

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

3. In addition, this suit is brought by the Office of Attorney General and the Harris County Attorney’s Office 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 in violation of Chapter 481 of the Texas Health & Safety Code and constitutes a common nuisance as defined by Texas Civil Practice & Remedies Code § 125.0015(4). Therefore, Defendants' conduct is subject to abatement under Texas Civil Practice & Remedies Code § 125.002.

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

8. In addition, venue is mandatory in Harris County under Texas Civil Practice & Remedies 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 **Happie Hippy Partnership (“Partnership”)** is an unregistered Texas general partnership operating or that has operated a business in Harris County at 8908 North Freeway, Houston, Texas, 77037, and at 211 Dominion Park Apt. 524, Houston, Texas 77090. Happie Hippy Partnership may be served with process by serving one or more of its general partners as follows:

- (a) Esam M. Ali-Hasan at 211 Dominion Park Apt. 524, Houston, Texas 77090, or wherever he may be found;
- (b) James Ayling at 211 Dominion Park Apt. 524, Houston, Texas 77090, or wherever he may be found; and
- (c) Michelle Hartman at 29911 Aldine Westfield Road, Spring, Texas 77386 or wherever she may be found.

12. Defendant **Esam M. Ali-Hasan d/b/a Happie Hippy Smoke Shop (“Ali-Hasan”)**, is sued in his individual capacity and in his capacity as a general partner in the Happie Hippy Partnership. He operates or has operated a business in Harris County at 8908 North Freeway, Houston, Texas, 77037, and at 211 Dominion Park Apt. 524, Houston, Texas 77090. He may be

served with process at 211 Dominion Park Apt. 524, Houston, Texas 77090, or wherever he may be found.

13. Defendant **Happie Hippie, Inc.**, is a Texas corporation that maintains or has maintained a place of business in Harris County at 8908 North Freeway, Houston, Texas 77037. Defendant may be served with process by serving its registered agent, United States Corporation Agents, Inc., located at 9900 Spectrum Drive, Austin, Texas 78717, or wherever it may be found.

14. Defendant **James Ayling (“Ayling”)** is sued in his individual capacity and in his capacity as a general partner in the Happie Hippie Partnership. He regularly conducts or has regularly conducted business in Harris County at 8908 North Freeway, Houston, Texas 77037 and at 211 Dominion Park Apt. 524, Houston, Texas 77090, his residence. He is also the sole director and sole officer of Happie Hippie, Inc. He may be served with process at 211 Dominion Park Apt. 524, Houston, Texas 77090, or wherever he may be found.

15. Defendant **Michelle Hartman (“Hartman”)** is sued in her individual capacity and in her capacity as a general partner in the Happie Hippie Partnership. She has a personal ownership interest in the business property which the Happie Hippie Partnership uses in conducting business in Harris County at 8908 North Freeway, Houston, Texas 77037. This ownership interest in said business property is derived from her status as a successor in interest to Enderlin-Hartman, Inc. d/b/a Happie Hippie, a recently-dissolved Texas corporation. At the time of dissolution, she was the sole director and officer of said corporation. She may be served with process at 29911 Aldine Westfield Road, Spring, Texas 77386 or wherever she may be found.

16. For purposes of this petition, the following additional definitions shall apply:

- (a) **“Partner Defendants”** means Esam M. Ali-Hasan, James Ayling, and Michelle Hartman;

- (b) **“Partnership and Entity Defendants”** means the Happie Hippie Partnership and Happie Hippie, Inc.; and
- (c) **“Individual Defendants”** means Esam M. Ali-Hasan, James Ayling, and Michelle Hartman;
- (d) **“Defendants”** means all defendants named in this lawsuit;
- (e) **“Store”** and **“Smoke Shop”** mean the retail store generally known as “Happie Hippie Smoke Shop” that the Happie Hippie Partnership owns and operates.

VIII. ACTS OF AGENTS

17. Whenever in this petition it is alleged that Defendants did any act, it is meant that
- (a) the applicable or otherwise specified Defendants performed or participated in the act, or
 - (b) the applicable or otherwise specified 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 applicable or otherwise specified 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. 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.

