4, Inc., is a Texas corporation that maintains a place of business at 16855 North Freeway, Houston, Texas. Defendant may be served with process by serving its registered agent and President, Bao Quoc Nguyen, at 1710 Highway 6 South, Suite G, Houston, Texas 77077.

12. Defendant Katz Boutique 8, Inc., is a Texas corporation that maintains a place of business at 27646 Tomball Parkway, Tomball, Texas. Defendant may be served with process by serving its registered agent and President, Bao Quoc Nguyen, at 1710 Highway 6 South, Suite G, Houston, Texas 77077.

13. Defendant Katz Boutique 9, Inc., is a Texas corporation that maintains a place of business at 11649 State Highway 249, Suite 200, Houston, Texas. Defendant may be served with process by serving its registered agent and President, Bao Quoc Nguyen, at 1710 Highway 6 South, Suite G, Houston, Texas 77077.

14. Defendant Bao Quoc Nguyen, aka Tony Nguyen, is an individual residing in Harris County, Texas. Defendant may be served with process at 1710 Highway 6 South, Suite G, Houston, Texas 77077 or wherever he may be found.

VIII. ACTS OF AGENTS

15. 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.

16. 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.

17. 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 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, 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

18. Synthetic marijuana is often labeled innocently as “incense” and “potpourri” and the packaging may contain the statement “not for human consumption” although the intended

¹ Ex. 1, p. 2, www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana; Ex. 2, pp. 4-8, www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4.

² Ex. 1, www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana.

³ Ex. 2, p. 5, www.federalregister.gov/articles/2015/01/30/2015-01776.

⁴ Ex. 1, www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana.

⁵ Ex. 1, p. 3; Ex. 2, p. 4, www.federalregister.gov/articles/2015/01/30/2015-01776/.

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

19. Poison control centers report¹⁰ 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.

20. 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

⁶ Ex. 3, www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts.

⁷ Ex. 2, p. 5; Ex. 4, p. 1, [www.aapcc.org/alerts/synthetic marijuana](http://www.aapcc.org/alerts/synthetic-marijuana).

⁸ Ex. 1, p. 2, www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana.; Ex. 3, p. 1.

⁹ Ex. 1, www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana.

¹⁰ Ex. 4, www.aapcc.org/alerts/synthetic-marijuana; Ex. 5, *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK (last visited Apr. 24, 2015).

¹¹ Ex. 4, www.aapcc.org/alerts/synthetic-marijuana.

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
- 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

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, *East Texas Police Seek Solution to Synthetic Marijuana Problem*, www.news-journal.com. See also www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area.

¹³ Ex. 8, 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, *Synthetic marijuana concern in Houston area*, www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area.

¹⁵ Ex. 10, 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>.

- 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
- 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

B. Defendants Sell Synthetic Marijuana At Multiple Katz Store Locations Throughout Harris County.

21. Defendants own and operate multiple retail stores throughout Harris County known as “Katz Boutique & Smoke Shop.” (There are at least 7 Katz retail locations in the Houston area.)

¹⁷ 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-marij/>

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, <http://time.com/89835/synthetic-marijuana-overdoses-k2/>.

²⁰ Ex. 15, *Smoking synthetic marijuana leads to self-mutilation requiring bilateral amputations*.

²¹ Ex. 14, *Postmortem distribution of AB-CHMINACA, 5-fluoro-AMB, and diphenidine in body fluids and solid tissues in fatal poisoning case*.

