



## I. DISCOVERY

1. Plaintiff intends to conduct discovery under Level 2 as outlined by Rule 190.3 of the Texas Rule of Civil Procedure and affirmatively plead that this case is not governed by the expedited-actions process outlined in Rule 169 of the Texas Rule of Civil Procedure for the following reasons:

- (a) the relief sought by Plaintiff includes non-monetary injunctive relief; and
- (b) Plaintiff's claim for monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees—is in excess of \$100,000.

## II. JURISDICTION AND STATUTORY AUTHORITY

2. This enforcement action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, jointly with Harris County Attorney Vince Ryan in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by § 17.47 and § 17.48 of the Texas Deceptive Trade Practices Act ("DTPA"), 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.

3. In addition this suit is brought by the Office of Attorney General and the Harris County Attorney's Office, against Defendants to enjoin and abate a common nuisance pursuant to Tex.

Civ. Prac. & Rem. Code §§ 125.001-125.047. Verification of the petition or proof of personal injury need not be shown by Plaintiff under Tex. Civ. Prac. & Rem. Code § 125.002(a).

### III. PUBLIC INTEREST AND NOTICE

4. Plaintiff, the State of Texas, has reason to believe Defendants have engaged in, and will continue to engage in, the unlawful practices set forth in this Petition. Plaintiff has reason to believe Defendants have caused and will cause immediate and irreparable injury, loss, and damage to the State of Texas by selling synthetic cannabinoids to consumers without disclosing that these substances are illegal and dangerous to their health. These proceedings are in the public's interest. *See* DTPA § 17.47(a).

5. Defendants' conduct in selling controlled substances to consumers from their 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.

6. Prior to hearing on the Plaintiff's Application for Temporary Restraining Order, Defendants were provided with written notice of the hearing along with a copy of the Plaintiff's Petition. In the event Defendants do not appear for the hearing on the Plaintiff's Application for Temporary Restraining Order, the Court is statutorily authorized to issue the Temporary Restraining Order *ex parte*. Pre-suit notice is not required under DTPA § 17.47(a) because there is good cause to believe, due to the seriousness of the allegations and the danger to public health, immediate relief is necessary without delay. *Id.*

#### IV. VENUE

7. 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; and
- (c) Defendants' principal places of business are in Harris County, Texas.

8. 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

9. 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

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

## VII. DEFENDANTS

11. Defendant PN SUPER TEXAS, INC. is a Texas corporation doing business at 506 Houston Blvd., South Houston, Texas 77587, in Harris County, Texas. Defendant may be served with process by serving its registered agent, president and director, Phong Duc Nguyen, at 506 Houston Blvd., South Houston, Texas 77587 or wherever he may be found.

12. Defendant SUPER TEXAS STORE, INC., is a Texas corporation doing business at 506 Houston Blvd., South Houston, Texas 77587, in Harris County, Texas. Defendant may be served with process by serving its registered agent, president and director, Hue Cong Huynh, at 506 Houston Blvd., South Houston, Texas 77587 or wherever he may be found.

13. Defendant, the REAL PROPERTY KNOWN AT 506 HOUSTON BLVD., SOUTH HOUSTON, TEXAS 77587 ("Property") is sued *in rem*. This Property is owned by ANSE Investment Group LLC, a Texas limited liability company that may be served with process by serving its registered agent, manager, and director, Gam K. Ngo, at 506 Houston Blvd., South Houston, Texas 77587 in Harris County, Texas, or wherever he can be found.

14. Defendant ANSE Investment Group LLC is a Texas limited liability company that owns the real property located at 506 Houston Blvd, South Houston, Texas 77587, in Harris County, Texas. Defendant may be served with process by serving its registered agent, manager and director, Gam K. Ngo, at 506 Houston Blvd., South Houston, Texas 77587, in Harris County, Texas or wherever he can be found.

15. Defendant PHONG DUC NGUYEN is an individual doing business in Harris County, Texas and may be served with process by serving him at 506 Houston Blvd., South Houston, Harris County, TX 77587 or wherever he may be found.

16. Defendant HUE CONG HUYNH is an individual doing business in Harris County, Texas and may be served with process by serving him at 506 Houston Blvd., South Houston, Harris County, TX 77587 or wherever he may be found.

17. Defendant GAM K. NGO is an individual doing business in Harris County, Texas and may be served with process by serving him at 506 Houston Blvd., South Houston, Harris County, TX 77587 or wherever he may be found.

