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Chris Daniel - District Clerk Harris County
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By: Wanda Chambers
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2015-44444 / Court: 281

NO. _____

THE STATE OF TEXAS	§	**IN THE DISTRICT COURT**
AND THE CITY OF HOUSTON	§	
	§	
	§	
Plaintiff	§	
	§	
v.	§	**OF HARRIS COUNTY, TEXAS**
	§	
CENTER CONVENIENCE, INC.	§	
CENTER REALTY, INC.	§	
TAMIE PHAM	§	**_____JUDICIAL DISTRICT**
TRUNG PHAM	§	
REAL PROPERTY KNOWN	§	
AS 10720-10722 KINGSPOINT RD.,	§	
HOUSTON, TEXAS	§	
Defendants	§	
	§	

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PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs, the STATE OF TEXAS, acting by and through Attorney General of Texas, Ken Paxton, and HARRIS COUNTY, TEXAS, acting by and through the County Attorney of Harris County, Texas, Vince Ryan, and Plaintiff, the CITY OF HOUSTON file this petition complaining of Defendants CENTER CONVENIENCE, Inc., CENTER REALTY, Inc., TAMIE PHAM, TRUNG PHAM the REAL PROPERTY KNOWN AS 10720-10722 KINGSPOINT RD, HOUSTON, TEXAS, *in rem*, 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 Plaintiffs' 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, the Harris County Attorney's Office, and the City of Houston against Defendants to enjoin and abate a common nuisance pursuant to their respective authority under Tex. Civ. Prac. & Rem. Code §§ 125.001-

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125.047. Verification of the petition or proof of personal injury need not be shown by Plaintiffs 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, the State of Texas, 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 a retail store 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 Plaintiffs' 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.*

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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. 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.

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VII. DEFENDANTS

10. Defendant Center Convenience, Inc., d/b/a Almeda Food Mart ("Almeda Food Mart" or "Center Convenience") is a Texas corporation that maintains a place of business at 10722 Kingspoint Road, Houston, Texas, 77075. Defendant may be served with process by serving its registered agent, Tamie H. Pham at 11915 Palmetto Shores, Houston, Texas, 77065.

11. Defendant Center Realty, Inc. ("Center Realty"), is a Texas corporation that maintains a place of business at 13119 Veterans Memorial Parkway, Houston, Texas, 77014. Defendant may be served with process by serving its registered agent and President, Trung S. Pham, at 13119 Veterans Memorial Parkway, Houston, TX 77014.

12. Defendant the Real Property Known As 10720-10722 Kingspoint Rd, Houston, Texas, ("Property") is sued *in rem.* This property is owned by Defendant Center Realty, Inc. and may be served by serving Center Realty, Inc.'s registered agent and President, Trung S. Pham, at 13119 Veterans Memorial Parkway, Houston, TX 77014.

13. Defendant Tamie H. Pham a/k/a Tammy Pham a/k/a Thienh H. Pham ("Tamie Pham") is an individual residing in Harris County, Texas. Defendant may be served with process at 11915 Palmetto Shores, Houston, Texas, 77065 or wherever she may be found.

14. Defendant Trung S. Pham ("Dr. Trung Pham") is an individual residing in Harris County, Texas. Defendant may be served with process at 11915 Palmetto Shores, Houston, Texas, 77065 or wherever he may be found.

15. The term "Defendants" in this petition shall mean Center Convenience, Center Realty, Property, Tamie Pham, and Dr. Trung Pham and the Real Propety known as 10720-10722 Kingspoint Rd, Houston, Texas.

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16. The term "Kingspoint Store" or "Kingspoint Location" in this petition shall mean the retail operation which one or more Defendants operate at 10722 Kingspoint, Houston, Texas 77075, which is known generally as "Almeda Food Mart."

VIII. ACTS OF AGENTS

17. Whenever in this petition it is alleged that Defendants did any act, it is meant that

(a) the named Defendants performed or participated in the act, or

(b) the named Defendants' officers, successors in interest, agents, partners, trustees or employees performed or participated in the act on behalf of and under the authority of one or more of the Defendants.

IX. FACTUAL BACKGROUND

A. Overview of the Synthetic Marijuana Problem.

18. 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

[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.

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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]

19. Synthetic marijuana is often labeled innocently as "incense" and "potpourri" and the packaging may contain the statement "not for human consumption" although the intended purpose is in fact for the product to be consumed by a human.[6] Typically, it is sold in retail smoke shops or head shops in small colorful packets with names such as "Kush" or "spice" or "K2" or "Scooby Snax" and costs between $20 and $25 per packet.[7] The packaging is intended to target young people, who may be afraid of the legal consequences and/or association with illegal drugs but want a "legal" high.[8] According to the federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.[9]

20. Poison control centers report[10] 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;

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[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/.
[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.aapc.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).