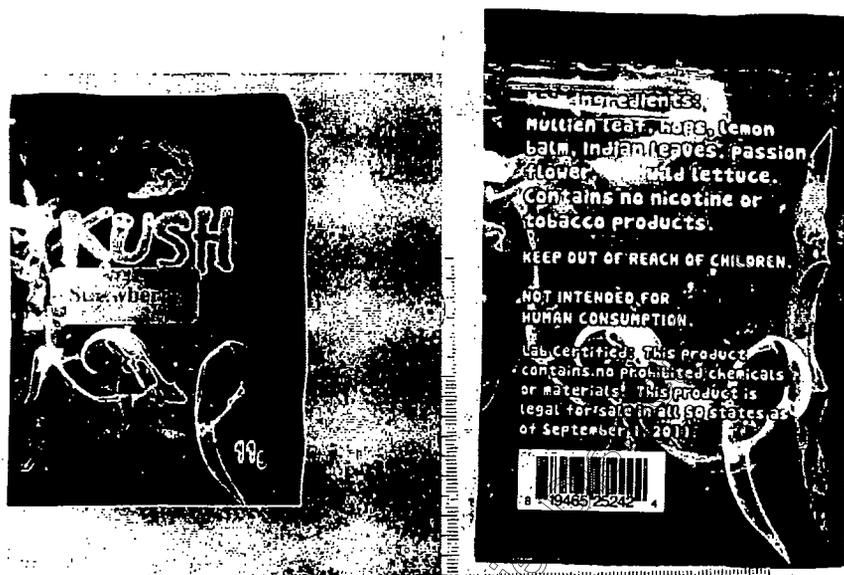
²² Ex. 15A, <http://www.texomashomepage.com/story/d/story/more-than-60-sickened-in-austin-by-k2-media-report/25480/qZ6kxnvJaU2GTJjx5l.7g9g>.

22. On February 18, 2015, members of the Harris County Sheriff's Office Narcotics Task Force and Harris County Sheriff's Office Vice Unit conducted an undercover buy at the Katz Boutique (Katz Boutique 4, Inc.) located at 16855 North Freeway, Houston Texas. (Ex. 16, Incident Report) Deputy Investigator K.B.²³ conducted the undercover shop and reported the following:

- That when Dep. K.B. entered the store K.B. observed several people standing in line at the register with no merchandise in their hands;
- That Dep. K.B. overheard people standing in line asking the clerk for different kinds of "Kush" or synthetic marijuana;
- That the clerk standing behind the counter reached into a blue bin to dig through different bags of what appeared to be "Kush".

(Ex. 16) When Deputy Investigator K.B. got to the counter, Dep. K.B. requested a bag of "strawberry Kush" and paid the clerk \$24. (Ex. 16) Dep. K.B. received a small bag labeled "Kush Strawberry" on the front with a background of swirling blue-gray smoke. (Ex. B-1, Custodian of Records Affidavit)

²³ Undercover officers are identified by their first and last initials.



The back of the bag obtained by Deputy Investigator K.B. lists as the “main ingredients” seven innocuous-sounding plant substances and makes a number of statements about the supposed legality and safety of the product:

Main ingredients: Mullien leaf, hops, lemon balm, Indian leaves, passion flower, and wild lettuce. Contains no nicotine or tobacco products. KEEP OUT OF REACH OF CHILDREN, NOT INTENDED FOR HUMAN CONSUMPTION.

Lab Certified: This product contains no prohibited chemicals or materials. This product is legal for sale in all 50 states as of September 1, 2011.

(Ex. B-1, Custodian of Records Affidavit)

23. The bag of Kush obtained by Dep. K.B. contained a brown leafy substance and was submitted to the Harris County Institute of Forensic Sciences (“lab”) for testing as to its contents.

(Ex. B-1, Custodian of Records Affidavit) The lab found that the bag contains a chemical known as “AB-CHMINACA.” (Ex. B-1, Custodian of Records Affidavit) AB-CHMINACA is a

synthetic cannabinoid, that has been identified by Texas Health & Human Services and the federal Drug Enforcement Administration (DEA) as a Schedule I controlled substance (the most dangerous). 40 Tex. Reg. 2007, Apr. 3, 2015; 21 CFR part 1308.²⁴ 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; 481.1101; 481.113; 481.119; 21 U.S.C. §§ 841, 844. In addition, in 2014, the City of Houston recently passed Ordinance § 28-572 outlawing synthetic marijuana including the product labeled as “Kush.” Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

24. On April 7, 2015, May 11 and 12, 2015, and June 9, 2015 the Harris County Sheriff’s Office Special Investigation Division conducted similar undercover buys at three other Katz store locations. (Ex. 17-19)

