

KNOWN AS 12745 EAST FWY, HOUSTON, TEXAS, 1922 L.P.; 1922 Z CO., INC.; THE REAL PROPERTY KNOWN AS 9884 SOUTHWEST FREEWAY, HOUSTON, TEXAS also known as **THE REAL PROPERTY KNOWN AS 9896 SOUTHWEST FREEWAY, HOUSTON, TEXAS;** and **THE REAL PROPERTY KNOWN AS 2590 SOUTH LOOP W FREEWAY, HOUSTON, TEXAS** also known as **THE REAL PROPERTY KNOWN AS 2574 SOUTH LOOP W FREEWAY, HOUSTON, TEXAS** and seeks temporary and permanent injunctive relief to stop the sale of dangerous synthetic drugs in order to protect the public as follows:

I. DISCOVERY

1. Plaintiffs intend to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3 and affirmatively plead 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, the Harris County Attorney's Office, and the City of Houston 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. Plaintiffs have reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition.

5. Plaintiffs have 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. 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 and the danger to public health—that immediate and irreparable injury, loss, or damage would occur as a result of delay. Further, such pre-suit notice is not required because there is good cause to believe—due to the illegal controlled substances being sold—that destruction of relevant records would occur and Defendants would attempt to secrete assets.

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

VII. DEFENDANTS

12. Defendant **SPICE BOUTIQUE A/K/A SPICE BOUTIQUE PARTNERSHIP**—also doing business as Spice Inc., Spice Boutique #1, Spice Boutique #2, Spice Boutique #3, T&M Video, TM Video, Spice Boutique USA, Spice610, Spice 610, Spice 610 Investments, LLC, Spiceglo Investments, LLC, and 24 HR DVD and Video—is an unregistered Texas partnership. Defendant’s places of business are in Harris County, Texas, located at 9896 Southwest Freeway Suite A, Houston, Texas 77074; 12745 East Freeway, Houston, Texas 77015; and 2574 South Loop W Freeway, Houston, Texas 77054. Defendant may be served with process by serving one or more of its partners as follows:

(a) Minh Dang, at 11010 Black Falls Court, Sugar Land, Texas 77498; 9896 Southwest Freeway, Suite A, Houston, Texas 77074; 12745 East Freeway, Houston, Texas 77015; and/or 2574 South Loop W Freeway, Houston, Texas 77054.

(b) Tuan Dang, at 651 Bering Drive, Unit 603, Houston, Texas 77057; 9896 Southwest Freeway, Houston, Texas 77074; 12745 East Freeway, Houston, Texas 77015; and/or 2574 South Loop W Freeway, Houston, Texas 77054.

13. Defendant **MINH DANG**—also known as Minh Anh Dang, Minh A. Dang, M. A. Dang, A. M. Dang, and Mike Dang—is an individual who is named as a defendant in his individual capacity; in his capacity as a partner in one or more partnerships, including the unregistered Spice Boutique Partnership; in his capacity as a registered manager of Phinam 888 Investments, LLC,

and Phinam Investments, LLC; and in his capacity as successor in interest to Spice 610 Investments, LLC. Defendant does business under the assumed names of Spice Boutique USA and T&M Video. Defendant may be served with process at 11010 Black Falls Court, Sugar Land, Texas 77498 or his usual place of business in Harris County at 9896 Southwest Freeway, Houston, Texas 77074, or wherever he may be found.

14. Defendant **TUAN DANG**—also known as Tuan Anh Dang, Tuan A. Dang, T. A. Dang, A. T. Dang, and Josh Dang—is an individual residing in Harris County, Texas. He is named as a defendant in his individual capacity; in his capacity as a partner in one or more partnerships, including the unregistered Spice Boutique Partnership; in his capacity as the registered agent, president and director of Phinam Investments, LLC; in his capacity as a registered manager of Phinam888 Investments, LLC; and in his capacity as successor in interest to Spice 610 Investments, LLC. He may be served with process at 651 Bering Drive, Unit 603, Houston, Texas 77057 or his usual place of business in Harris County at 9896 Southwest Freeway, Houston, Texas 77074, or wherever he may be found.

15. Defendant **PHINAM 888 INVESTMENTS, LLC** also known as Phinam888 Investments, LLC is a Texas limited liability corporation that maintains a place of business at 651 Bering Dr. Unit 603, Houston, Texas 77057, and 9896 Southwest Freeway, Houston, Texas 77074. Defendant does business under the assumed name Spice Boutique. Defendant may be served with process by serving its registered agent, National Registered Agents, Inc., at 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

16. Defendant **PHINAM INVESTMENTS, LLC** is a Texas limited liability corporation that maintains a place of business at 651 Bering Dr. # 603, Houston, Texas 77057, and 9896 Southwest Freeway, Houston, Texas 77074. Defendant also owns and maintains the real property located at

12745 East Fwy., Houston, Texas 77015. Defendant may be served with process by serving its President, Director, and Registered Agent, Tuan Dang, at 19114 Baton Pass, Humble, Texas 77346.

