



## I. DISCOVERY

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

- (a) The relief sought includes non-monetary injunctive relief.
- (b) The claims for monetary relief—including penalties, costs, expenses, consumer redress, and attorney fees—is in excess of \$100,000.

## II. JURISDICTION AND STATUTORY AUTHORITY

2. This enforcement action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by § 17.47 and § 17.48 of the Texas Deceptive Trade Practices–Consumer Protection Act, Tex. Bus. & Com. Code §§ 17.41–17.63 (“DTPA”), upon the ground that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, § 17.46(a) and (b) of the DTPA. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is further authorized to seek civil penalties, redress for consumers, and injunctive relief.

3. In addition this suit is brought by the Office of Attorney General, against Defendants, to enjoin and abate a common nuisance pursuant to Texas Civil Practice & Remedies Code §§ 125.001–125.047. Verification of the petition or proof of personal injury need not be shown by the State under Texas Civil Practice & Remedies Code § 125.002(a).

## III. PUBLIC INTEREST AND NOTICE

4. Plaintiff has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth in this petition.

5. Plaintiff has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas by selling synthetic cannabinoids to consumers without disclosing that these substances are illegal and potentially dangerous to their health. Therefore, these proceedings are in the public interest. *See* DTPA § 17.47(a).

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

7. Pre-suit notice is not required under DTPA § 17.47(a) because there is good cause to believe that such an emergency exists—due to the seriousness of the allegations and the danger to public health—that immediate and irreparable injury, loss, or damage would occur as a result of delay. *Id.*

#### IV. VENUE

8. Venue of this suit lies in Nueces County, Texas, under the DTPA § 17.47(b), for the following reasons:

- (a) The transactions forming the basis of this suit occurred in Nueces County, Texas.
- (b) Defendants have done business in Nueces County, Texas.
- (c) Defendants' principal places of business are in Nueces County, Texas.

9. In addition, venue is mandatory in Nueces County under Texas Civil Practice & Remedies Code § 125.002 because the nuisance to be enjoined is maintained by Defendants in Nueces County, Texas.

## V. TRADE AND COMMERCE

10. At all times described below, Defendants and their agents have engaged in conduct constituting “trade” and “commerce,” defined in § 17.45(6) of the DTPA, as follows:

“Trade” and “commerce” mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

## VI. CLAIM FOR RELIEF

11. 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

12. Defendant, **AARSHIYA MEMON** is an individual residing in Nueces County. Defendant may be served with process at 7701 Outreau Drive, Corpus Christi, Texas 78414, Nueces County or wherever she may be found.

13. Defendant, **ABDUL SHAKIR MEMON a/k/a SHAKIR MEMON** is an individual residing in Nueces County. Defendant may be served with process at 7701 Outreau Drive, Corpus Christi, Texas 78414, Nueces County or wherever he may be found.

14. Defendant, **KASSI BUSINESS, INC.** (“Kassi”), doing business as “**Tobacco Junction #1** (“TJ#1”) and **Tobacco Junction #2**” (“TJ#2”) is a Texas corporation that maintains a place of business in Nueces County at 9858 Leopard, Corpus Christi, Texas 78410. Defendant may be served with process by serving its registered agent and president, **AARSHIYA MEMON**, at 7701 Outreau Drive, Corpus Christi, Texas 78414; 4346 Ayers St., Corpus Christi, TX. 78415; or wherever she may be found.

15. Defendant, **The Real Property Known as 9858 Leopard St., Corpus Christi, Texas** is sued *in rem*. This property is owned by Westwood Center – Corpus, LTD and may be served by serving its registered agent for service Westwood Center – Corpus GP, LLC through its manager Stanley Lipman at 1000 Uptown Park Blvd, #231, Houston, Texas 77056.

16. Defendant, **The Real Property Known as 4346 Ayers, Corpus Christi, Texas** is sued *in rem*. This property is owned by Joel Landin who may be served at his residence 3600 Aransas St., Corpus Christi, Texas 78411 or wherever he may be found.

