

THE STATE OF TEXAS,

*Plaintiff,*

v.

MOON MART a/k/a AZEL H. CORP., et al,

*Defendants.*

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IN THE DISTRICT COURT

OF HARRIS COUNTY, TEXAS

164th JUDICIAL DISTRICT

**PLAINTIFF’S MOTION FOR CONTEMPT AND STATUTORY REMEDIES DUE TO  
DEFENDANTS’  
VIOLATION OF AGREED PARTIAL TEMPORARY INJUNCTION**

TO THE HONORABLE COURT:

Plaintiff, the STATE OF TEXAS, acting by and through Attorney General of Texas, Ken Paxton, and the Harris County Attorney, Vince Ryan, herein files this Motion for Statutory Remedies against Defendants MOON MART A/K/A AZEL H. CORP. and HAZIM H. QUADUS (collectively referred to as “Defendants”), for violation of the Court’s Agreed Partial Temporary Injunction, entered into April 20, 2016.

**I. INTRODUCTION AND FACTUAL BACKGROUND**

1. This case is brought by Plaintiff, the STATE OF TEXAS, acting by and through Attorney General of Texas, Ken Paxton, and the County Attorney of Harris County, Texas, Vince Ryan, against Defendants related to their sale and distribution of controlled substances and controlled substance analogues from their convenience store, known as Moon Mart, located at 10010 La Porte Freeway, Houston, Texas 77017.

2. This action is brought under the Plaintiff’s statutory authority under i) Chapter 125 of the Texas Civil Practice & Remedies Code relating to Defendants’ maintenance of a common

nuisance, and ii) for deceptive trade practices under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code §§ 17.41–17.63. The synthetic marijuana products sold by Defendants at their retail store are illegal controlled substances and controlled substance analogues under Chapter 481 of the Texas Health & Safety Code (“Texas Controlled Substances Act”).

3. On **April 20, 2016**, the Court signed an Agreed Partial Temporary Injunction. (Ex. 1, Agreed Partial Temporary Injunction). The Agreed Partial Temporary Injunction was signed by Defendants’ attorney as well as Defendant Hazim Qadus, the president of Moon Mart a/k/a Azel H. Corp. The Agreed Partial Temporary Injunction orders Defendants to post a bond of \$10,000.00, or in lieu of bond, make a cash deposit of \$10,00.00 in the Court’s registry as required by Texas Civil Practice and Remedies Code § 125.045(a)(1)-(2), (a-1)(1)-(4). (Ex. 1 at 10).

4. In the Agreed Partial Temporary Injunction, the Parties stipulated to the following:

- They acknowledge receipt of copies of this Agreed Partial Temporary Injunction and have full and actual notice of the terms of this Agreed Partial Temporary Injunction;
- The issuance and service of a writ of injunction is waived; and
- The terms of this Agreed Partial Temporary Injunction are sufficiently detailed and specific to be enforceable by the Court in conformance with Texas Rule of Civil Procedure 683 and Chapter 125 of the Texas Civil Practice and Remedies Code.

(Ex. 1 at 2). The Court also found it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in the District Court is proper. (Ex. 1 at 2).

5. The Agreed Partial Temporary Injunction also orders that Defendants are enjoined from, among other things:

- selling, distributing, delivering, or possessing controlled substances;
- selling, distributing, delivering, or possessing products labeled as potpourri or incense that contain controlled substances;

- selling, distributing, delivering, or possessing products labeled as “not for human consumption” when the product is in fact intended for consumption;
- selling, distributing, delivering, or possessing products labeled as “Legal” when the product in fact contains a controlled substance;
- selling, distributing, delivering, or possessing products labeled as “Lab Certified” when the product in fact is not certified by a bona-fide laboratory;
- selling, distributing, delivering, or possessing products that do not contain the name and location of the manufacturer or distributor on the package labeling;
- failing to comply with City of Houston Ordinance 2014-913; and
- maintaining a common nuisance as defined by § 125.0015 of the Civil Practice and Remedies Code.

(Ex. 1 at 5–7).

6. As of the date of the filing of this Motion, Defendants have failed to post a bond.

7. On May 5, 2016, officers with the Houston Police Department Narcotics Division conducted an undercover operation at Moon Mart and seized approximately one kilogram (over 2 pounds) of synthetic marijuana from the store. (Ex. 2) The store clerk was arrested, and it was determined she had an outstanding felony warrant for delivering of synthetic cannabinoids. *Id.*

## **II. VIOLATIONS OF THE COURT’S AGREED PARTIAL TEMPORARY INJUNCTION ORDER**

8. As of the date of filing this Motion, in violation of the Agreed Partial Temporary Injunction, Defendants have not posted a bond of \$10,000.00 or, in lieu of bond, made a cash deposit of \$10,000.00 in the Court’s registry. Indeed, Defendants have not posted any amount with the registry of the Court.

9. As noted, on May 5, 2016, officers with the Houston Police Department Narcotics Division conducted an undercover buy of synthetic marijuana at Moon Mart. HPD officers then seized approximately one kilogram of suspected synthetic marijuana. The Houston Forensic

Science Center analyzed the packets seized by law enforcement on May 5, 2016, and determined they contained a plant substance and chemical known as FUB\_AMB, which is an illegal synthetic cannabinoid under the Texas Controlled Substances Act. (Ex. 3) Tex. Health & Safety Code §481.1031.(b)(5).