19. Synthetic marijuana is a designer drug, often manufactured overseas, that is marketed as a “safe” and “legal” alternative to marijuana.¹ Synthetic marijuana is not marijuana at all but a dried leafy substance that is sprayed with powerful, added-in hallucinogenic chemicals (synthetic cannabinoids) that are dangerous and highly addictive to the user.² Synthetic marijuana has no medical use.³ It is consumed like marijuana in that the user generally smokes it in a bowl, bong, water pipe, or by rolling it into a cigarette.⁴ The added chemicals are intended to mimic the biological effects of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient in marijuana.⁵

20. Synthetic marijuana is often labeled innocently as “incense” and “potpourri” and the packaging may contain the statement “not for human consumption” although the intended purpose is in fact for the product to be consumed by a human.⁶ Typically, it is sold in retail smoke shops or head shops in small colorful packets with names such as “Kush” or “spice” or “K2” or “Scooby Snax” and costs between \$20 and \$25 per packet.⁷ The packaging is intended to target young people who may be afraid of the legal consequences and/or association with

¹ Ex. 1, *DrugFacts: K2/Spice (“Synthetic Marijuana”)*, NATIONAL INSTITUTE ON DRUG ABUSE (lasted updated Dec. 2012), <http://www.drugabuse.gov/publications/drugfacts/k2spice-synthetic-marijuana>; Ex. 2, 78 Fed. Reg. 28735 (May 16, 2013) (temporary placement of three synthetic cannabinoids, including XLR11, into schedule I); Ex. 2A, 80 Fed. Reg. 27854 (May 15, 2015) (extension of temporary scheduling of XLR11).

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

³ Ex. 2, 78 Fed. Reg. at 28,735–36.

⁴ Ex. 1, p. 3.

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

⁶ Ex. 3, *Synthetic Drugs (a.k.a. K2, Spice, Bath Salts, etc.)*, THE WHITE HOUSE: OFFICE OF NATIONAL DRUG CONTROL POLICY, <http://www.whitehouse.gov/ondcp/ondcp-fact-sheets/synthetic-drugs-k2-spice-bath-salts> (last visited May 21, 2015).

⁷ Ex. 2, 78 Fed. Reg. at 28,736; Ex. 4, *Alerts: Synthetic Marijuana*, AMERICAN ASSOCIATION OF POISON CONTROL CENTERS, <http://www.aapc.org/alerts/synthetic-marijuana> (last visited May 21, 2015).

illegal drugs but want a “legal” high.⁸ According to the federal Drug Enforcement Agency, synthetic marijuana is the second most abused substance by high school seniors after marijuana itself.⁹

21. Poison control centers report¹⁰ that users of synthetic marijuana report symptoms such as:

- Severe paranoia, agitation and anxiety;
- Psychotic episodes;
- Racing heartbeat and high blood pressure (in a few cases associated with heart attacks);
- Nausea and vomiting;
- Muscle spasms, seizures and tremors;
- Intense hallucinations and psychotic episodes; and
- Suicidal thoughts and other harmful thoughts and actions.

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

⁸ Ex.1, p. 2; Ex. 3, p. 1.

⁹ Ex. 1.

¹⁰ Ex. 4; Ex. 5, *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK, <http://www.poisoncontrol.org/news/topics/synthetic-marijuana.cfm> (last visited May 21, 2015).

¹¹ Ex. 4.

¹² Ex. 6, David Winograd, *Nearly 120 People Overdose on Synthetic Marijuana in 5-Day Period*, TIME (May 6, 2014), <http://time.com/89835/synthetic-marijuana-overdoses-k2/>; see also Ex. 7, Kirstin Tate, *Synthetic Marijuana Hospitalizes 45 In Texas*, BREITBART (May 5, 2014), <http://www.breitbart.com/texas/2014/05/05/synthetic-marijuana-hospitalizes-45-smokers-in-texas/>; Ex. 12, Sara Thomas, *East Texas Police Seek Solution to Synthetic Marijuana Problem*, LONGVIEW NEWS JOURNAL (May 8, 2014), <http://www.news-journal.com/news/2014/mar/08/east-texas-police-seek-solution-to-synthetic-marijuana>. See also Ex. 9, Ashley Johnson, *Synthetic Marijuana Becomes Growing Concern in Houston Area*, FOX 26 HOUSTON (March 12, 2015), <http://www.myfoxxhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area>.