### 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. Since 2010, the United States has experienced an epidemic of so-called designer drugs. Designer drugs are substances that mimic the effects of controlled substances such as marijuana, cocaine, and amphetamines, but their chemical structure has been modified so that their actual chemical composition is not banned as a controlled substance. The chemical structure of the designer drug is purposefully altered by designer drug manufacturers (often overseas) in order to attempt to circumvent controlled substance drug laws.

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 at all but a dried leafy substance that is sprayed with powerful man-made mind altering chemicals that are dangerous and highly addictive to the user.<sup>2</sup> It is these added chemicals that cause synthetic marijuana to be five to 200 times more potent than regular marijuana.<sup>3</sup> In essence, using synthetic cannabinoids is like playing Russian roulette.<sup>4</sup> Synthetic marijuana has no medical use.<sup>5</sup> It is consumed like marijuana in that the user generally smokes it in a bowl, bong, water pipe, or by rolling it into a cigarette.<sup>6</sup> The added chemicals are intended to mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana.<sup>7</sup>

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.<sup>8</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

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<sup>1</sup> Ex. 1, *DrugFacts: Synthetic Cannabinoids*, NATIONAL INSTITUTE ON DRUG ABUSE (Revised November 2015), <https://www.drugabuse.gov/publications/drugfacts/synthetic-cannabinoids>.

<sup>2</sup> Ex. 1, p.1.

<sup>3</sup> Ex. 2, Jacob Brooks, “*Fort Hood drug expert: Smoking Spice like ‘Russian roulette’*”, KDHNEWS.COM, (April 26, 2015), [http://kdhnews.com/military/fort-hood-drug-expert-smoking-spice-like-russian-roulette/article\\_e881f850-eba7-11e4-a0cb-0fb0ca7d2c08.html](http://kdhnews.com/military/fort-hood-drug-expert-smoking-spice-like-russian-roulette/article_e881f850-eba7-11e4-a0cb-0fb0ca7d2c08.html).

<sup>4</sup> Ex. 2, p.2.

<sup>5</sup> Ex. 3, 78 Fed. Reg. at 28,735–36.

<sup>6</sup> Ex. 1, p. 3.

<sup>7</sup> *Id.*; Ex. 3, 78 Fed. Reg. at 28,736.

<sup>8</sup> Ex. 4, *Synthetic Drugs (a.k.a K2, Spice, Bath Salts, etc.)*, THE WHITE HOUSE: OFFICE OF NATIONAL DRUG CONTROL POLICY, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited May 19, 2015).

Snax” and can be bought for under \$30 per packet.<sup>9</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>10</sup> According to the Federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.<sup>11</sup>

20. Poison Control Centers report<sup>12</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;
- 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.<sup>13</sup> In Texas, there has been an uptick in reported overdoses on synthetic marijuana.<sup>14</sup> Throughout the United States, including Texas, reports of

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<sup>9</sup> Ex. 3, 78 Fed. Reg. at 28,736; Ex. 5, Pedro Perez, *Synthetic Drug Use on the Rise in Hidalgo County*, Valley Town Crier (October 22, 2015), <http://www.yourvalleyvoice.com/article/20151022/NEWS/151029836>

<sup>10</sup> Ex.2, p. 2; Ex. 4, p. 1.

<sup>11</sup> Ex. 1.

<sup>12</sup>Ex. 6, *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK, <http://poisoncontrol.org/the-dangers-of-synthetic-marijuana> (last visited May 24, 2016).

<sup>13</sup> Ex. 6.

<sup>14</sup> Ex. 7, 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. 8, Nestor Mato, *Officials urge caution with synthetic marijuana-related hospital visits on the rise*, ValleyCentral.com (October 2, 2015), <http://valleycentral.com/news/local/officials-urge-caution-with-synthetic-marijuana-related-hospital-visits-on-the-rise>; Ex. 9, Lorenzo Zazueta-Castro, *Spike in synthetic drug hospitalizations leads to public advisory*, The Monitor

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.<sup>15</sup>
- Two students at Carroll High School, in Corpus Christi, Texas, were hospitalized after they experienced a reaction to synthetic marijuana.<sup>16</sup>
- Synthetic marijuana may have caused the death of a Corpus Christi man.<sup>17</sup>
- Two dozen people sent to hospital after a possible “bad” batch of synthetic marijuana.<sup>18</sup>
- 20 people in Austin were treated after consuming synthetic drugs. 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>19</sup>