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- Intense hallucinations and psychotic episodes;
- Suicidal thoughts and other harmful thoughts and actions.

21. The American Association of Poison Control Centers has reported thousands of instances of exposure to synthetic marijuana each year.[11] In Texas, there has been an uptick in reported overdoses on synthetic marijuana.[12] Throughout the United States, including Texas, reports of synthetic marijuana use have been linked to overdoses and other serious injuries, including bizarre and violent self-mutilations, and deaths:

- 17-year old girl became paralyzed and permanently brain damaged from suffering multiple strokes and violent hallucinations after smoking synthetic marijuana;[13]
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss.[14]
- 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]

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

[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.myfoxhouston.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.myfoxhouston.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/.

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- Police have received multiple reports of users high on synthetic marijuana standing in the middle of the street, disoriented, and with no recollection how they got there; [17]
- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood.[18]
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period.[19]
- A patient presented at an emergency room with self-inflicted fourth-degree burns to his hands and forearms, leading to amputation, due to synthetic marijuana known as Black Diamond.[20]
- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana.[21]
- More than 60 people in Austin, Texas were recently reported to have been sickened by a synthetic drug, known as K-2, including reports of seizures, convulsions and extremely violent behavior.[22]
- A Harris County man recently pled guilty to brutally beating, stabbing and choking his girlfriend to death in front of her children after he smoked a "bad batch" of synthetic

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[16] Ex. 11, Abby Haglage, *When Synthetic Pot Kills*, THE DAILY BEAST (Nov. 21, 2013), http://www.thedailybeast.com/articles/2013/11/21/when-synthetic-pot-kills.html.

[17] Ex. 12, 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/qZ6kxnvJaU2GTJjx5L7g9g.

marijuana known as "Kush."[23] Officers found the man straddling the victim and trying to pull her teeth and tongue out with pliers. *Id.*

B. Defendants Sell Synthetic Marijuana in at Least One Store Location in Harris County.

22. Defendants own and operate at least one retail store in Harris County known as "Almeda Food Mart" and referred to in this petition as the Kingspoint Store.

23. As described herein, the corporation coordinating and managing the Kingspoint Store is Center Convenience, Inc., while the related-party corporation that owns and controls the real property on which the store is located is Center Realty, Inc.

24. The secretary of state filings for Center Convenience list two individuals with the managerial title of "Director" for Center Convenience: Tamie Pham and Dr. Trung Pham. No other company officers are named. Upon reason and belief, Defendant Tamie Pham is intimately involved in the day-to-day operation of the Kingspoint Store.

25. Secretary of State filings list Dr. Trung Pham as the President of and Tamie Pham as Vice President of Center Realty. The two corporate defendants are managed from the Pham's residential home at 11915 Palmetto Shore Dr., Houston, Texas 77065. They are also on the board of directors. No other officers are listed.

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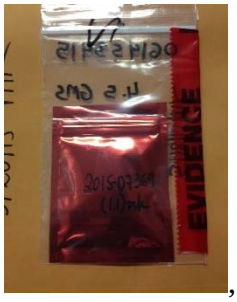
[23] Ex. 15B, "Synthetic Marijuana is blamed in death", Houston Chronicle, July 9, 2015, houstonchronicle.com.

C. Undercover Buys of Synthetic Marijuana at Defendants' Retail Store

26. On or about May 15, 2015, Houston Police Department officers conducted an undercover buy at the Kingspoint Store. (Ex. 16, Incident Report.) Officer N.A.[24] arranged for and supervised an operation whereby the following occurred:

- An informant went into the Kingspoint Store to purchase narcotics.
- The informant asked for a "gold bag".
- The store clerk stated they were out of gold bags, but they had "red bags" in stock.
- The informant purchased a red foil package of synthetic drugs (later determined to contain AB-CHMINACA).

(Ex. 16.) The outside of the red foil package contains no printing or lettering of any kind--no product name, no description of its contents, no listing of ingredients, no manufacturing information, and no weight or price information.



, (Ex. C-1)

27. On May 22, 2015, a second undercover operation was performed. This time the informant requested and obtained a "gold bag" from the store clerk, which was later determined to contain

[24] Undercover officers are identified by their first and last initials.

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AB-CHMINACA and AKB48. (Ex. 17). Similar to the red bag, the "gold bag" packaging contains no printing or lettering of any kind.