25. On May 12, 2015, Deputy D.A. conducted an undercover buy of synthetic marijuana from the Katz Boutique & Smoke Shop at 27646 Tomball Parkway, in Tomball, Harris County, Texas (Defendant Katz Boutique 8, Inc.). (Ex. 17) Deputy D.A. asked the store clerk for a bag of Strawberry Kush. (Ex. 17) The clerk reached behind the counter and opened a drawer to pull out a small package labeled Strawberry Kush, commenting “[A]s much of this stuff that I sell I

²⁴ <https://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4>; www.ncbi.nlm.nih.gov/pubmed/25730924.

should [know] the price by heart.” (Ex. 17) Deputy D.A. paid the clerk \$24. (Ex. 17) The package labeling was identical to the Strawberry Kush purchased at the earlier undercover buy at the Katz location at 16855 North Freeway, Houston, Texas. (Ex. B-2)

26. On May 11, 2015, Dep. D.A. conducted another undercover buy of synthetic marijuana from Katz Boutique & Smoke Shop at 11649 State Highway 249, Suite 200, Houston, Harris County, Texas (Defendant Katz Boutique 9, Inc.) (Ex. 18) Deputy D.A. asked the store clerk for a bag of Blueberry Kush. (Ex. 18) Again, the clerk reached behind the counter and opened a drawer to pull out a small package labeled Blueberry Kush. (Ex. 18) Deputy D.A. paid the clerk \$22. (Ex.18) The package labeling was identical to the Strawberry Kush purchased at the undercover buys at the other Katz locations. (Ex. B-3)

27. On June 9, 2015, Dep. D.A. conducted two more follow up undercover buys at the Katz locations at 11649 State Highway 249 (Defendant Katz Boutique No. 9, Inc.) (Ex. 18) and at 27646 Tomball Parkway, Tomball, Texas (Defendant Katz Boutique No. 8, Inc.) (Ex. 17). At both locations, Dep. D.A. conducted similar purchases of “Strawberry Kush” and “Blueberry Kush” from the clerks who pulled the packages from a bin under the counter and charged \$23.60 per package. (Ex. 17 and 18)

28. On June 9, 2015, Investigator J.M. conducted a follow up undercover buy at the Katz location at 16855 North Freeway, Houston, Harris County, Texas (Defendant Katz Boutique 4, Inc.) (Ex. 20) Similar to the other undercover buys and locations, Investigator J.M. purchased a package of Strawberry Kush from the store clerk for \$23.60 (Ex. 20).

29. The bags of “Strawberry Kush” and “Blueberry Kush” purchased by Dep. D.A. on May 11, 2015 and June 9, 2015, and by Investigator J.M. on June 9, 2015, at the Katz locations were submitted to the Harris County lab for analysis. (Ex. 17, 18, 20, 21; Ex. B-2, B-3, B-5) The lab

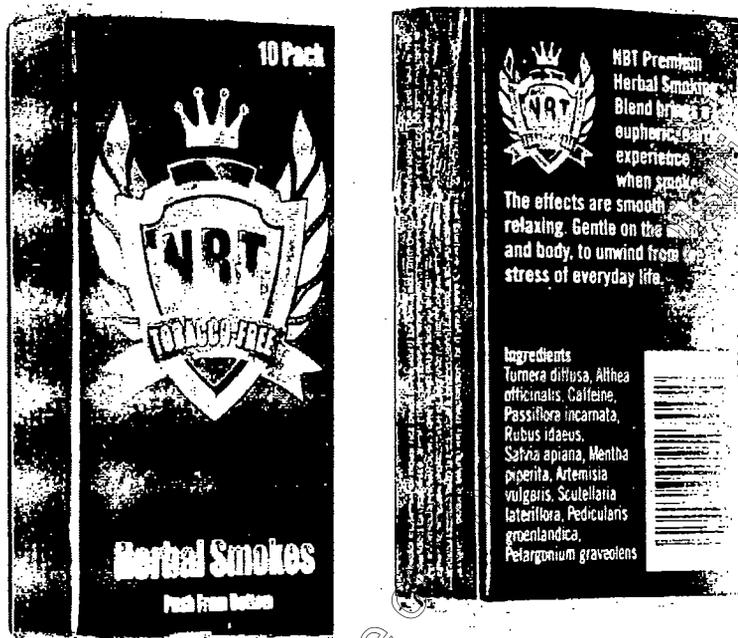
found that the bags of Kush contained the same labeling and also contained the Schedule I drug, a controlled substance, known as “AB-CHMINACA.” (Ex. B-2, B-3 and B-5, Custodian of Records Affidavit)