### VIII. ACTS OF AGENTS

18. Whenever it is alleged that Defendants did any act, it is meant that

(a) the named Defendants performed or participated in the act, and/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 (1) or more of the Defendants.

### IX. FACTUAL BACKGROUND

#### A. *Overview of the Synthetic Marijuana Problem.*

19. Since 2010, the United States has experienced an epidemic of so-called designer drugs. Designer drugs are substances which mimic the effects of controlled substances such as marijuana, cocaine, and amphetamines, but their chemical structure has been modified so the actual chemical composition is not banned as a controlled substance. The chemical structure of

the designer drug is purposefully altered by designer drug manufacturers (often overseas) in order to circumvent controlled substance drug laws. As the legislature passes new laws to ban these newly created substances, the manufacturers simply tweak the chemical structure again so the substances are no longer a controlled substance and may be marketed legally.

20. Synthetic marijuana is a designer drug, often manufactured overseas, that is marketed as a “safe” and “legal” alternative to marijuana.<sup>1</sup> Synthetic marijuana is not marijuana; rather, it is a dried leafy substance sprayed with powerful, added-in hallucinogenic chemicals which are dangerous and highly addictive to the user.<sup>2</sup> Synthetic marijuana has no medical use.<sup>3</sup> Similar to marijuana, it is consumed when the user smokes it in a bowl, bong, water pipe, or by rolling it into a cigarette.<sup>4</sup> The added chemicals are intended to mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana.<sup>5</sup>

21. Synthetic marijuana is often labeled innocently as “incense” or “potpourri” and the packaging may contain the statement “not for human consumption” although the intended purpose is consumption by a human.<sup>6</sup> 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

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<sup>1</sup>Ex. 1, p. 2, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://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](http://www.federalregister.gov/articles/2015/01/30/2015-01776/schedules-of-controlled-substances-temporary-placement-of-three-synthetic-cannabinoids-into-schedule#h-4).

<sup>2</sup> Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

<sup>3</sup> Ex. 2, p. 5, [www.federalregister.gov/articles/2015/01/30/2015-01776](http://www.federalregister.gov/articles/2015/01/30/2015-01776).

<sup>4</sup>(All exhibits are attached to the Original Petition and incorporated herein.) Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

<sup>5</sup> Ex. 1, p. 3; Ex. 2, p. 4, [www.federalregister.gov/articles/2015/01/30/2015-01776/](http://www.federalregister.gov/articles/2015/01/30/2015-01776/).

<sup>6</sup> Ex. 3, [www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts](http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts).

costs between \$20 and \$25 per packet.<sup>7</sup> 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.<sup>8</sup> According to the federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.<sup>9</sup>

22. Poison control centers report<sup>10</sup> that users of synthetic marijuana report symptoms such as:

- severe paranoia, agitation and anxiety;
- psychotic episodes;
- racing heartbeat and high blood pressure (in a few cases associated with heart attacks);
- nausea and vomiting;
- muscle spasms, seizures and tremors;
- intense hallucinations and psychotic episodes;
- suicidal thoughts and other harmful thoughts and actions.

23. The American Association of Poison Control Centers reports thousands of instances of exposure to synthetic marijuana each year.<sup>11</sup> In Texas, there has been an uptick in reported

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

<sup>8</sup> Ex. 1, p. 2, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana); Ex. 3, p. 1.

<sup>9</sup> Ex. 1, [www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana](http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana).

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

<sup>11</sup> Ex. 4, [www.aapcc.org/alerts/synthetic-marijuana](http://www.aapcc.org/alerts/synthetic-marijuana).

overdoses on synthetic marijuana.<sup>12</sup> 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. For example:

- a 17-year old girl became paralyzed and permanently brain damaged from suffering multiple strokes and violent hallucinations after smoking synthetic marijuana;<sup>13</sup>
- a 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss;<sup>14</sup>
- three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011;<sup>15</sup>
- an 18-year old Amarillo man died after smoking synthetic marijuana;<sup>16</sup>
- 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; <sup>17</sup>

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<sup>12</sup> Ex. 6, David Winograd, *Nearly 120 People Overdose on Synthetic Marijuana in 5-Day Period*, TIME (May 6, 2014), <http://time.com/89835/synthetic-marijuana-overdoses-k2/>; see also Ex. 7, Kirstin Tate, *Synthetic Marijuana Hospitalizes 45 In Texas*, BREITBART (May 5, 2014), <http://www.breitbart.com/texas/2014/05/05/synthetic-marijuana-hospitalizes-45-smokers-in-texas/>. Ex. 12, *East Texas Police Seek Solution to Synthetic Marijuana Problem*, www.news-journal.com. See also www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area.