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(Oct. 21, 2016), [http://www.themonitor.com/news/local/spike-in-synthetic-drug-hospitalizations-leads-to-public-advisory/article\\_cd98c348-7856-11e5-a6dd-efc73fe621f0.html](http://www.themonitor.com/news/local/spike-in-synthetic-drug-hospitalizations-leads-to-public-advisory/article_cd98c348-7856-11e5-a6dd-efc73fe621f0.html); See also Ex. 10, Nicole Chavez and Samantha Matsumoto, *More than 300 sickened by synthetic drug K2 in recent spate* (June 22, 2015), <http://www.statesman.com/news/news/local/nearly-300-sickened-by-synthetic-drug-k2-in-recent/nmhtR/>; Ex. 11, Ashley Johnson, *Synthetic Marijuana Becomes Growing Concern in Houston Area*, FOX 26 HOUSTON (March 12, 2015), <http://www.myfoxboston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area>.

<sup>15</sup> Ex. 12, *Teenage Girl Suffered Strokes, Brain Damage After Smoking Synthetic Marijuana*, FOX NEWS (Feb. 5, 2013), <http://www.foxnews.com/health/2013/02/05/teenage-girl-suffered-strokes-brain-damage-after-smoking-synthetic-marijuana>.

<sup>16</sup> Ex. 13, *Carroll Students Hospitalized After Reaction to Synthetic Marijuana*, KiiiTV.com (updated May 6, 2013), <http://www.kiiitv.com/story/22082197/carroll-students-hospitalized-after-reaction-to-synthetic-marijuana>.

<sup>17</sup> Ex. 14, *Synthetic Marijuana may have caused man's death*, kztv10.com (updated April 25, 2015), <http://www.kztv10.com/story/28810028/synthetic-marijuana-may-have-caused-mans-death>.

<sup>18</sup> Ex. 15, *Synthetic Marijuana Sends Two Dozen to Hospital*, KiiiTV.com (updated April 15, 2015), <http://www.kiiitv.com/story/28760374/synthetic-marijuana-sends-two-dozen-to-hospital>.

<sup>19</sup> Ex. 16, *20 people treated in latest round of K2 cases*, KXAN.com (April 6, 2015), <http://kxan.com/2015/04/03/austin-medics-see-another-uptick-in-k2-cases/>.

- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood;<sup>20</sup>
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;<sup>21</sup>
- A Mission man was sentenced to 17 years in prison for killing his uncle while under the influence of synthetic marijuana.<sup>22</sup>
- In Harlingen, 19-year-old Ezequiel Pena, was placed on life support after he collapsed while smoking the synthetic drug.<sup>23</sup>
- A local (Corpus Christi) family is still mourning the death of their 22 year old son, a victim of synthetic marijuana.<sup>24</sup>

***B. Defendants Sell or Possess, Synthetic Marijuana At Tobacco Junction #1, 4346 Ayers, Corpus Christi, Texas, and Tobacco Junction#2, 9858 Leopard St., Corpus Christi, Texas in Nueces County.***

22. The Individual Defendants and the Entity Defendant own and operate the stores known as “Tobacco Junction #1” and “Tobacco Junction#2” in Nueces County. Based upon Texas Comptroller sales tax reports, Secretary of State filings, and Nueces County public records, assumed name records, the Individual and Entity Defendants are currently doing business as Tobacco Junction #1 at 4346 Ayers, Corpus Christi, Texas and Tobacco Junction #2 at 9858

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<sup>20</sup> Ex. 17, *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>21</sup> Ex. 7.

<sup>22</sup> Ex. 18, Lorenzo Zazueta-Castro, *Mission man sentenced to 17 years in uncle’s death*, The Monitor (Sept. 24, 2015), [http://www.themonitor.com/news/local/mission-man-sentenced-to-years-in-uncle-s-death/article\\_e6a9326a-6324-11e5-9b0d-f3f8a3c086ed.html](http://www.themonitor.com/news/local/mission-man-sentenced-to-years-in-uncle-s-death/article_e6a9326a-6324-11e5-9b0d-f3f8a3c086ed.html).