30. On April 7, 2015, Investigator J.M. purchased “Grape Kush” and “Mango Kush” from the Katz location on the North Freeway (Katz store No. 4) for \$48. (Ex. 21) Similar to the other undercover buys, the Kush was stored behind the counter and the office had to ask the clerk for the Kush by name. (Ex. 21). The packages labeled “Grape Kush” and “Mango Kush” were submitted to the Harris County lab for analysis. (Ex. 21; Ex. B-6, Custodian of Records Affidavit) The lab found that the Grape Kush and Mango Kush contained the substance, 5-Fluoro-AB-PINACA, which is a synthetic cannabinoid, and an analogue of (*i.e.*, structurally similar to) AB-PINACA and AB-FUBINACA, Schedule I drugs and controlled substances. 40 Tex. Reg. 2007, Apr. 3, 2015; 21 CFR part 1308.²⁵ Under Texas law, it is a crime to deliver or possess a synthetic cannabinoid. Tex. Health & Safety Code §§481.1031; 481.113; 481.1161.

31. On May 12, 2015, Deputy T.W. conducted an undercover buy from the Katz Boutique & Smoke Shop at 1710 Highway 6 South in Houston, Harris County, Texas (Defendant Katz Boutique 1, Inc.). (Ex. 19) Dep. T.W. entered the store and requested “Strawberry Kush.” (Ex. 19) The clerk said “no” but pointed to a package of “NBT Herbal Smokes,” stating that it “is the same thing as Kush.” (Ex. 19) Dep. T.W. paid \$21.43 for the package of 10 cigarettes of the “NBT Herbal Smokes.” (Ex. 19)

²⁵ <https://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule-i-h-4>;
www.ncbi.nlm.nih.gov/pubmed/25730924; www.grassley.senate.gov/sites/default/files/news/upload/3-factor%20analysis%20AB-CHMINACA%20AB-PINACA%20THJ2201%2012172014.pdf

32. The packaging of the “NBT Herbal Smokes” (Ex. B-4) states that it is “tobacco-free” and assures the consumer that its “premium herbal smoking blend brings a euphoric, earthy experience when smoked” and that the “effects are smooth and relaxing. Gentle on the mind and body, to unwind from the stress of everyday life.” (Ex. B-4, Custodian of Records Affidavit)



33. The listed ingredients are a variety plant, herb, shrub, and flower substances: Turnera diffusa, Althea officinalis, caffeine, passiflora incarnata, rubus idaeus, salvia apiana, mentha piperita, artemisia vulgaris, scutellaria lateriflora, pedicularis groenlandica, pelargonium gravelolens. *Id.* The packaging contained no warnings or other disclosures regarding other, unnamed ingredients.

34. The package of “NBT Herbal Smokes” was submitted to the Harris County lab for analysis. (*Id.*) The lab found that the package contained 10 cigarettes of a leafy substance that contained a chemical known s 5-Fluoro-AMB. (Ex. B-4, Custodian of Records Affidavit) The substance, 5-Fluoro-AMB, is a synthetic cannabinoid, and an analogue of (*i.e.*, structurally similar to) a

Schedule I drug known as AB-PINACA. 40 Tex. Reg. 2007, Apr. 3, 2015; 21 CFR part 1308.²⁶

Under Texas law, it is a crime to deliver or possess a synthetic cannabinoid. Tex. Health & Safety Code §§481.1031; 481.113; 481.1161.

35. On June 11, 2015, a search warrant was issued by the District Court Judge of the Harris County Criminal Courts for law enforcement officers to search the Katz store locations and seize all illegal controlled substances, including products labeled “Kush” as well as video surveillance, and drug precursors to manufacture such drugs. (Ex. C)

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

36. By selling, offering for sale, and distributing synthetic marijuana, including “Kush” and “NBT Herbal Smokes”, 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.