17. Defendant **THE REAL PROPERTY KNOWN AS 12745 EAST FWY, HOUSTON, TEXAS** is sued *in rem*. This property is owned by Phinam Investments, LLC and may be served by serving the Registered Agent of Phinam Investments, LLC, Tuan Dang, at 19114 Baton Pass, Humble, Texas 77346.

18. Defendant **1922 L.P.** is a Texas limited partnership that owns and maintains the real property at 9896 Southwest Freeway, Houston, Texas 77054, and 2574 South Loop W Freeway, Houston, Texas 77054. Defendant may be served with process by serving its registered agent and president, Harvey E. Zinn, Sr. at 8200 Wednesbury Lane Suite 430, Houston, Texas 77074.

19. Defendant **1922 Z CO., INC.** is a Texas corporation and is sued in its capacity as general partner in 1922 L.P., a limited partnership which regularly conducts business in Harris County. Defendant also has a principle place of business located at P. O. Drawer 887, Stafford, Texas 77479. Defendant may be served with process by serving its registered agent and president, Harvey E. Zinn, Sr. at 8200 Wednesbury Lane Suite 430, Houston, Texas 77074. Defendant 1922 ZA CO., Inc. is the general partner of 1922 L.P.

20. Defendant **THE REAL PROPERTY KNOWN AS 9884 SOUTHWEST FREEWAY, HOUSTON, TEXAS** also known as **THE REAL PROPERTY KNOWN AS 9896 SOUTHWEST FREEWAY, HOUSTON, TEXAS** is sued *in rem*. This property is owned by 1922 L.P. and may be served by serving 1922 L.P.'s general partner, 1922 Z CO., INC., at 8200 Wednesbury Lane Suite 430, Houston, Texas 77074.

21. Defendant **THE REAL PROPERTY KNOWN AS 2590 SOUTH LOOP W FREEWAY, HOUSTON, TEXAS** also known as **THE REAL PROPERTY KNOWN AS 2574 SOUTH LOOP W FREEWAY, HOUSTON, TEXAS** is sued *in rem*. This property is owned by 1922 L.P. and may be served by serving 1922 L.P.'s general partner, 1922 Z CO., INC., at 8200 Wednesbury Lane Suite 430, Houston, Texas 77074.

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

- (a) “**Individual Defendants**” means Minh Dang and Tuan Dang.
- (b) “**Partnership Defendant**” means Spice Boutique a/k/a Spice Boutique Partnership.
- (c) “**In Rem Defendants**” means the real properties named as *in rem* defendants in this lawsuit.
- (d) “**Entity Defendants**” means Phinam888 Investments, LLC and Phinam Investments, LLC.
- (e) “**Landlord Defendants**” means Phinam Investments, LLC, 1922 L.P., and 1922 Z CO., INC.
- (f) “**Defendants**” means all defendants named in this petition.

VIII. ACTS OF AGENTS

23. 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.

24. 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.

25. 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, 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

26. 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

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, 78 Fed. Reg. 28735 (May 16, 2013) (temporary placement of three synthetic cannabinoids into schedule I); Ex. 2a, 80 Fed. Reg. 27854 (May 15, 2015) (extension of temporary placement of three synthetic cannabinoids in schedule I).

² Ex. 1, p.1; Ex. 2, 78 Fed. Reg. at 28,736.

³ Ex. 2, 78 Fed. Reg. at 28,735–36.

⁴ Ex. 1, p. 3.

⁵ *Id.*; Ex. 2, 78 Fed. Reg. at 28,736.

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

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

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, 78 Fed. Reg. at 28,736; Ex. 4, *Alerts: Synthetic Marijuana*, AMERICAN ASSOCIATION OF POISON CONTROL CENTERS, <http://www.aapc.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).

28. 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 Houston has seen its share of incidents related to the ingestion of this dangerous product. As recently as June 23, 2016, paramedics were called to Hermann Park located in the Texas Medical Center to assist approximately 16 individuals who had become ill after ingesting synthetic marijuana.¹³ This incident highlights the epidemic of synthetic marijuana abuse known to first responders in the Houston area. This epidemic is not just limited to the Houston area. Throughout the United States, 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;¹⁴
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss.¹⁵

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.myfoxxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area>.

¹³ Ex. 15G, *Synthetic Drug Use at Hermann Park sends 16 to hospital, authorities say*, Houston Chronicle (June 23, 2016), <http://www.chron.com/news/houston/article/HFD>.

¹⁴ 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>.

¹⁵ Ex. 9.

- Three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011;¹⁶
- An 18-year old Amarillo man died after smoking synthetic marijuana;¹⁷
- 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;¹⁸
- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood;¹⁹
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;²⁰
- 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.²¹
- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana;²²

¹⁶ 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/>.

¹⁷ 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>.

¹⁸ Ex. 12.

¹⁹ 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/>.

²⁰ Ex. 6.

²¹ 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.nlm.nih.gov/pubmed/24762846>.

²² 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;²³
- A man in Houston had a psychotic break on a “bad batch” of synthetic marijuana and stabbed, beat, and fatally choked his girlfriend;²⁴
- Two men in Houston, after smoking synthetic marijuana, attacked and shot at the hosts of a neighborhood barbeque fundraiser;²⁵
- 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;²⁶ and
- In Dallas, Texas, emergency services received approximately 192 emergency calls related to synthetic marijuana between December 1, 2015, and January 7, 2016.²⁷

29. A major factor driving the increased distribution of synthetic marijuana is the financial incentives for retailers and distributors. According to the Drug Enforcement Administration

²³ 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>.