- 17-year old girl became paralyzed and permanently brain damaged from suffering multiple strokes and violent hallucinations after smoking synthetic marijuana;¹³
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss.¹⁴
- Three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011;¹⁵
- An 18-year old Amarillo man died after smoking synthetic marijuana;¹⁶
- Police have received multiple reports of users high on synthetic marijuana standing in the middle of the street, disoriented, and with no recollection how they got there;¹⁷
- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood;¹⁸
- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;¹⁹
- A patient presented at an emergency room with self-inflicted fourth-degree burns to his hands and forearms, leading to amputation, due to synthetic marijuana known as Black Diamond.²⁰

¹³ Ex. 8, *Teenage Girl Suffered Strokes, Brain Damage after Smoking Synthetic Marijuana*, FOX NEWS (Feb. 5, 2013), <http://www.foxnews.com/health/2013/02/05/teenage-girl-suffered-strokes-brain-damage-after-smoking-synthetic-marijuana>.

¹⁴ Ex. 9.

¹⁵ Ex. 10, *Texas Teens Had Heart Attacks after Smoking Synthetic Marijuana*, FOX NEWS (Nov. 8, 2011), <http://www.foxnews.com/health/2011/11/08/texas-teens-had-heart-attacks-after-smoking-k2/>.

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

¹⁷ Ex. 12.

¹⁸ Ex. 13, *Synthetic Pot Blamed for Death of U.S. Soldier Deployed to Ebola Zone*, CBS NEWS (Apr. 17, 2015), <http://www.cbsnews.com/news/synthetic-pot-blamed-for-death-of-fort-hood-soldier-deployed-to-ebola-zone/>.

¹⁹ Ex. 6.

- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana;²¹
- More than 60 people in Austin, Texas, were recently reported to have been sickened by a synthetic drug, known as K-2, including reports of seizures, convulsions and extremely violent behavior;²²
- A man in Houston had a psychotic break on a “bad batch” of synthetic marijuana and stabbed, beat, and fatally choked his girlfriend;²³
- Two men in Houston, after smoking synthetic marijuana, attacked and shot at the hosts of a neighborhood barbeque fundraiser;²⁴
- A 27-year old man, described by witnesses as driving erratically and speeding, killed a woman when he drove his car up onto a sidewalk; he then kept driving until he hit another vehicle, and police found synthetic marijuana in his car;²⁵ and
- In Dallas, Texas, emergency services received approximately 192 emergency calls related to synthetic marijuana between December 1, 2015, and January 7, 2016.²⁶

²⁰ Ex. 15, K.A. Meijer et al., *Abstract: Smoking Synthetic Marijuana Leads to Self-Mutilation Requiring Bilateral Amputations*, ORTHOPEDICS, 2014 Apr. 37(4):e391-4, available at <http://www.ncbi.nlm.nih.gov/pubmed/24762846>.

²¹ Ex. 14, Koutaro Hasegawa et al., *Abstract: Postmortem Distribution of AB-CHMINACA, 5-fluoro-AMB, and Diphenidine in Body Fluids and Solid Tissues in Fatal Poisoning Case*, 33 FORENSIC TOXICOLOGY 45 (2015), available at <http://link.springer.com/article/10.1007%2Fs11419-014-0245-6>.

²² Ex. 15A, *More than 60 Sickened in Austin by K-2: Media Reports*, TEXOMA’S HOMEPAGE.COM (June 5, 2015), <http://www.texomashomepage.com/story/d/story/more-than-60-sickened-in-austin-by-k2-media-report/25480/qZ6kxnvJaU2GTJjx5L7g9g>.

²³ Ex. 15B, Brian Rodgers, “*Synthetic Marijuana*” is Blamed in Death, HOUSTON CHRONICLE, July 9, 2015, at B2.

²⁴ Ex. 15C, Dylan Baddour, *Man Attacks, Shoots Grieving Family in Rage over BBQ Chicken*, HOUSTON CHRONICLE (Sept. 9, 2015), <http://www.chron.com/news/houston-texas/houston/article/Man-attacks-shoots-grieving-family-in-rage-over-6493362.php>.

²⁵ Ex. 15D, Dylan Baddour, *Suspect in Fatal Wreck Carried “Synthetic Marijuana”*, HOUSTON CHRONICLE (Oct. 22, 2015), <http://www.chron.com/houston/article/Suspect-in-fatal-wreck-carried-synthetic-6584058.php>.

23. A major factor driving the increased distribution of synthetic marijuana is the financial incentives for retailers and distributors. According to the Drug Enforcement Administration (“DEA”), “a \$1,500 purchase of a bulk synthetic cannabinoids can generate as much as \$250,000 of revenue at the retail level.”²⁷

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

24. Under Texas law, it is a crime to manufacture, deliver, or possess or possess a synthetic cannabinoid, and synthetic cannabinoids are classified as Penalty Group 2-A drugs.²⁸ Tex. Health & Safety Code §§ 481.1031, 481.113, 481.1161.