<sup>13</sup> 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>.

<sup>14</sup>Ex. 9, Synthetic marijuana concern in Houston area, www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area.

<sup>15</sup> Ex. 10, [www.foxnews.com/health/2011/11/08/texas-teens-had-heart-attacks-after-smoking-k2/](http://www.foxnews.com/health/2011/11/08/texas-teens-had-heart-attacks-after-smoking-k2/).

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

- synthetic marijuana is also blamed for the death of a soldier from Fort Hood;<sup>18</sup>
- over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;<sup>19</sup>
- 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;<sup>20</sup>
- a 30-year old man was found dead in his car, due to poisoning from synthetic marijuana<sup>21</sup>
- 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; and<sup>22</sup>
- 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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<sup>17</sup> 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/>

<sup>18</sup> 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/>.

<sup>19</sup> Ex. 6, <http://time.com/89835/synthetic-marijuana-overdoses-k2/>.

<sup>20</sup> Ex. 15, Smoking synthetic marijuana leads to self-mutilation requiring bilateral amputations.

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

<sup>22</sup> 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.”<sup>23</sup> Officers found the man straddling the victim and trying to pull her teeth and tongue out with pliers. *Id.*

***B. Houston City Ordinance Prohibiting Sale of Synthetic Drugs.***

The dangers of synthetic marijuana have been widely reported and the subject of a recent ordinance by the City of Houston. In October 2014, the City of Houston passed Ordinance No. 2015-913, outlawing synthetic drugs. (Ex. 16) The City Council found that synthetic cannabinoids are being sold in retail outlets as household products such as “herbal incense” and labeled “not for human consumption” to “mask their intended purpose” and avoid regulatory oversight. (Ex. 16) The Council found these substances endanger the public health and cited a 2013 study that found synthetic drugs are the second most widely used illicit drug (after marijuana) among tenth graders. (Ex. 16) The Council also noted that businesses that sell illicit synthetic drugs often conceal them from public display, that the drugs are often marketed as a safe and legal substitute to marijuana, and that manufacturers continually reconfigure the banned substances to produce new ones to avoid prosecution. Section 28-572 prohibits the sale, the display, the marketing, or offering for sale of synthetic drugs in the City of Houston. (Ex.16) Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

***C. Defendants Sell Synthetic Marijuana at 506 Houston Blvd., South Houston, Texas in Harris County.***

24. Defendants own and operate a convenience store at 506 Houston Blvd in South Houston, Texas, which is in Harris County. Based upon the Texas Comptroller franchise tax reports,

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<sup>23</sup> Ex. 15B, “Synthetic Marijuana is blamed in death”, Houston Chronicle, July 9, 2015, houstonchronicle.com.

Secretary of State filings, and assumed name records, Defendants PN Super Texas, Inc., Super Texas Store, Inc., and ANSE Investment Group LLC, are currently doing business at the location at 506 Houston Blvd., South Houston, Texas 77587. (Ex. 19 through 31). Defendant Phong Duc Nguyen is the president and sole director of Defendants PN Super Texas, Inc. (Ex. 20, 22) Defendant Hue Cong Huynh is the president and sole director of Super Texas Store, Inc. (Ex. 24, 25) Defendant Gam K. Ngo is the sole manager and director of ANSE Investment Group LLC. (Ex. 26, 30)

25. Defendant ANSE Investment Group LLC., owns and controls the real property at 506 Houston Blvd., South Houston, Texas. (Ex. 27)

***D. Undercover Buys of Synthetic Marijuana at Defendants' Convenience Store.***

26. On June 24, 2015, an undercover officer of the Harris County Sheriff's Office Narcotics Task Force conducted an undercover operation at 506 Houston Blvd., South Houston, Texas. (Ex. 32). The officer entered the store and noticed the store clerk was behind the counter, which was completely secured by glass and burglar bars with just a single small opening for transactions. (Ex. 32) The undercover officer approached the counter and asked the store clerk behind the glass for "Strawberry Kush," a common term for synthetic marijuana. (Ex.32) The store clerk replied he did not have any strawberry flavor. (Ex. 32) The officer then asked for "Pineapple Kush" instead. The store clerk bent over and retrieved a bag of "Pineapple Kush" from under the counter. (Ex. 32) The undercover officer paid \$15 for the "Kush" and exited the store. (Ex. 32) Shortly thereafter, a uniformed patrol officer entered the business and obtained the driver's license of the store clerk, identified as Phong Duc Nguyen (also the president and sole director of PN Super Texas, Inc.). (Ex. 32).