²⁴ Ex. 15B, Brian Rodgers, “*Synthetic Marijuana*” is Blamed in Death, HOUSTON CHRONICLE, July 9, 2015, at B2.

²⁵ 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>.

²⁶ 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>.

²⁷ 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/>.

(“DEA”), “a \$1,500 purchase of a bulk synthetic cannabinoids can generate as much as \$250,000 of revenue at the retail level.”²⁸

B. Texas Law Prohibits The Sale and Distribution of Synthetic Cannabinoids.

30. Under Texas law, it is a crime to manufacture, deliver, or possess or possess a synthetic cannabinoid, and synthetic cannabinoids are classified as Penalty Group 2-A drugs under the Texas Controlled Substances Act.²⁹ Tex. Health & Safety Code §§ 481.1031, 481.113, 481.1161.

31. In addition, in 2014, the City of Houston passed Ordinance § 28-572 outlawing synthetic marijuana including the product labeled as “Kush.”³⁰ Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

32. The Texas Legislature has recently amended the DTPA 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).

²⁸ Ex. 15F, *Deadly Synthetic Drugs—The Need to Stay Ahead of the Poison Peddlers: Hearing Before the S. Comm. On the Judiciary*, 114th Cong. 5 (2016) (statement of Chuck Rosenberg, Acting Administrator, Drug Enforcement Administration).

²⁹ 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”

³⁰ Ex. 16, City of Houston Kush Ordinance.

C. The Individual, Entity, and Partnership Defendants Sell Synthetic Marijuana at the Spice Boutique stores in Houston, Texas, in Harris County through an Unregistered Partnership.

33. The Individual, Entity, and Partnership Defendants own and operate the stores known as “Spice Boutique” located in Harris County at the following three locations: (1) 12745 East Fwy, Houston, Texas; (2) 2574 S. Loop West, Houston, Texas, and (3) 9896 Southwest Fwy, Houston, Texas (hereinafter “Spice Boutique stores”). Based upon Texas Comptroller franchise tax reports, Secretary of State filings, assumed name records, and City of Houston occupancy certifications, the Individual, Entity, and Partnership Defendants are currently doing business at these locations in Harris County. The Individual Defendants, Minh Dang and Tuan Dang, are brothers who direct the Spice Boutique operations at all three locations and have been operating their business in the form of an unregistered partnership (“Spice Boutique a/k/a Spice Boutique Partnership”). Spice Boutique a/k/a Spice Boutique Partnership has regularly conducted business in Harris County under the following assumed names: “Spice Inc.,” “Spice Boutique #1,” “Spice Boutique #2,” “Spice Boutique #3,” “T&M Video,” “TM Video,” “Spice Boutique USA,” “Spice610,” “Spice 610,” “Spice 610 Investments, LLC,” and “Spiceglo Investments, LLC.”³¹ The Partnership Defendant Spice Boutique operates as an unregistered partnership under various assumed names and through various entities created after the formation of the partnership:

³¹ Ex. 17, Harris County Assumed Name Certificate, TM Video; Ex. 18, Harris County Assumed Name Certificate, Spice Boutique; Ex. 19, Harris County Assumed Name Certificate, Spice Boutique USA; Ex. 20, Texas Secretary of State Records, Phinam888 Investments, LLC; Ex. 21, Texas Secretary of State Records, Spice610 Investments, LLC; Ex. 22, “Spice Inc.” Receipt; Ex. 23, “T&M” Video, COH Sign Permit and Texas Tobacco Product Taxes Permit; Ex. 24; Spice 610, COH Certificate of Occupancy; Ex. 25, HPD Photograph of Location Listing; Ex. 26, Texas Dept. of State Health Services Two Year Abusable Volatile Chemical Sales Permit, “Spiceglo Investments LLC”; Ex. 27, Texas Sales and Use Tax Permit and Texas Cigarette Taxes Permit, “Spice610.”

- The Partnership Defendant operates the Spice Boutique store located at 12745 East Fwy, Houston, Texas, through the assumed names of “T&M Video” and “TM Video.”³² The Partnership Defendant considers this location to be “Location 1.”³³
- The Partnership Defendant operates the Spice Boutique store located at 9896 Southwest Fwy, Houston, Texas, through the assumed name of “Spice Boutique USA.”³⁴ The Partnership Defendant operates the store with Entity Defendant Phinam 888 Investments LLC doing business as “Spice Boutique” to operate this location.³⁵ The Partnership Defendant considers this location to be “Location 2.”³⁶
- The Partnership Defendant operates the Spice Boutique store located at 2574 S. Loop West, Houston, Texas, through the Individual Defendants acting as successors in interest to “Spice 610 Investments, LLC” and through the assumed name of “Spiceglo Investments LLC.”³⁷ The Partnership Defendant considers this location to be “Location 3.”³⁸

At all three store locations, the Partnership Defendant uses the assumed names of “Spice Boutique” and “Spice, Inc.” This partnership is the alter-ego of the Individual Defendants.