25. In addition, in 2014, the City of Houston passed Ordinance § 28-572 outlawing synthetic marijuana including the product labeled as “Kush.”²⁹ Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

26. The Texas Legislature has recently amended the DTPA to make it a per se DTPA laundry list violation to make a deceptive representation or designation about synthetic marijuana or

²⁶ Ex. 15E, Robert Wilonsky, *Police, Paramedics Dealing with Sharp Rise in 911 Calls Related to K2 Use in Downtown Dallas*, THE DALLAS MORNING NEWS: CRIME BLOG (Jan. 22, 2016), <http://crimeblog.dallasnews.com/2016/01/police-paramedics-dealing-with-sharp-rise-in-911-calls-related-to-k2-use-in-downtown-dallas.html/>.

²⁷ Ex. 15F, *Deadly Synthetic Drugs—The Need to Stay Ahead of the Poison Peddlers: Hearing before the S. Comm. On the Judiciary*, 114th Cong. 5 (2016) (statement of Chuck Rosenberg, Acting Administrator, Drug Enforcement Administration).

²⁸ 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”

²⁹ Ex. 16, City of Houston Kush Ordinance.

cause confusion or misunderstanding as to the effects of synthetic marijuana when consumed or ingested. DTPA § 17.46(b)(30).

C. Defendants Package and Sell Synthetic Marijuana at the Happie Hippie Smoke Shop

27. The Partnership owns and, in conjunction with Happie Hippie, Inc., operates the store generally known as the “Happie Hippie Smoke Shop,” which is located at 8908 North Freeway Houston, Texas in Harris County.³⁰ On information and belief, the Shop is now closed. The address known as 635 Gulf Bank Road, Houston, Texas 77037, is the legal address of the shopping center containing the Happie Hippie Smoke Shop.³¹

D. Undercover Buys of Synthetic Marijuana at Defendants’ Business.

28. On January 21, 2016, five undercover officers from the Houston Police Department Narcotics Division conducted a narcotics investigation that resulted in a controlled buy of approximately two bags, approximately 8.9 grams of synthetic marijuana from the Happie Hippie Smoke Shop, located at 8908 North Freeway Houston, Texas in Harris County.³² The investigations were conducted after a tip was received that the Happie Hippie Smoke Shop was selling a large amount of synthetic cannabinoids.³³ Undercover Officer J.W. along with undercover Officers M.P., R.L and B.P. entered the Happie Hippie Smoke Shop from the main

³⁰ See Ex. 17, Texas Secretary of State Record Certified Filings for Happie Hippie, Inc., and Enderlin-Hartman, Inc.; Ex. 18, Harris County Clerk Assumed Name Records for Happie Hippie filed by Enderlin-Hartman, Inc.; Ex. 19, Harris County Appraisal District Personal Property Account Information; Ex. 20, Harris County Clerk Assumed Name Records for Happie Hippie Smoke Shop filed by Esam Ali-Hasan; Ex. 21,

³¹ Ex. 19; Ex. 21, Texas Franchise Tax Public Information Report; Ex. 22, Special Warranty Deed for sale of land from G&C Properties to 8900 North Freeway, Inc; Ex. 23, Texas Secretary of State Records for 8900 North Freeway L.C. JWG Corp/Rosalind Ng is the listed owner of the entire strip shopping center, land and parking lot located at 635 Gulf Bank Road, Houston, Texas 77037 and 8930 North Freeway (parking area). Happie Hippie is located in the strip shopping center at 635 Gulf Bank Road, Houston, Texas 77037. On information and belief, the Shop is now closed.

³² Ex. 24, Houston Police Department Incident Report #88671-16 for January 21, 2016, undercover buys of King Kong at 8908 North Freeway.

³³ *Id.*

entrance.³⁴ Officer J.W. approached the clerk, a white male, showed the clerk an empty bag of “Hulk” synthetic cannabinoids and asked the clerk if they had any more of the “Hulk.”³⁵ The clerk stated that they did not have “Hulk.” The clerk informed Officer J.W. that the shop currently had “King Kong” and “Black Lotus.”³⁶ Officer J.W. requested two bags of “King Kong” and made a \$20 purchase (\$10 per bag) of the synthetic cannabinoids from the clerk at the Store.³⁷ After exiting the shop, Officer J.W. gave the purchased synthetic marijuana to Officer J.M. (the reporting officer) who observed the synthetic cannabinoids to be the “King Kong” brand.³⁸ The King Kong bags were sent to the Houston Forensic Science Center Controlled Substance Section for testing on January 22, 2016.³⁹ The Houston Forensic Science Center found that the substance in each bag contained NM2201, a synthetic cannabinoid.⁴⁰ NM2201 is a chemical compound with the following components: Indole (core), carboxylate (link), and naphthalene (group A) and is a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).