27. Four weeks later, on July 21, 2015, an undercover officer of the Harris County Sheriff's Office Narcotics Task Force conducted a second undercover buy at the same location at 506 Houston Blvd., South Houston, Texas. (Ex. 33) Again, the undercover officer entered the store, approached the counter, and asked the store clerk (the same Phong Duc Nguyen) behind the glass for a bag of "Pineapple Kush." (Ex. 33) The clerk bent over and retrieved a bag of "Pineapple Kush" from a bin under the counter where the officer observed additional bags of "Kush" remaining. (Ex. 33) The officer then purchased the "Pineapple Kush" for \$15.00. (Ex. 33) After the officer exited the store, a marked patrol officer entered the business and obtained the driver's license of the clerk, Phong Duc Nguyen. (Ex. 33).

28. Shortly, thereafter, on July 24, 2015, the Harris County Sheriff's Office Narcotics Task Force executed a search warrant at the 506 Houston Blvd., South Houston, Texas. (Ex. 34) The search warrant instructed officers to seize synthetic marijuana labeled as "Kush" and any other synthetic marijuana present, however labeled. (Ex. 34). Officers seized 1,600 packets from the store. (Ex. 35, 36, 37). Defendant Phong Duc Nguyen was present during the search and seizure and told the officers the following:

- For the past 11 months, Defendant Nguyen has been running the store for his brother who had become ill;
- Maybe twice a week an unidentified Hispanic male would come to the store and drop off the synthetic marijuana;
- Defendant Nguyen pays \$6.00 a bag for the synthetic marijuana and then sells it for \$15.00 a bag.

(Ex. 35)

29. Narcotics investigators then searched the premises for additional synthetic marijuana and found more packets in several locations, including drawers behind the counter, three drawers in a file cabinet, and other assorted locations behind the sales counter. (Ex. 35-38).

30. A sampling of the 1600 packets seized from the 506 Houston Blvd store was submitted to Harris County Institute of Forensic Science (the “lab”) for testing. (Ex. 40) The lab tested over 40 of the seized packets, describing each tested packet as containing a “green leafy substance” with a “fruity odor.” (Ex. 40) The lab’s testing revealed multiple packets obtained from the 506 Houston Blvd. store contained an illegal controlled substance known as AB-CHMINACA, a synthetic cannabinoid. (Ex. 40) These packets containing AB-CHMINACA had a variety of names including, “Geeked Up Premium Natural Blend ... PotPourri,” “3xxx Klimax Potpourri,” “Diablo 10 g,” “Kush Blueberry,” “White Tiger Kush,” “Mind Trip 4 g,” “California Dreams,” “Kush Cotton Candy,” “Dead Man Walking,” “WTF Next Generation Herbal Potpourri,” “Scooby Snax Potpourri blueberry bliss,” “Dead Man Legal Herbal Sacket,” “Phantom 4 g” “Insane Next Generation Herbal Potpourri 10 g,” and “Bomb Marley Botanical Potpourri Strawberry Banana.” (Ex. 40)

31. 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). (Ex. 18) *See* 40 Tex. Reg. 2007, Apr. 3, 2015; 21 CFR part 1308.<sup>24</sup> 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

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<sup>24</sup><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](http://www.ncbi.nlm.nih.gov/pubmed/25730924).

for use of the drug or other substance under medical supervision. Tex. Health & Safety Code §481.035; 21 U.S.C § 812. Other Schedule I drugs include heroin, LSD, MDMA (ecstasy) and marijuana. Under Texas and federal law, it is a crime to manufacture, distribute, dispense or possess a Schedule I drug or synthetic cannabinoid such as AB-CHMINACA. Tex. Health & Safety Code §§481.1031; 481.1161; 481.113; 481.119; 21 U.S.C. §§ 841, 844.