10. Plaintiff requests a hearing to present evidence that Defendants are in violation of the Court's Agreed Partial Temporary Injunction by (1) failing to post the required cash bond of \$10,000.00, and (2) continuing to sell synthetic cannabinoids after entry of the Court Order.

**III. STATUTORY REMEDIES UNDER CHAPTER 125 OF THE TEXAS CIVIL PRACTICE & REMEDIES CODE AND CHAPTER 17 OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT**

11. Under DTPA § 17.47(e), "Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than \$10,000 per violation, not to exceed \$50,000."

12. Under § 125.002(d) of the Texas Civil Practice and Remedies Code, a person who violates a temporary or permanent injunctive is subject to:

- a fine of not less than \$1,000 or more than \$10,000;
- confinement in jail for a term of not less than 10 or more than 30 days; or
- both fine and confinement.

13. In addition, under § 125.045(d) of the Texas Civil Practice and Remedies Code, if after an entry of a temporary or permanent injunction, a court determines that a condition of the injunctive order is violated, the Court may:

- order a political subdivision to discontinue the furnishing of utility services to the place at which the nuisance exists;
- prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;

- revoke the certificate of occupancy of the place;
- prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
- limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law;
- order a landlord to terminate a tenant's lease if: (A) the landlord and the tenant are parties to the suit; and (B) the tenant has violated a condition of the injunctive order; or
- order any other legal remedy available under the laws of the state.

Tex. Civ. Prac. & Rem. Code § 125.045(b). Further, under §125.003(a), upon violation of the Court's injunctive order, the place where the nuisance exists shall be ordered closed for one year.

Tex. Civ. Prac. & Rem. Code § 125.003(a).

14. Further, the Court may order forfeiture of the Defendants' bond of \$10,000.00 and order that the Defendants pay the State's reasonable attorney's fees and costs. Tex. Civ. Prac. & Rem. Code § 125.045(c), § 125.003.

15. In the case at bar, the Defendants have failed to post a bond and continued to sell synthetic cannabinoids, and have therefore failed to comply with the key terms of the Court's Agreed Partial Temporary Injunction. The unwillingness of the Defendants to comply willingly with this Court's order demands that compliance be obtained by the other statutory means available. The State asks this Court to:

- (a) fine the Defendants \$50,000 as allowed under DTPA § 17.47(e);
- (b) order Defendants to pay \$10,000 as allowed under Chapter 125 of the Texas Civil Practice & Remedies Code;
- (c) order the Defendants to be jailed for the maximum term of 30 days;
- (d) prohibit the furnishing of utility service to the location or locations in violation of the Agreed Partial Temporary Injunction;

- (e) revoke the certificate of occupancy of the location or locations in violation of the Agreed Partial Temporary Injunction;
- (f) limit the hours of operation of the location or locations in violation of the Agreed Partial Temporary Injunction; or
- (g) order any other legal remedy available under the laws of the State of Texas.

Tex. Civ. Prac. & Rem. Code § 125.045(b).

16. The Individual Defendant, Hazim H. Quadus, and the Entity Defendant, Moon Mart A/K/A Azel H. Corp., should be punished for violations of the Court's order. "Although a corporation is a legally distinct and cognizable entity, it is only able to act through its agents." *Ex parte Chambers*, 898 S.W.2d 257, 260 (Tex. 1995) (citing *San Antonio Bar Ass'n v. Guardian Abstract & Title Co.*, 156 Tex. 7, 291 S.W.2d 697, 701 (1956)). "Since a corporation is capable of violating a court order only if *its agents* act or refrain from acting, it follows that an order directed at a corporation is binding on agents authorized to act on its behalf, whether specifically named in the order or not." *Id.* (citing *Wilson v. United States*, 221 U.S. 361 (1911) (order directed at the corporation only, but the president was held in contempt)). An agent may be individually held in contempt for a violation of an order directed at a corporation if the agent personally participates in its violation with notice of the order. *Id.* at 261. Here, the Individual Defendant Hazim H. Quadus signed his agreement to the Agreed Partial Temporary Injunction, as seen in page 13. Hazim H. Quadus, the agent and president for the Entity Defendant, Moon Mart A/K/A Azel H. Corp., also signed the Agreed Partial Temporary Injunction. (Ex. 1 at 12). These signatures are evidence of notice received by the Defendants. *Ex parte Chambers*, 898 S.W.2d at 261. As all of the Individual and Entity Defendants were on notice of the

requirements of the Agreed Partial Temporary Injunction, the (1) failure of the Defendants to pay the bond and (2) failure to cease selling synthetic marijuana in violation of the Agreed Partial Temporary Injunction is due to their collective refusal to act. *See id.* Accordingly, it is appropriate for the Court to find the Defendants in contempt.

**IV. PRAYER**

Plaintiffs request that the Court grant the relief requested herein for violations of the Court's Agreed Partial Temporary Injunction and all other relief to which the Plaintiffs may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF,  
STATE OF TEXAS**

**CERTIFICATE OF CONFERENCE**

[INSERT]

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Stephanie Eberhardt

**CERTIFICATE OF SERVICE**

I hereby certify that, on ~~May 17, 2016~~ May 18, 2016, a true and correct copy of the foregoing was served on Defendants in accordance with Texas Rules of Civil Procedure 21 and 21a.

***Via email***

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Texas and Defendant CJ Holdings LLC**

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