29. During the same investigation on January 21, 2016, undercover Officer M.P., asked the Store’s clerk for a pack of Zig Zag rolling papers and a bag of “Black Lotus.”⁴¹ Officer M.P. observed the clerk go to the storage room that was concealed by a curtain hung in the doorway.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Ex. 25, Houston Forensic Science Center Lab Report for Houston Police Department Incident Report #008867116 Forensic Case #2016-01058 and Affidavit.

⁴⁰ *Id.*

⁴¹ Ex. 26, Houston Police Department Incident Report #88673-16 for January 21, 2016, undercover buy of Black Lotus at 8908 North Freeway.

The clerk returned with one black bag that he referred to as “Black Lotus.”⁴² The clerk informed Officer M.P that the black bag would be \$10 and the rolling papers were \$3.⁴³ Officer M.P. provided clerk with a \$20 bill and the clerk provided the officer with change.⁴⁴ Officer M.P. left the store and provided reporting Officer J.M. with the “Black Lotus.”⁴⁵ The Black Lotus bag was sent to the Houston Forensic Science Center Controlled Substance Section for testing on January 22, 2016.⁴⁶ The Houston Forensic Science Center found that the substance in the bag contained AB-CHMINACA, a synthetic cannabinoid.⁴⁷ AB-CHMINACA is a chemical compound with the following components: Indazole (core), carboxamide (link), and amino oxobutane (group A) and is a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).

30. On January 22, 2016, Officer J.G. and J.M continued their investigation with the Houston Police Department Narcotics Division by executing a search and arrest warrant at the Hattie Hattie Smoke Shop.⁴⁸ Upon entering the smoke shop, officers observed the Store clerk, Ayling, attempting to leave the premises.⁴⁹ He was apprehended and detained while additional officers searched the smoke shop. Officers found several opened black bags with various amounts of leafy substances. Business documents were also found on the premises that connected Ayling

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Ex. 27, Houston Forensic Science Center Lab Report for Houston Police Department Incident Report #008867316 Forensic Case #2016-01059 and Affidavit.

⁴⁷ *Id.*

⁴⁸ Ex. 28, Houston Police Department Incident Report #93734-16 for January 22, 2016, Search and Arrest Warrant Execution at 8908 North Freeway.

⁴⁹ *Id.*

and Ali-Hasan to the operation and ownership of the business.⁵⁰ Ayling informed the police that Ali-Hasan created and packaged the product called Black Lotus.⁵¹ Ayling informed the police that the Store sold approximately 100-150 packets per day.⁵² While talking with officers, Ayling received a call from Ali-Hasan.⁵³ Officer J.M. answered the phone and spoke with Ali-Hasan directly.⁵⁴ Ali-Hasan informed the officer that he owned the smoke shop in the past but not currently and repeatedly asked the officer what they were doing in the store.⁵⁵ Ayling later revealed to officers that Ali-Hasan had video and audio surveillance of the shop and was aware of the Houston Police Departments presence on the premises.⁵⁶ After the brief phone conversation between Ali-Hasan and Officer J.M., Ayling informed officers that more than fifty pounds of possible synthetic cannabinoids could be found at the residence of Ali-Hasan and that it was likely that Ali-Hasan would try to destroy evidence.⁵⁷

31. After concluding the search and arrest warrant at the 8908 North Freeway location, officers requested two additional officers be dispatched to the home of Ali-Hasan at 211 Dominion Park Drive #524 Houston, Texas 77090.⁵⁸ Ayling stated that he and Ali-Hasan lived in the apartment together and he was on the lease.⁵⁹ Officers corroborated this information with