34. Besides operating the Spice Boutique stores, the Partnership Defendant also operates the limited liability company called “Phinam Investments, LLC,” which owns the real property known

³² Ex. 17; Ex. 23.

³³ Ex. 25.

³⁴ Ex. 19.

³⁵ Ex. 18; Ex. 20.

³⁶ Ex. 25.

³⁷ Ex. 21; Ex. 26; Ex. 27.

³⁸ Ex. 25.

as 12745 East Fwy, Houston, Texas.³⁹ The two Individual Defendants are the sole managing members of Phinam Investments, LLC, and therefore, knowledge of illegal activities described herein is within the knowledge of Phinam Investments, LLC itself. The remaining two properties—the real property known as 2574 S. Loop West, Houston, Texas, and the real property known as 9896 Southwest Fwy, Houston, Texas—are owned by 1922 L.P.⁴⁰ The general partner of 1922 L.P. is 1922 Z Co., Inc.⁴¹

D. HPD Purchase and Seizure of Synthetic Marijuana at Spice Boutique

35. In response to a large overdose of synthetic marijuana at Hermann Park, known as “Kush Korner,” that caused several individuals to become ill, officers with the Houston Police Department Narcotics Division began an investigation to identify the distributors of these illegal and harmful substances. Officers received information that kush could be purchased at the Spice Boutique stores located in Houston, Harris County, Texas.

i. Investigation at 9896 Southwest Freeway, Houston, Texas

36. On July 6, 2016, officers with the Houston Police Department Narcotics Division conducted an investigation at the Spice Boutique located at 9896 Southwest Freeway, Houston, Texas.⁴² Officer K.C.E. and Officer M.R., working undercover, entered the Spice Boutique and inquired to the female clerk about the purchase of “Black Widow or “Bam”—which is street slang for synthetic marijuana. The female clerk responded that she had “Bam” and opened a drawer

³⁹ Ex. 28, Texas Secretary of State Records, Phinam Investments, LLC; Ex. 29, Harris County Appraisal District, 12745 East Fwy, Houston, Texas.

⁴⁰ Ex. 30, Texas Secretary of State Records, 1922 L.P.; Ex. 31, Harris County Appraisal District, 9884 Southwest Freeway, Houston, Texas (which contains the property located at 9896 Southwest Fwy, Houston, Texas); Ex. 32, Harris County Appraisal District, 2590 S. Loop West, Houston, Texas (which contains the property located at 2574 S. Loop West, Houston, Texas).

⁴¹ Ex. 33, Texas Secretary of State Records, 1922 Z Co., Inc.

⁴² Ex. 34, Houston Police Department Incident Report #871879-16.

behind the counter. After handing Officer K.C.E. one packet Officer K.C.E. asked if there were more to which the female clerk responded by displaying additional packets and naming other flavors. Officer K.C.E. decided on the “strawberry” flavor of “Bam” and paid the clerk \$30 and both officers left the store.

37. The foil packet of strawberry flavored bam contained 6.6 grams and was sent to the Houston Forensic Science Center for testing. The laboratory report revealed that the foil packet with a plant substance contained a chemical known as “FUB-AKB48.”⁴³ “FUB-AKB48” is a synthetic cannabinoid and a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).

38. That same day, on July 6, 2016, uniformed officers with the Houston Police Department Narcotics Division conducted an inspection at the Spice Boutique at 9896 Southwest Freeway, Houston, Texas.⁴⁴ Officer J. Guerra and Officer J. Medlin, working in uniform, entered the Spice Boutique store and explained to the store clerk that the purpose of the visit was to educate businesses of the newly adopted ordinances regarding synthetic marijuana. The officers also explained that other business permits such as health and safety would also be inspected. The male clerk gave written consent for the officers to conduct a search.⁴⁵ The officers observed a handwritten note taped to the cash register that listed colors and corresponding flavors (i.e. a red number 4 was strawberry).⁴⁶ The officers discovered a drawer under the cash register that contained numerous foil packets. The male clerk stated that retail customers purchased the foil

⁴³ Ex. 35, Houston Forensic Science Center Lab Report 2016-13386 for Houston Police Department Narcotics Report #871879-16.

⁴⁴ Ex. 36, Houston Police Department Incident Report #870651-16.

⁴⁵ *Id.* at 5, 7.

⁴⁶ *Id.*

packets to smoke the contents. The officer recognized the foil packets as possible synthetic marijuana. They also found in the drawer packets of Zeagra and blue foil packets. The male clerk told officers that the possible synthetic marijuana sold for approximately \$30 per packet. The male clerk identified “Josh” and “Mike” as the store owners and stated he has worked at the store for approximately two years.

39. The officers seized items from the store, including 90.1 grams of possible synthetic cannabinoids, and submitted these items to the Houston Forensic Science Center for testing.⁴⁷ The laboratory report revealed that the sealed foil ziplock bags containing a plant substance also contained a chemical known as “NM2201.”⁴⁸ “NM2201” is a synthetic cannabinoid and a Penalty Group 2-A drug under Texas law.⁴⁹ *See* Tex. Health & Safety Code § 481.1031(b)(5). The laboratory report also revealed that the blue foil bags contained “PV9,” a derivative of 2-aminopropanal.⁵⁰ “PV9” is a type of synthetic cathinone, the chemical in what is commonly known as bath salts. “PV9” is a Penalty Group 2 drug under Texas law. *See* Tex. Health & Safety Code § 481.103(a)(4).