<sup>23</sup> Ex. 6.

<sup>24</sup> Ex. 19, *The Deadly Consequences of Synthetic Marijuana*, KiiiTV.com (March 28, 2016), <http://www.kiiitv.com/story/31514956/the-deadly-consequences-of-synthetic-marijuana>.

Leopard St., Corpus Christi, Texas in Nueces County.<sup>25</sup> Defendant **AARSHIYA MEMON** is the president and sole director of Kassi Business, Inc.<sup>26</sup>

23. Westwood Center – Corpus, LTD owns the real property located at 9858 Leopard, Corpus Christi, Texas 78415. It is controlled by its general partner Westwood Center – Corpus GP, LLC which is managed by Stanley Lipman.<sup>27</sup>

24. Joel Landin is the owner of record of the real property located at 4346 Ayers, Corpus Christi, Texas 78401.<sup>28</sup>

***C. Undercover Buys of Synthetic Marijuana at Defendants’ Business.***

25. On December 8, 2015, Undercover Officer V.M. with the Narcotics Division of the Corpus Christi Police Department conducted an undercover narcotics investigation that resulted in a controlled buy of approximately 9.56 grams of synthetic cannabis from Tobacco Junction #2. Officer V.M. went through the drive-thru of Tobacco Junction #2.<sup>29</sup> Officer V.M. met a female at the drive-thru window, who identified herself as “Cathy.”<sup>30</sup> When officer V.M. asked Cathy for a bag of “Juicy Pink” synthetic cannabis, she left the window and returned with a brown paper bag

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<sup>25</sup> Ex. 20, Texas Secretary of State, certification of public documents; Ex. 21, Nueces County Clerk, Assumed Business or Professional Name Certificate, Tobacco Junction #2; Ex. 21-A, Nueces County Clerk, Assumed Business or Professional Name Certificate, Tobacco Junction #1; Ex. 22, Texas Office of the Comptroller, Franchise Tax Account Status, Kassi Business, Inc.

<sup>26</sup> Ex. 23, Texas Secretary of State, Certificate of Fact, Kassi Business, Inc.

<sup>27</sup> Ex. 24, Nueces County Tax Office, Tax Assessor Kevin Kieschnick, Property Tax Balance, Account Number: 955700000040, 9858 Leopard St., Corpus Christi, Texas 78401; Ex. 25, Nueces County Clerk, Appointment of Successor Trustee, Doc# 2011023389 (July 5, 2011).

<sup>28</sup> Ex. 24-A, Nueces County Tax Office, Tax Assessor Kevin Kieschnick, Property Tax Balance, Account Number: 693600010080, 4346 Ayers, Corpus Christi, Texas 78401.

<sup>29</sup> Ex. 26, Corpus Christi Police Department Incident/Investigation Report for December 8, 2015, Case Number 1512080104.

<sup>30</sup> *Id.*

containing a white package labeled “Klimax 6XX Juicy Pink.”<sup>31</sup> After paying for the purchase, \$81.00, Officer V.M. asked Cathy if she could put Officer V.M. on the “list” for further purchases. Cathy asked Officer V.M. for her initials and wrote it on a notepad.<sup>32</sup> The packages were sent to the Texas Department of Public Safety Crime Laboratory in Corpus Christi, Texas, for testing. The laboratory report revealed that the white zip lock bag with a purple sticker labeled as “KLIMAX 6XX JUICY PINK” contained the chemicals “fluoro-ADB” and “fluoro-AMB.”<sup>33</sup> Fluoro-ADB is a compound with Indazole, Methoxy dimethyl oxobutane, and Carboxamide and is a controlled substance, and a Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5). Fluoro-AMB is also a compound with Indazole, Methyl methoxy oxobutane, and Carboxamide and is a controlled substance, and Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5).