32. The lab testing also revealed multiple packets obtained from the 506 Houston Blvd. store contained the controlled substance, XLR11. (Ex. 40) XLR11 is a controlled substance that acts as a potent agent for cannabinoid receptors and also is listed as a Texas Schedule 1 substance (most dangerous). 38 Tex. Reg. 4928 (effective August 1, 2013). (Ex. 17)

33. The lab testing also revealed multiple packets obtained from the 506 Houston Blvd. store contained other Schedule 1 controlled substances, such as AKB48, AB-FUBINACA, and PB-22, and analogues of controlled substances, such as NM-2201, 5-Flouro-AB-PINACA, FDU-PB-22, FUB-AK48, FUB-144, FUB-PB-22. (Ex. 40) See 40 Tex. Reg. 2007-2008. (Ex. 18)

***E. Defendants Have Engaged in False, Misleading and Deceptive Trade Practices and Maintain a Common Nuisance.***

34. By selling, offering for sale, and distributing synthetic marijuana, including “Kush,” 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. The 506 Houston Blvd. store also constitutes a common nuisance as defined by Texas law.

35. The packaging of the synthetic marijuana products obtained by the officers from the store, make a number of false and misleading statements designed to mislead consumers into believing that the product is safe and legal.

36. For example, the “Kush” products make a number of false and misleading statements designed to mislead consumers into believing the product is safe and legal, such as “Lab certified: this product contains no prohibited chemicals or materials” and “This product is legal for sale in all 50 states as of September 1, 2011.” (Ex. 40) The packaging also lists the “main ingredients” as a variety of innocuous sounding vegetable matters—such as “lemon balm,” “passion flower” and “wild lettuce” without any mention of the key ingredient—AB-CHMINACA, a highly addictive and dangerous chemical and Schedule I drug. (Ex. 40) The statement on the packaging, “not intended for human consumption,” is simply an absurdity, designed to provide cover for the seller and the user if they are confronted by law enforcement.



37. Similarly, the “White Tiger” packaging falsely states that “[t]his product does not contain any prohibited ingredients” when in fact the product contains illegal controlled substances. The

“Geeked Up” product falsely states that it is “potpourri” and “for fragrance purposes only” and is “legal” when in fact the product also contains illegal controlled substances. (Ex. 40)

38. By selling synthetic marijuana products at their convenience 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 by Defendants and their agents—keeping it hidden, requiring customers to ask for it by name, and charging the inflated price for products labeled “incense” and “potpourri”<sup>25</sup>—confirm that Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers. Defendants’ deliberate disregard for the law was confirmed when Defendants continued to sell synthetic marijuana to the public after the initial undercover operation on June 24, 2015, when Defendant Nguyen was asked to provide his i.d. to the uniformed officer. (Ex. 32, 33, 35-37) Unsuspecting consumers who purchase these products from Defendants are exposed to the physical dangers of Schedule 1 drugs, such as AB-CHMINACA, XR11, AKB48, AB-FUBINACA, and PB-22, as well as the dangers of synthetic analogues. Defendants’ conduct also exposes unwitting consumers to serious potential criminal liabilities.

39. Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at the store at 506 Houston Blvd., South Houston, Harris

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<sup>25</sup> The cost of the leafy substances listed as ingredients in a single packet of Kush is approximately 77 cents. The price charged by Defendants for the undercover buys was \$15 per package. (Ex. 32, 33)

County, Texas. Defendant Nguyen directly participated in the purchase and sale of the synthetic marijuana, as confirmed by the undercover officers. (Ex. 32, 33, 35) Defendant Huynh as sole owner and president of Super Texas Store, Inc., and Defendant Ngo, as manager and director of ANSE Investment Group LLC, 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 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.

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

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

41. 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).

42. The store at 506 Houston Blvd., South Houston, Texas constitutes a common nuisance under Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4) because persons habitually go to this store to

purchase and possess a controlled substance in violation of Chapter 481 of the Texas Health & Safety Code. Defendants own, maintain, operate, and/or use the stores knowingly tolerate the nuisance activity. Further, Defendants fail to make reasonable attempts to abate the nuisance activity. Tex. Civ. Prac. & Rem. Code § 125.002(b); § 125.0015(a)(4). This action is brought by the State to request injunctive relief to abate this nuisance, enjoin Defendants from maintaining or participating in the nuisance, and for any other reasonable requirements to prevent the use of these stores as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(b),(e). Plaintiff requests that upon issuance of injunctive relief, each Defendant be ordered to post a bond in the name of the State to be forfeited to the State in the event of a violation by Defendants of the Injunction. Tex. Civ. Prac. & Rem. Code § 125.003. The bond must be payable to the State of Texas, be in the amount set by the Court, but no less than \$5000 nor more than \$10,000, have sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly allow a common nuisance to exist at the 506 Houston Blvd. location. *Id.*

43. Based upon Section 125.002 of the Texas Civil Practice & Remedies Code, if the judgment is in favor of the Plaintiff, the Court shall grant an injunction ordering Defendants to abate the nuisance and be enjoined from maintaining or participating in the common nuisance. The Court may include in the order reasonable requirements to prevent the use or maintenance of the place as a nuisance. The judgment must order the location where the nuisance was found be closed for one (1) year.