40. On July 26, 2016, officers with the Houston Police Department Narcotics Division conducted another undercover buy at the Spice Boutique located at 2574 South Loop West, Houston, Texas.⁵¹ Officer K.M. and Officer C.P., working undercover, entered the Spice Boutique and asked the clerk for “Zeagra.” The clerk reached behind the counter and retrieved a blister 4-

⁴⁷ *Id.*

⁴⁸ Ex. 37, Houston Forensic Science Center Lab Report 2016-13387 for Houston Police Department Narcotics Report #870651-16.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Ex. 49, Houston Police Department Incident Report #958558-16.

pack of “Zeagra.” Officer K.M. purchased the “Zeagra” for \$43.25. Officer K.M. also asked the clerk about purchasing “Bam” or “XTC.” The clerk indicated that the store was out because someone had told the police the store was selling it. The officers left the store with the “Zeagra,” which was submitted to the Houston Forensic Science Center for testing.

ii. Investigation at 2574 South Loop West, Houston, Texas

41. On July 6, 2016, officers with the Houston Police Department Narcotics Division conducted a narcotics investigation at the Spice Boutique located at 2574 South Loop West, Houston, Texas.⁵² Officer K.C.E. and Officer M.R., working undercover, entered the Spice Boutique and asked the clerk for “Bam”—which is street slang for synthetic marijuana. The clerk indicated that the store had “Bam” and showed Officer K.C.E. packets from a drawer behind the counter. The clerk showed Officer K.C.E. “strawberry” and “blueberry” flavored packets and Officer K.C.E. asked for “blueberry.” The clerk asked for payment before handing over the foil packet. Officer M.R. paid the clerk \$30 and both officers left the store.

42. The foil packet of blueberry flavored “Bam” weighed 6.4 grams. It was sent to the Houston Forensic Science Center for testing. The laboratory report revealed that the foil packet with a plant substance contained a chemical known as “FUB-AKB48.”⁵³ “FUB-AKB48” is a synthetic cannabinoid and a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).

43. On July 6, 2016, uniformed officers with the Houston Police Department Narcotics Division conducted an inspection at the Spice Boutique at 2574 South Loop West, Houston,

⁵² Ex. 38, Houston Police Department Incident Report #871892-16.

⁵³ Ex. 39, Houston Forensic Science Center Lab Report 2016-13410 for Houston Police Department Narcotics Report #871892-16.

Texas.⁵⁴ Officer J. Guerra and Officer J. Medlin entered the Spice Boutique store and explained to the clerk that the purpose of their visit was to educate businesses about the newly adopted ordinances regarding synthetic marijuana. The officers also explained to the clerk that other business permits such as health and safety code permits would be inspected. The male clerk gave written consent for the officers to conduct a search. Officers searched around the store and noticed next to the cash register there was a handwritten note taped on to the left side stating colors and corresponding flavors (i.e. a red number 4 was strawberry) of possible synthetic marijuana. The note also stated, “Note: If they combine the two flavors it becomes very, very, good.”⁵⁵ The officers found numerous ziplock sealed foil packets of possible synthetic marijuana in a drawer below the cash register along with “Zeagra” packages in foil blister packets.

44. The clerk explained to the officers that the cash register code for the possible synthetic cannabinoids was “BW” which outputs a description of “B Movie” and sells for approximately \$27.71 dollars. The clerk told the officers that the owners of the store were “Josh” and “Mike” and that their phone numbers were written on a handwritten note taped to the counter.⁵⁶ Officers also took notice of several signs placed near the cash register one of which stated, “Call every morning Mike or Josh to check for kush, zeagra, etc.”⁵⁷ When officers asked the store clerk if he knew what substance the foil packets contained he replied, “No . . . , the owners just told me to sell it.” The clerk also told the officers that usually every morning Mike or Josh come to the store with more pills (Zeagra) and foil packets.

⁵⁴ Ex. 40, Houston Police Department Incident Report #871167-16.

⁵⁵ Ex. 41, HPD Photo from 2574 South Loop (cash register note).

⁵⁶ Ex. 25.

⁵⁷ Ex. 42, HPD Photo from 2574 South Loop (Josh and Mike).

45. The narcotics officers also seized several items from the Spice Boutique located at 2574 South Loop West, Houston, Texas.⁵⁸ Before items were seized written consent from the store clerk was obtained.⁵⁹ Officers seized 135 grams of possible synthetic cannabinoids, which were submitted to the Houston Forensic Science Center for testing.⁶⁰ Other items seized at the location include: assorted boxes of synthetic urine, Zeagra (possible Viagra), 24.89 grams of unknown substances suspected to be dangerous drugs.⁶¹

46. The laboratory report revealed that two of the foil packets seized contained a plant substances and a chemical known as “FUB-AKB48.”⁶² “FUB-AKB48” is a synthetic cannabinoid and a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).