26. On December 15, 2015, Officer V.M. attempted another undercover buy of synthetic cannabinoid at Tobacco Junction #2. Once inside the store, she made contact with Cathy, the same woman from whom she had purchased on the previous visit. Cathy told Office V.M. “he isn’t selling anymore, but to check back later.”<sup>34</sup>

27. On February 23, 2016, Officer V.M. once again attempted to make an undercover purchase of synthetic cannabinoid from Tobacco Junction #2. Officer V.M. entered Tobacco Junction #2

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Ex. 27 Texas Department of Public Safety Crime Laboratory, Controlled Substance Analysis Laboratory Report, Laboratory Case Number: COR-1602-00400 and Affidavit.

<sup>34</sup> Ex. 28, Corpus Christi Police Department Incident/Investigation Report for December 14, 2015, Case Number 1512080104.

and made contact with Cathy.<sup>35</sup> Officer V.M. left the store having purchased a white zip lock bag with a purple sticker labeled as “6X KLIMAX.”<sup>36</sup> The zip lock bag contained 9.39 grams of an aromatic dried green and brown leafy substance believed to be synthetic cannabis.<sup>37</sup> The package was sent to the Texas Department of Public Safety Crime Laboratory in Corpus Christi, Texas for testing. The laboratory report revealed that the white zip lock bag with a purple sticker labeled as “6X KLIMAX” contained the chemicals “fluoro-ADB” and “fluoro-AMB.”<sup>38</sup> Fluoro-ADB is a compound with Indazole, Methoxy dimethyl oxobutane and Carboxamide and is a controlled substance, and a Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5). Fluoro-AMB is also a compound with Indazole, Methyl methoxy oxobutane, and Carboxamide and is a controlled substance, and Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5).

28. On March 7, 2016, Officer V.M. attempted another undercover purchase of synthetic cannabis from Tobacco Junction #2. Officer V.M. entered the store and made contact with a female named Catalina (Cathy).<sup>39</sup> On this visit, Officer V.M. purchased two white zip lock bags with a purple label that said “6X KLIMAX.”<sup>40</sup> The bags contained 18.47 grams of an aromatic

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<sup>35</sup> Ex. 29, Corpus Christi Police Department Incident/Investigation Report for February 22, 2016, Case Number 1512080104.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Ex. 30, Texas Department of Public Safety Crime Laboratory, Controlled Substance Analysis Laboratory Report, Laboratory Case Number: COR-1604-01479 and Affidavit.

<sup>39</sup> Ex. 31, Corpus Christi Police Department Incident/Investigation Report for March 7, 2016, Case Number 1512080104.

<sup>40</sup> *Id.*

dried green and brown leafy substance believed to be synthetic cannabis.<sup>41</sup> The packages were sent to the Texas Department of Public Safety Crime Laboratory in Corpus Christi, Texas for testing. The laboratory report revealed that the white zip lock bag with a purple sticker labeled as “6X KLIMAX” contained the chemicals “fluoro-ADB” and “fluoro-AMB.”<sup>42</sup> Fluoro-ADB is a compound with Indazole, Methoxy dimethyl oxobutane, and Carboxamide and is a controlled substance, and a Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5). Fluoro-AMB is also a compound with Indazole, Methyl methoxy oxobutane, and Carboxamide and is a controlled substance, and Penalty Group 2-A drug, in accordance with the Texas Health and Safety Code Chapter 481.1031(b)(5). The substance was tested at the Texas Department of Public Safety Crime Laboratory in Corpus Christi, Texas.

29. Under Texas law, it is a crime to deliver or possess a synthetic cannabinoid, and synthetic cannabinoids are classified as Penalty Group 2-A drugs. Tex. Health & Safety Code §§ 481.1031, 481.113, 481.1161. The laboratory analysis in this case found that all samples tested contained the synthetic cannabinoid fluoro-ADB and fluoro-AMB, Penalty Group 2-A drugs.<sup>43</sup> Also, fluoro-ADB and fluoro-AMB have been identified by Texas Department of Health & Human Services and the federal Drug Enforcement Administration (DEA) as a Schedule I controlled substance (the most dangerous). 38 Tex. Reg. 4928 (Aug. 2, 2013); 21 CFR part 1308. 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.