44. Pursuant to Section 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this Court be violated, the State may sue upon the bond, and upon showing a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to the State and the location where the

nuisance was found should be closed for one (1) 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 a fine of not less than \$1000 nor more than \$10,000, confinement in jail for a term of not less than 10 (ten) nor more than 30 (thirty) days, and both 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.

45. On violation of the bond or injunction, the place where the nuisance exists shall be ordered closed for one year from the date of the order of bond forfeiture. *Id.*

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

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

47. 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); and

(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).

## **XII. THE CORPORATE FICTION MUST BE DISREGARDED.**

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

49. The owners and shareholders of the Defendant corporate entities should be held personally liable for the acts of the corporations as the corporations are the alter egos of the shareholders, the corporations have been used for an illegal purpose, and the corporations have been used as a sham to perpetuate a fraud.

50. Plaintiff has reason to believe the Defendants are engaging in illegal activities that tend to deceive others and injure the public and are using the corporate shield to protect themselves from individual liability. In addition, on information and belief, the individual Defendants are the alter ego of their respective corporate entities.

## **XIII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

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

52. Further, pursuant to Chapter 125 of the Texas Civil Practice & Remedies Code, Plaintiff requests the Court enjoin Defendants from maintaining or participating in the common nuisance described herein, *i.e.*, delivery and possession of controlled substances in violation of Chapter 481 of the Texas Health & Safety Code at the store at 506 Houston Blvd., South Houston, Texas, and order such requirements as to prevent the ongoing nuisance activity in Harris County, Texas. Tex. Civ. Prac. & Rem. § 125.002(b)(e). Plaintiff is not required to verify facts in support of injunctive relief to abate the nuisance activity. Tex. Civ. Prac. & Rem. § 125.002 (a).

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

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

55. Plaintiff further requests the Court find Plaintiff is likely to succeed on the merits on its claim for common nuisance and include in the Court's temporary injunction order reasonable requirements to prevent the use or maintenance of the 506 Houston Blvd. store as a nuisance, and (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).

#### **XIV. REQUEST TO CONDUCT DISCOVERY PRIOR TO**

## **TEMPORARY INJUNCTION HEARING**

56. Plaintiff requests leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiff requests that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

### **XV. TRIAL BY JURY**

57. Plaintiff herein requests a jury trial and tenders the jury fee to the Harris County District Clerk's office pursuant to Tex. R. Civ. P. 216 and the Tex. Gov't Code § 51.604.

### **XVI. CONDITIONS PRECEDENT**

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

### **XVII. REQUEST FOR DISCLOSURE**

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

### **XVIII. PRAYER**

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

61. Plaintiff prays that the TEMPORARY RESTRAINING ORDER be extended, and that after due notice and hearing, a TEMPORARY INJUNCTION be issued, and upon final hearing a PERMANENT INJUNCTION be issued, restraining, and enjoining Defendants, Defendants' officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all Defendants—from engaging in the following acts or practices without further order of the Court:

- (a) Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to the purchase and sale of synthetic cannabinoids 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, products containing controlled substances, or controlled substance analogues 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;

- (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;
- (i) 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;

- (j) 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;
- (k) Failing to cooperate with authorized representatives of the State and Harris County, including law enforcement representatives, in locating and impounding all synthetic marijuana products in Defendants' custody, care and control or located on Defendants' premises and preserving all documents related to purchase and sale of synthetic marijuana products in Defendants' custody, care or control.

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

63. Plaintiff further prays that upon final hearing that this Court order each Defendant to pay to the Plaintiff its reasonable and necessary attorney fees and costs of court pursuant to the Tex. Govt. Code § 402.006(c). Plaintiff further prays for recovery of reasonable

attorneys' fees, investigative costs, court costs, witness fees, and deposition fees pursuant to Tex. Civ. Prac. & Rem. Code § 125.003(b),(d).

64. Plaintiff further prays that this Court grant all other relief to which the Plaintiff is entitled.

Respectfully submitted,

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