47. The laboratory report also revealed that that the seized Zeagra contained sildenafil,⁶³ the active ingredient in Viagra and a dangerous drug under Chapter 483 of the Texas Health and Safety Code. *See* Tex. Health & Safety Code §§ 483.001(2), 483.042(a).⁶⁴

48. On July 26, 2016, officers with the Houston Police Department Narcotics Division conducted another undercover buy at the Spice Boutique located at 2574 South Loop West,

⁵⁸ Ex. 40.

⁵⁹ *Id.* at 3, 7.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Ex. 43, Houston Forensic Science Center Lab Report 20163-13388 for Houston Police Department Narcotics Report #871167-16.

⁶³ *Id.*

⁶⁴ It is a state-jail felony to deliver or offer to deliver a dangerous drug. Tex. Health & Safety Code § 483.042(d). Possessing a dangerous drug without authority is a Class A misdemeanor. Tex. Health & Safety Code § 483.041(d). Other violations of any provision under the Texas Dangerous Drug Act are Class B misdemeanor that may give rise to Class A misdemeanor if offender is previously convicted of any offense under chapter 483. Tex. Health & Safety Code § 483.052(b).

Houston, Texas.⁶⁵ Officer K.M. and Officer C.P., working undercover, entered the Spice Boutique and asked the clerk for “Zeagra”—a male enhancement pill. The clerk told Officer K.M. that he did not have “Zeagra” but that everyone was buying “Rhino 69” instead. Officer K.M. purchased the “Rhino 69” for \$12. Officer K.M. also asked the clerk about purchasing “Bam”—which is street slang for synthetic marijuana. The clerk indicated that the store did not sell “Bam.” The officers left the store with the “Rhino 69,” which was submitted to the Houston Forensic Science Center for testing.

iii. Investigation at 12745 East Freeway, Houston, Texas

49. On July 6, 2016, uniformed officers with the Houston Police Department Narcotics Division conducted an inspection at the Spice Boutique located at 12745 East Freeway, Houston, Texas.⁶⁶ Officer J. Guerra and Officer J. Medlin entered the Spice Boutique and explained to the clerk that the purpose of their visit was to educate businesses of the newly adopted ordinances regarding synthetic marijuana. The officers also explained to the clerk that other business permits such as health and safety permits would be inspected. The clerk told the officers that he knew they were coming and that the store did not have synthetic urine or male enhancement pills. The officers noticed that the display cases had large empty spaces, as if something was just recently moved from them. Officers received written consent from the clerk to search the store. After the officers noticed large and numerous cameras around the store, the clerk told officers that the owners could see and hear via the cameras. The clerk also told the officers that after arriving at the location for his shift at 8:00 pm that night, the owner called and instructed the clerk to remove the synthetic urine and male enhancement pills from the store. The clerk later referred to the owner as “Tuan”

⁶⁵ Ex. 47, Houston Police Department Incident Report #958700-16.

⁶⁶ Ex. 44, Houston Police Department Incident Report #871598-16.

and stated that “Tuan” had called to give the warning and instruction. After obtaining permission from the clerk, the officers searched the clerk’s vehicle and found boxes of pills and synthetic urine in the trunk.

50. On July 26, 2016, officers with the Houston Police Department Narcotics Division conducted another undercover buy at the Spice Boutique located at 2574 South Loop West, Houston, Texas.⁶⁷ Officer K.M. and Officer C.P., working undercover, entered the Spice Boutique and asked the clerk for “Z.” The clerk reached behind the counter and retrieved a blister 4-pack of “Zeagra.” Officer K.M. purchased the “Zeagra” for \$43.25. Officer K.M. also asked the clerk about purchasing “Bam” or “XTC.” The clerk indicated that the store did not sell those items. The officers left the store with the “Zeagra,” which was submitted to the Houston Forensic Science Center for testing.

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

51. By selling, offering for sale, and distributing synthetic marijuana, the Individual, Entity, and Partnership 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. *See* DTPA § 17.46(a).

52. The packaging of the synthetic marijuana and bath salts sold by the Individual, Entity, and Partnership Defendants is deceptive. The packaging of the kush product and the bath salts products do not disclose that the products contain dangerous and illegal hallucinogenic chemicals.⁶⁸ The product is sold in packages that contain no warnings of any kind. There is no mention that the key

⁶⁷ Ex. 48, Houston Police Department Incident Report #958626-16.

⁶⁸ Ex. 45, Affidavit of J. Guerra and HPD Photos of Seized Products from 9896 SWF Spice Location; Ex. 46, Affidavit of J. Guerra and HPD Photos of Seized Products from 2574 S Loop Spice Location.

ingredients, NM2201, FUB-AKB48, and PV9, are highly addictive and dangerous chemicals. The lack of identifying packaging is itself misleading due to its failure to disclose the dangers of the substance. By selling and distributing synthetic marijuana and bath salts at their stores, the Individual, Entity, and Partnership Defendants deliberately mislead consumers into believing that these products are legal and safe.