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<sup>41</sup> *Id.*

<sup>42</sup> Ex. 32, Texas Department of Public Safety Crime Laboratory, Controlled Substance Analysis Laboratory Report, Laboratory Case Number: COR-1604-01601 and Affidavit.

<sup>43</sup> See Ex. 24, Ex. 27, and Ex. 29.



30. The Texas Legislature has recently amended the Penalty Group 2-A definition of the Texas Controlled Substances Act such that the compound of fluoro-ADB (Indazole, Methoxy dimethyl oxobutane, and Carboxamide) and fluoro-AMB (Indazol, Methyl methoxy oxobutane, and Carboxamide) are within the structural classes defined by Penalty Group 2-A drugs.<sup>44</sup>

31. The Texas Legislature has also recently amended the DPTA to make it a per se DTPA laundry list violation to make a deceptive representation or designation about synthetic marijuana or cause confusion or misunderstanding as to the effects of synthetic marijuana when consumed or ingested. DTPA § 17.46(b)(30).

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

32. By selling, offering for sale, and distributing synthetic marijuana, including “6X KLIMAX,” Defendants and their agents have, in the conduct of trade and commerce, engaged in false, misleading, and deceptive acts and practices declared unlawful under the DTPA. *See* DTPA § 17.46(a).

33. The packaging of the synthetic marijuana sold by Defendants is per se deceptive. Defendants sold the synthetic marijuana in plain zip lock bags with only a purple or pink label identifying it as “6X KLIMAX.” The packaging contains no ingredient list or warnings of any

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<sup>44</sup> Tex. Health & Safety Code § 481.1031(b)(5):

(b) Penalty Group 2-A consists of any material, compound, mixture, or preparation that contains any quantity of a natural or synthetic chemical substance, including its salts, isomers, and salts of isomers, listed by name in this subsection or contained within one of the structural classes defined in this subsection:

.....

(5) any compound containing a core component substituted at the 1-position to any extent, and substituted at the 3-position with a link component attached to a group A component, whether or not the core component or group A component are further substituted to any extent, including . . . :”

Fluoro-ADB is a compound having the following components: Indazole (core), carboxamide (link), and Methoxy dimethyl oxobutane (Group A); fluoro-AMB is a compound having the following components: Indazole (core), carboxamide (link), and Methyl methoxy oxobutane (Group A) accordance with Tex. Health & Safety Code § 481.1031(b)(5).

kind. There is no mention that the key ingredient, either fluoro-AMB or fluoro-ADB, is a highly addictive and dangerous chemical and Schedule I drug. The lack of identifying packaging is itself misleading due to its failure to disclose the dangers of the substance. By selling synthetic marijuana at their store, Defendants deliberately mislead consumers into believing that these products are “safe” and “legal.”

34. Defendants knew or should have known the actual content of the products they are selling to consumers is illegal and dangerous, and they deliberately fail to disclose this information in order to induce consumers to buy the products. The suspicious circumstances of the sale of the synthetic marijuana by Defendants and their agents—keeping it in an office away from the store showroom, hiding it from view, requiring customers to be on a “list” of approved customers, the lack of any identifying markings on the packaging of certain products, and not selling the substance for a short time after an employee left their employment (in case a disgruntled employee contacted authorities) — all confirm that Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers. Unsuspecting consumers who purchase these products from Defendants are exposed to the physical dangers of fluoro-AMB and fluoro-ADB, 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 Tobacco Junction#1, located at 4346 Ayers, Corpus Christi, Texas, and Tobacco Junction#2, located at 9858 Leopard St., Corpus Christi, Texas. The Individual Defendants have at all relevant times, directly or indirectly, been involved in the day-to-day operations and management of the 4346 Ayers, Corpus Christi, Texas store and 9858 Leopard St., Corpus Christi, Texas store, and on information and belief knowingly participated in and/or tolerated the illegal activities described herein.

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

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

37. 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).