(Ex. C-2)

28. HPD submitted the red foil bag and the gold foil bag packages to the Houston Forensic Science Center ("lab") for testing as to their contents. (Ex. B-1, B-2, Custodian of Records Affidavit) The lab found that both packages contained a chemical known as "AB-CHMINACA." (Ex. B-1, B-2, 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.[25] 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

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[25] 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.

crime to manufacture, distribute, dispense or possess a Schedule I drug or synthetic cannabinoid. Tex. Health & Safety Code §§481.1031; 481.1161; 481.113; 481.119; 21 U.S.C. §§ 841, 844.[26]

29. In addition, the gold package from the second undercover buy contained another chemical identified as AKB48, a/k/a APINACA, a synthetic cannabinoid, which is also a Schedule I drug (since 2013). 78 Fed. Reg. 28735; 38 Tex. Reg. 4928-4929. Again, under Texas law, it is a crime to deliver or possess a synthetic cannabinoid. Tex. Health & Safety Code §§481.1031; 481.113; 481.119; 481.1161.

30. On July 20, 2015, HPD conducted a third undercover buy at the Kingspoint Store, at which time the undercover informant purchased another two of the red foil packagse from the clerk similar to the red foil package purchased before. (Ex. 18). Shortly thereafter on the same day, an HPD officer conducted an inspection of the Kingspoint Store[27] to determine whether more synthetic marijuana was for sale. (Ex. 19.) When asked by the officer if there was anything at the store that "didn't need to be there" the store operator walked over to several boxes behind the counter out of public view and showed the officer a large supply of packages of synthetic marijuana according to the appearance of the labeling and packaging (Ex. 19), including packages labeled "Kush," "Scooby Snax," "Klimax," "Geeked Out" and "Master Kush." The store clerk advised the HPD officer that he purchases the synthetic marijuana from a person named "Shawn" typically in the amount of $1000 worth at a time and that the store sells approximately "30-40 packages a day" of synthetic marijuana for approximately $10 - $25 per

[26] In addition, in 2014, the City of Houston recently passed Ordinance § 28-572 outlawing synthetic marijuana. Violation of the ordinance carries a criminal penalty of up to $2000 per violation.

[27] HPD is permitted to inspect facilities like the Kingspoint Store that are licensed by the Texas Alcoholic Beverage Commission.

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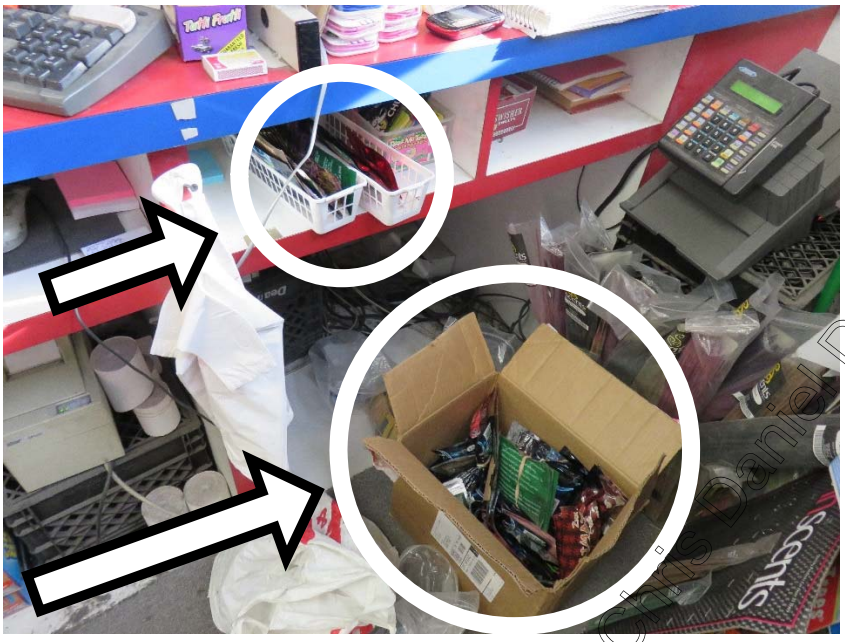
package. (Ex. 19). The store clerk stated that the owner of the business is Tammie Phan. *Id.* HPD took the following photos showing the locations of the synthetic marijuana behind the counter in the store. (Ex. C-3, C-4)



(Ex. C-3, C-4.)

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31. The HPD officer confiscated hundreds of packets of the inventory of synthetic marijuana, weighing over 8 pounds and submitted a sample of 12 packages of this inventory to the lab for testing. (Ex. 19)

32. The Houston Forensic Science lab found that the 12 sample packages contained AB-CHMINACA, AKB48, AB-FUBINACA, XLR11, 5-FLUORO-PB-22, PB-22—all of which are Schedule I drugs. (Ex. B-3, Custodian of Records Affidavit) The packages also contained the synthetic analogues: NM2201, 5-FLUORO-AMB, and 5—FLUORO-ADB. (Ex. B-3)

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

33. By selling, offering for sale, and distributing synthetic marijuana, 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.