53. The Individual, Entity, and Partnership Defendants also market “male enhancement pills” that contain the dangerous drug sildenafil, which is only obtainable with a prescription. Tex. Health & Safety Code § 483.001(2). The Individual, Entity, and Partnership Defendants are not authorized to dispense prescription drugs such as sildenafil to the public.⁶⁹ The Individual, Entity, and Partnership Defendants do not inform consumers of possible side effects or harm that could be caused by taking sildenafil and do not inform them that use of sildenafil in combination with other substances could cause serious side effects, including fatal heart attacks.

54. The Individual, Entity, and Partnership 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 and bath salts by the Individual, Entity, and Partnership 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”⁷⁰—all confirm that the Individual, Entity, and Partnership Defendants and their agents knew or should have known that

⁶⁹ Only designated agents have authorization to dispense dangerous drugs under the statute. Tex. Health & Safety Code § 483.001(4)(A)–(C). Moreover, the Defendants are not licensed medical practitioners and have no authority to prescribe medications of any kind to consumers. *See* Tex. Occ. Code § 551.003(34)(A)–(D).

⁷⁰ The cost of the leafy substances listed as ingredients in a single packet of kush is approximately 77 cents. The average retail price charged by Defendants is \$30.

the product being sold is illegal and harmful to consumers. In addition, paperwork seized from the Spice Boutique stores located at 2574 S. Loop West, Houston, Texas, and 9896 Southwest Fwy, Houston, Texas, revealed that employees of Spice Boutique were provided with information and tips to assist in the consumer on how to ingest and mix the illegal products. Unsuspecting consumers who purchase these products from the Individual, Entity, and Partnership Defendants are exposed to the physical dangers of NM2201, FUB-AKB48, and PV9, as well as serious potential criminal liabilities.

55. Defendants knowingly participated in and/or tolerated the illegal activity of selling, distributing, delivering, and possessing controlled substances at the Spice Boutique stores located at 12745 East Fwy, Houston, Texas, 2574 S. Loop West, Houston, Texas, and 9896 Southwest Fwy, Houston, Texas. The Individual Defendants, Minh Dang and Tuan Dang, have at all relevant times been involved in the day to day operations and management of the Spice Boutique stores and on information and belief knowingly participated in and/or tolerated the illegal activities described herein.

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

56. Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph of this petition.

57. Chapter 125 of the Texas Civil Practice & Remedies Code defines a common nuisance. Section 125.0015(a) states “[a] person who maintains a place 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).

58. The Spice Boutique stores located at 12745 East Fwy, Houston, Texas, 2574 S. Loop West, Houston, Texas and 9896 Southwest Fwy, Houston, Texas constitute a common nuisance under Texas Civil Practice and Remedies 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. In addition, Defendants have engaged in organized criminal activity by committing and conspiring to commit the unlawful manufacture, delivery and distribution of a controlled substance with the intent to establish, maintain and participate in the profits of a combination in violation of the Texas Penal Code and Texas Civil Practice and Remedies Code § 125.0015(a)(3). 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)(3), (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(e). Plaintiffs request 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 and the City of Houston, 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 12745 East Fwy, Houston, Texas, 2574 S. Loop West, Houston, Texas, and 9896 Southwest Fwy, Houston, Texas. *See id.*

59. Based upon § 125.002 of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the Plaintiffs, 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.

60. 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 Plaintiffs 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 Plaintiffs 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.

61. 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

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

63. The Individual, Partnership, and Entity Defendants, as alleged and detailed above, have 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.

64. Additionally, the Individual, Partnership, and 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);

(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. DISGORGEMENT/CONSTRUCTIVE TRUST/UNJUST ENRICHMENT

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

66. Plaintiffs request the Court impose a constructive trust over the assets and funds Defendants derived from the sale of illegal controlled substances to the public. Defendants would be unjustly enriched if allowed to retain the proceeds and assets from their criminal activities in selling illegal substances. Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that have resulted from Defendants' promotion and sale of illegal substances as legal and safe. Plaintiffs pray that Defendants be ordered to disgorge all monies taken from consumers as a result of Defendants' deceptive practices, together with all the proceeds, profits, income, interest, and assets acquired with the proceeds of Defendants' deceptive practices. Plaintiffs further pray that the Court enjoin Defendants from transferring, moving, concealing, spending, or withdrawing funds derived from the sale of illegal controlled substances to the public.

XIII. VIOLATIONS OF THE TEXAS UNIFORM FRAUDULENT TRANSFER ACT

67. Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph of this petition.

68. On information and belief, the Individual Defendants, the Partnership Defendant, and the Entity Defendants have made and received transfers that are subject to the Texas Uniform Fraudulent Transfer Act, Chapter 24 of the Texas Business and Commerce Code (“TUFTA”).

69. As a result of their close financial, business, ownership, and family ties, Individual Defendants, the Partnership Defendant, and the Entity Defendants are TUFTA insiders.

70. Without receiving reasonably equivalent value in exchange, as well as to hinder, delay, or defraud creditors, on information and belief Individual Defendants, the Partnership Defendant, and the Entity Defendants have made numerous transfers of value to or for the benefit of Individual Defendants, the Partnership Defendant, and the Entity Defendants. Plaintiffs, which are a TUFTA creditor based on the factual allegations in this lawsuit, is entitled to recover said transfers of value under TUFTA. Tex. Bus. & Com. Code §§ 24.005(a)(1), 24.005(a)(2), 24.006(a), and 24.006(b).