37. The packaging of the Kush (Ex. B-1, B-2, B-3, B-5, B-6) makes a number of false and misleading statements designed to mislead the consumer into believing the product is safe and legal, such as “Lab certified: this product contains no prohibited chemicals or materials” and “This product is legal for sale in all 50 states as of September 1, 2011.” The packaging also lists the “main ingredients” as a variety of innocuous sounding vegetable matters—such as “lemon balm,” “passion flower” and “wild lettuce” without any mention of the key ingredient—AB-CHMINACA, a highly addictive and dangerous chemical and Schedule I drug. The statement on

²⁶ <https://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4>;
www.ncbi.nlm.nih.gov/pubmed/25730924.

the packaging, “not intended for human consumption,” is simply an absurdity, designed to provide cover for the seller and the user if they are confronted by law enforcement.

38. The packaging of the NBT Herbal Smokes is also false, deceptive and misleading. The packaging claims that the product a “herbal blend” that produces a “relaxing” effect that is “gentle on the mind and the body” and lists only plant substances without any mention of the key ingredient, 5-Fluoro-AMB, a highly addictive hallucinogen and an analogue of AB-PINACA, a Schedule I drug. (Ex. B).

39. By selling Kush and NBT Herbal Smokes at their retail stores, Defendants deliberately mislead consumers into believing that these products are legal and safe. Defendants know or should know 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 Kush and NBT Herbal Smokes by Defendants and their agents—keeping it behind the counter, hiding it from view, requiring customers to ask for it by name, and charging the inflated price²⁷—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 AB-CHMINACA, 5-Fluoro-AMB, 5-Fluoro-AB-PINACA, as well as serious potential criminal liabilities.

²⁷ 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 \$22 and \$24 per package. (Ex. 16-20)

40. The dangers of Defendants' practices are heightened by the fact that there are at least of (6) middle schools and (12) high schools within 1-2 miles of the four Katz retail stores named in this petition, which are currently selling synthetic cannabinoids over the counter.

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

41. The Plaintiff State of Texas incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

42. 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).

43. The Katz Boutique stores at 16855 North Freeway, Houston, 1710 Highway 6 South, Suite G, Houston, 11649 State Highway 249, Suite 200, Houston and 27646 Tomball Parkway, Tomball, Texas constitute a common nuisance under Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4) because persons habitually go to these stores 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 Katz store locations. *Id.*

44. Based upon Section 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.

45. Pursuant to Section 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 Tex. Civ. Prac. & Rem. Code §125.002(d), 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.

46. 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 ET SEQ.**

47. The Plaintiff State of Texas incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

48. 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);

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).

**XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

49. Plaintiff has 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. 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.

50. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiff requests 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 Katz store locations at 1710 Highway 6 South, Suite G, Houston, Texas; 16855 North Freeway, Houston, Texas; 27646 Tomball Parkway, Tomball, Texas; and 11649 State Highway 249, Suite 200, 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). Plaintiff is not required to verify facts in support of injunctive relief to abate the nuisance activity. Tex. Civ. Prac. & Rem. § 125.002 (a).

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

52. 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).

53. 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 Katz stores 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

54. 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

55. Plaintiff herein requests a jury trial and tenders 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

56. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

XVI. REQUEST FOR DISCLOSURE

57. 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

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

59. Plaintiff prays that a 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 and NBT Herbal Smokes, 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 products labeled “Kush” and “NBT Herbal Smokes”;
- (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 Kush and NBT Herbal Smokes;
- (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;
- (g) 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;
- (h) 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;

- (i) 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.

60. Plaintiff further prays 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;

61. The State further prays that upon final hearing that this Court order each Defendant to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the Tex. Govt. Code Ann. § 402.006(c). The State further prays for recovery of reasonable attorneys' fees, investigative costs, court costs, witness fees, and deposition fees pursuant to Tex. Civ. Prac. & Rem. Code § 125.003(b),(d).

62. The State further prays that this Court grant all other relief to which the Plaintiff, State of Texas, may show itself entitled.

Respectfully submitted,

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