34. By selling these illegal products at their retail store, 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 synthetic marijuana products by Defendants and their agents confirm that Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers. The absence of any printing or lettering of any on the red and gold foil packages is highly suspicious in and of itself. The absence of any manufacturing information, ingredients, contents or even a product name is sufficient to put Defendants on notice that the product they are selling is not legitimate. The other packages with labels such as “Kush” and “Scooby Snax” and “Klimax” are well known

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synthetic marijuana products. The fact that these packages are kept behind the store counter out of sight and customers must request it by name also reveals an awareness by the Defendants and their agents that these products are not legitimate. Finally, the inflated price—between $10 and $25 per bag (*see* Ex. 19)—dispels any notion that the products are harmless incense or pot pourri. Consumers, believing that because these products are sold at a retail store they are legal and harmless, are exposed to the physical dangers of Schedule 1 drugs and their analogues, as well as serious potential criminal liabilities.

35. Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at the Kingspoint Store. Defendants Tamie and Trung Pham, as owners, directors and officers of the Defendants, have at all relevant times been involved in the day to day operations and managementof the Kingspoint Store and on information and belief knowingly participated in and/or tolerated the illegal activities described herein. Delivery, sale and possession of controlled substances are illegal activities that are outside the corporate veil. In the alternative, the corporate fiction of the Defendant corporate entities must be disregarded in this case and Defendants Tamie and Trung Pham must be held personally liable for the acts of the corporate entities because under Texas law the corporate structure may not be used to protect a crime, circumvent the law, justify a wrong, perpetuate a fraud, or allow continuance of a common nuisance.

36. The dangers of Defendants' practice of selling synthetic marijuana from a retail location are heightened by the fact that within the area of the Kingspoint Store are numerous schools, including South Houston High School, Beverly Hills Intermediate School and numerous public elementary shcools and and private schools. Additionally, within about half of a mile is the main Southeast Houston Mall, Almeda Mall, where teens congregate.

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

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

38. 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).

39. The Kingspoint Store constitutes a common nuisance under Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4) because persons habitually go to the store to purchase and possess a controlled substance in violation of Chapter 481 of the Texas Health & Safety Code. Defendants own, maintain, operate, or use the store 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). Plaintiffs 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 the store as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(b),(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, be in the amount set by the Court, but no less

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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 Kingspoint Store. *Id.*

40. Based upon Section 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. The final judgment must order that the location where the nuisance was found is closed for one year.

41. 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, 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 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.

42. 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.*

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XI. VIOLATIONS OF THE DTPA
TEX. BUS. & COM. CODE § 17.41 *ET SEQ*.

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

44. 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) 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);

(c) 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);

(d) 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).

(e)

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

45. Plaintiff, the State of Texas, 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.

46. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiffs request 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 Kingspoint Store and order such requirements as to prevent the ongoing nuisance activity in Harris County, Texas. Tex. Civ. Prac. & Rem. § 125.002(b)(e). Plaintiffs are not required to verify facts in support of injunctive relief to abate the nuisance activity. Tex. Civ. Prac. & Rem. § 125.002 (a).

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

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

49. Plaintiffs further requests the Court find Plaintiffs are likely to succeed on the merits on their claim for common nuisance and include in the Court's temporary injunction order (i) reasonable requirements to prevent the use or maintenance of the Kingspoint Store as a nuisance, and (ii) require that Defendants execute a bond of not less than $5,000 nor more than $10,000, payable to

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the State, with sufficient sureties and conditioned that Defendants will not maintain a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.045(a).

XIII. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

50. Plaintiffs request leave of this Court to conduct depositions of witnesses and parties, including relevant third 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, Plaintiffs request that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

XIV. TRIAL BY JURY

51. Plaintiffs herein request a jury trial and tender the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. 216 and the Tex. Gov't Code § 51.604.

XV. CONDITIONS PRECEDENT

52. All conditions precedent to Plaintiffs' claim for relief have been performed or have occurred.

XVI. REQUEST FOR DISCLOSURE

53. 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.

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XVII. PRAYER

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

55. Plaintiffs prays that a TEMPORARY RESTRAINING ORDER be issued, 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—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;

(c) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any products containing controlled substances or synthetic cannabinoids;

(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;

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(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;

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(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, Harris County and the City of Houston, 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.

56. Plaintiff further prays that this Court award judgment for the Plaintiff, the State of Texas, ordering Defendants to pay civil penalties to the State of Texas for each violation of the DTPA up to a total of $20,000 per each violation;

57. 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). Plaintiffs further pray 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).

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58. Plaintiffs further pray that this Court grant all other relief to which the Plaintiffs may show themselves entitled.

Respectfully submitted,

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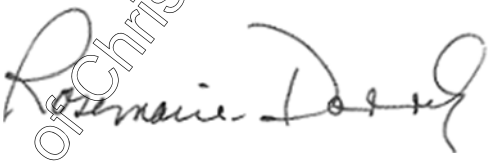

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