XIV. THE CORPORATE FICTION MUST BE DISREGARDED

71. Plaintiffs incorporate and adopt by reference the allegations contained in each and every preceding paragraph of this Petition.

72. Defendants Minh Dang and Tuan Dang are the partners in the Spice Boutique a/k/a Spice Boutique Partnership. In addition to their individual liability and their partnership liability, Defendants Minh Dang and Tuan Dang are personally liable for the acts of their agents and for the acts of Defendants Phinam 888 Investments, LLC and Phinam Investments, LLC. These entities are the alter egos of Defendants Minh Dang and Tuan Dang, the entities have been used for an illegal purpose, and the entities have been used as a sham to perpetuate a fraud.

73. Plaintiffs have reason to believe the Defendants Minh Dang and Tuan Dang are engaging in illegal activities that tend to deceive others and injure the public and is using the corporate shield to protect himself from individual liability.

XV. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION

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

75. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiffs, the State of Texas and the City of Houston, request the Court enjoin the Individual, Partnership, Entity, In Rem, and Landlord 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 Spice Boutique stores located at 12745 East Fwy, Houston, Texas, 2574 S. Loop West, Houston, Texas, and 9896 Southwest Fwy, 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, Plaintiffs are not required to verify facts in support of the requested injunctive relief to abate the nuisance activity.

76. In addition to restraining Defendants' conduct to prevent future illegal acts and harm to consumers, Plaintiff, the State of Texas, requests immediate relief to preserve and protect the

monies obtained by Defendants in violation of the DTPA. The Individual, Entity, and Partnership Defendants own or control numerous other businesses which have various physical locations and bank accounts which Defendants can hide funds and other valuable assets. The evidence assembled thus far demonstrates that it is likely that the Individual, Entity, and Partnership Defendants will dissipate or conceal these monies prior to trial. Therefore, pursuant to DTPA § 17.47(d), Plaintiff, the State of Texas, requests that these monies be frozen pending final trial.

77. Plaintiffs believe immediate injunctive relief by way of Temporary Restraining Order and Temporary Injunction is necessary to prevent continuing harm prior to trial.

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

79. Plaintiffs further request the Court find Plaintiffs are 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 Spice Boutique 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).

XVI. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

80. Plaintiffs request 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 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, Plaintiffs request that the filing requirements for business

records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

XVII. TRIAL BY JURY

81. Plaintiffs herein request a jury trial and tender the jury fee to the Harris County District Clerk's office pursuant to Texas Rule of Civil Procedure 216 and Texas Government Code § 51.604.

XVIII. CONDITIONS PRECEDENT

82. All conditions precedent to Plaintiffs' claims for relief have been performed or have occurred.

XIX. REQUEST FOR DISCLOSURE

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

XX. PRAYER

84. Plaintiffs pray that Defendants be cited according to law to appear and answer herein.

85. Plaintiffs pray 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) Transferring, spending, hypothecating, concealing, encumbering or removing from the jurisdiction of this Court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by any of the Defendants, insofar as such property relates to, arises out of or is derived from the business operations of Defendants except in response to further orders by the Court;

(d) Selling or offering for sale controlled substances on Defendants’ premises, including but not limited to synthetic substances containing NM2201, FUB-AKB48, and PV9;

(e) Selling or offering for sale dangerous substances on Defendants’ premises, including but not limited to substances containing sildenafil;

(f) Manufacturing, purchasing, distributing, delivering, offering for sale, holding, selling, or giving away any products containing controlled substances, synthetic cannabinoids, bath salts, and dangerous drugs, including but not limited to synthetic substances containing NM2201, FUB-AKB48, and PV9;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) Failing to cooperate with authorized representatives of the State and Harris County, including law enforcement representatives, in locating and impounding all synthetic marijuana products, bath salt products, and male enhancement 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

(o) 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.

86. Plaintiff, the State of Texas, further prays that this Court award judgment for the Plaintiff as follows:

(a) Order 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;

(b) Order Defendants to restore all money or other property obtained from consumers by means of unlawful acts or practices, or in the alternative award judgment for damages to compensate for such losses or, in the alternative, order disgorgement of all sums, monies, and value taken from consumers by means of deceptive trade practices, together with all proceeds, interest, income, profits, and accessions thereto; making such disgorgement for

the benefit of victimized consumers and Plaintiff;

(c) Place an equitable lien and constructive trust on all of Defendants' assets, personal property, and real property, and grant the State an interest in said assets and property; and

(d) Order Defendants' assets be repatriated into the jurisdiction of the Court.

87. Plaintiffs further pray that upon final hearing that this Court order each Defendant to pay the Plaintiffs' attorney fees and costs of court pursuant to Texas Government Code § 402.006(c). Plaintiffs further pray 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).

88. Plaintiffs further pray that this Court grant all other relief to which the Plaintiffs, the State of Texas and the City of Houston, are entitled.

Respectfully submitted,

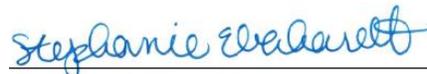
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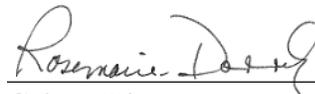
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