38. Defendants’ stores, Tobacco Junction#1, located at 4346 Ayers, Corpus Christi, Texas and Tobacco Junction #2, located at 9858 Leopard St., Corpus Christi, Texas, constitute 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, or use the stores, and knowingly tolerate the nuisance activity and further fail to make reasonable attempts to abate the nuisance activity. Tex. Civ. Prac. & Rem. Code §§ 125.002(b), 125.0015(a)(4). This action is brought by the State to request injunctive relief to abate this nuisance and enjoin Defendants from maintaining or participating in the nuisance, and for any other reasonable requirements to prevent the use of these stores as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(b)-(e). Plaintiff requests that upon issuance of injunctive relief, each of *in rem* Defendants be ordered to post a bond in the name of the State to be forfeited to the State in the event of a violation by Defendants, of the injunction. Tex. Civ. Prac. & Rem. Code § 125.003. The bond must be payable to the State of Texas, be in the amount set by the Court, but no less than \$5000 nor more than \$10,000, have

sufficient sureties approved by the Court, and be conditioned that the Defendants will not knowingly allow a common nuisance to exist at the Tobacco Junction#1, located at 4346 Ayers, Corpus Christi, Texas and Tobacco Junction #2 store, located at 9858 Leopard St., Corpus Christi, Texas location. *Id.*

39. Based upon § 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. If Plaintiff is successful in a motion for contempt for a violation of the temporary injunction, the judgment must order that the location where the nuisance was found, be closed for one year.

40. Pursuant to § 125.003(a) of the Texas Civil Practice & Remedies Code, should any condition of the bond or any injunctive order by this Court be violated, the State may sue upon the bond and upon showing a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to the State, and the location where the nuisance was found should be closed for one year. In addition, in accordance with § 125.002(d) of the Texas Civil Practice and Remedies Code, a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt: a) a fine of not less than \$1000 nor more than \$10,000; b) confinement in jail for a term of not less than 10 nor more than 30 days; and c) both a fine and confinement. If a Defendant violates the temporary or permanent injunction, under § 125.045(b), the Court may order a landlord to terminate a tenant's lease or make additional orders to abate the nuisance.<sup>45</sup>

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<sup>45</sup> If, after an entry of a temporary or permanent injunction, a court determines that a condition of the injunction ordered is violated, the court may: ... (6) order a landlord to terminate a tenant's lease if: (A) the landlord and tenant are parties

41. 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. Tex. Civ. Prac. & Rem. Code § 125.002(e).

**XI. VIOLATIONS OF THE DTPA: TEX. BUS. & COM. CODE §§ 17.41–17.63**

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

43. Defendants, as alleged and detailed above, have in the conduct of trade and commerce, engaged in false, misleading, or deceptive acts or practices in violation of § 17.46(a) of the Texas Business and Commerce Code.

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) 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);

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to the suit; and (B) the tenant has violated a condition of the injunctive order... Tex. Civ. Prac. & Rem. Code §125.045(b) (6).

- (d) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of the DTPA, § 17.46(b)(7);
- (e) Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of the DTPA, § 17.46(b)(24); and
- (f) In the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:
  - i) Making a deceptive representation or designation about the synthetic substance, in violation of the DTPA, § 17.46(b)(30)(A), and
  - ii) Causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested, in violation of the DTPA, § 17.46(b)(30)(B).

## XII.

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

45. 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.

46. 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 Tobacco Junction #2, located at 9858 Leopard, Corpus Christi, Texas, and order such requirements as to prevent the ongoing nuisance activity in Nueces County, Texas. Tex. Civ. Prac. & Rem. § 125.002(b)(e). Under § 125.002(a) of the Texas Civil Practice and Remedies Code, Plaintiff is not required to verify facts in support of the requested injunctive relief to abate the nuisance activity.

47. Plaintiff believes 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 the Plaintiff. DTPA § 17.47(b); Tex. Civ. Prac. & Rem. Code § 6.001(a).

49. Plaintiff further requests the Court find Plaintiff is likely to succeed on the merits on its claim for common nuisance and include in the Court's temporary injunction order (i) reasonable requirements to prevent the use or maintenance of the property known as Tobacco Junction#1, located at 4346 Ayers, Corpus Christi, Texas and Tobacco Junction #2 at 9858 Leopard St., Corpus Christi, Texas stores as a nuisance, and (ii) require that Defendants execute a bond of not less than \$5,000 nor more than \$10,000, payable to the State, with sufficient sureties and conditioned that Defendants will not maintain a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.045(a).

**XIII. REQUEST TO CONDUCT DISCOVERY PRIOR TO  
TEMPORARY INJUNCTION HEARING**

50. Plaintiff requests leave of this Court to conduct discovery and depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There may be a number of witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiff 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. Plaintiff herein request a jury trial and tenders the jury fee to the Nueces 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 Plaintiff's claims for relief have been performed or have occurred.

**XVI. REQUEST FOR DISCLOSURE**

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

**XVII. PRAYER**

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

55. Plaintiff prays that the TEMPORARY RESTRAINING ORDER be issued, and that after due notice and hearing, a TEMPORARY INJUNCTION be issued, and upon final hearing a PERMANENT INJUNCTION be issued, restraining, and enjoining Defendants, Defendants'

officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all Defendants—from engaging in the following acts or practices without further order of the Court:

- (a) 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, including but not limited to synthetic substances containing fluoro – AMB and fluoro – ADB;
- (c) Manufacturing, purchasing, delivering, offering for sale, holding, selling, or giving away any products containing controlled substances or synthetic cannabinoids, including but not limited to synthetic substances containing fluoro – AMB and fluoro – ADB;
- (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 that are false, misleading, or deceptive because of the lack a label with 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;
- (h) 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;
- (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 the City Of Corpus Christi Police Department, 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; and
- (l) Failing to preserve video surveillance, if any, of the Defendants' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request.

56. 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;

57. Plaintiff further prays that upon final hearing, that this Court order each Defendant to pay Plaintiff's attorney fees and costs of court pursuant to Texas Government Code § 402.006(c).

58. Plaintiff further prays for recovery of reasonable attorneys' fees, investigative costs, court costs, witness fees, and deposition fees pursuant to Texas Civil Practice & Remedies Code § 125.003(b),(d).

59. Plaintiff further prays that this Court grant all other relief to which the Plaintiff, the State of Texas, is entitled.

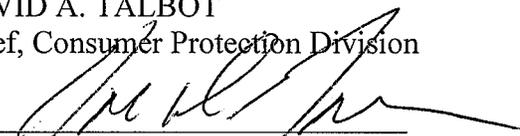
Respectfully submitted,

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Attorney General of Texas

JEFFREY C. MATEER  
First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for  
Civil Litigation

DAVID A. TALBOT  
Chief, Consumer Protection Division



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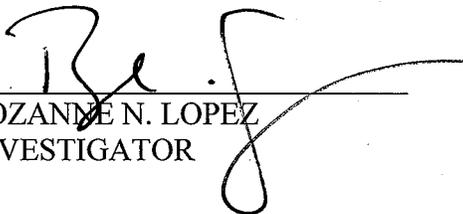
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**VERIFICATION**

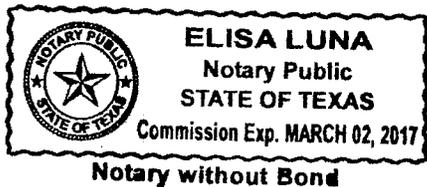
STATE OF TEXAS           §

COUNTY OF HIDALGO   §

BEFORE ME, the undersigned authority, on this day personally appeared affiant Rozanne N. Lopez, who proved to me through current Texas Driver License to be the person whose name is subscribed to this Verification and who acknowledged to me that she executed the same, and after she was duly sworn, upon her oath, she deposed and said that the affiant is an investigator for the Office of Attorney General, and is authorized to make this affidavit, that the affiant has carefully read the statements made in the "Factual Background" in the foregoing PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION AND PERMANENT INJUNCTIONS, and has reason to believe that statements made in the "Factual Background" are true and correct; and affiant signs this Verification, pursuant to Rule 682 of the TEXAS RULES OF CIVIL PROCEDURE.

  
\_\_\_\_\_  
ROZANNE N. LOPEZ  
INVESTIGATOR

SUBSCRIBED AND SWORN TO before me on June 29, 2016.



  
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NOTARY PUBLIC IN AND  
THE STATE OF TEXAS