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

the leasing office and Ayling provided officers with a key and signed a form giving consent for officers to search the residence.⁶⁰ Officers entered the apartment and observed a large fifty gallon fish tank with a dark liquid and strong odor of alcohol or acetone and a moderate size of substances later identified as a synthetic cannabinoid.⁶¹ Ayling provided information on where they could find pure crystal substances under the sink of the bathroom.⁶² Officers found two additional bagged crystal substances in the trash, bulk foil packages were found in the bedroom area that contained a powdered substance and bundles of money were found under the bed.⁶³ Ayling stated that the foil packages were used to package synthetic marijuana.⁶⁴ During the search, Ali-Hasan arrived to the apartment in a BMW and was detained.⁶⁵ Ayling informed officers that the BMW was purchased with cash from sales made at Happie Hippie Smoke Shop with the majority of sales coming from synthetic marijuana purchases.⁶⁶ Ayling informed that the Happie Hippie Smoke Shop made around \$30,000 a month from synthetic marijuana.⁶⁷ Officers also found silver tarp in the apartment that was used to dry out the synthetic marijuana, according to Ayling.⁶⁸ At the conclusion of the search, both Ayling and Ali-Hasan were taken into custody. Ayling and Ali-Hasan were both charged with felony possession with intent to deliver synthetic cannabinoids.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

32. Evidence was submitted to Houston Forensic Science Center for the January 22, 2016 incident.⁶⁹ Laboratory results conclude that all three of the pink bags with beige crystal substances, found at the 211 Dominion Park locations, contained AB-CHMINACA.⁷⁰ In addition, lab results concluded that 2.67 pounds of a plant substance found at the Happie Hippie Smoke Shop contained AB-CHMINACA, a Penalty Group 2-A drug under Texas law. *See* Tex. Health & Safety Code § 481.1031(b)(5).⁷¹

33. 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. AB-CHMINACA and NM2201, the synthetic cannabinoids found by HPD at Happie Hippie Smoke Shop and the residence of Ali-Hasan, owner of Happie Hippie Smoke Shop, have also 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); 40 Tex. Reg. 2007 (April 3, 2015); 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. 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. Tex. Health & Safety Code §§ 481.1031, 481.1161, 481.113, 481.119; 21 U.S.C. §§ 841, 844.

⁶⁹ Ex. 29, Houston Forensic Science Center Lab Report for Houston Police Department Incident Report #009373416 Forensic Case #2016-01126 and Affidavit. January 25, 2016

⁷⁰ *Id.*

⁷¹ *Id.*

34. In addition, in 2014, the City of Houston passed Ordinance § 28-572 outlawing synthetic marijuana, including the product labeled as “Kush”.⁷² Violation of the ordinance carries a criminal penalty of up to \$2000 per violation.

35. The Texas Legislature has recently amended the Penalty Group 2-A definition of the Texas Controlled Substances Act such that AB-CHMINACA and NM2201 are now more specifically defined as Penalty Group 2-A drugs.⁷³

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

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

37. By selling, offering for sale, and distributing synthetic marijuana, including “Kush,” the 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.

38. By packaging and selling synthetic marijuana at their store, the Defendants deliberately misled consumers into believing that these products like “King Kong,” “Platinum Diablo,” “AK-47,” “Black Lotus,” “Scooby Snacks,” and “KLIMAXX” are legal and safe. Defendants knew or

⁷² Ex. 3716.

⁷³ 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”

should have known that the substances they were packaging and selling to retail customers were illegal. Defendants did nothing to warn consumers that the synthetic marijuana products were illegal and dangerous. The packaging contains no ingredient lists or warnings of any kind. There is no mention that the key ingredients, AB-CHMINACA and NM2201, are highly addictive and dangerous chemicals, Schedule I drugs, and Penalty Group 2-A drugs. The lack of identifying packaging is itself misleading due to its failure to disclose the dangers of the substance.

39. The Defendants knew or should have known the actual content of the products they sold to consumers is illegal and dangerous, and they deliberately failed to disclose this information in order to induce consumers to buy the products. From the suspicious circumstances of i) the delivery of an indiscriminate black bags full of a leafy substance described as Black Lotus, ii) which was created by the Defendants at the residence of two of the general partners in the Happie Hippie Partnership, and iii) which was then packaged by the Happie Hippie Partnership into small packets in the shop's storage room points. The Defendants were aware that the substance was illegal or, at best, had conscious indifference as to whether the substance was legal. Further, the suspicious circumstances of keeping the synthetic marijuana in the back storage room, requiring customers to ask for it by name or agents suggesting the brand to customer's and providing no identifying markings on the packaging, and charging a lower price of \$10 for a 4 gram package to increase sales⁷⁴—also confirm that the Defendants and their agents knew or should have known that the product being sold is illegal and harmful to consumers. Unsuspecting consumers who purchased these products from the Individual and

⁷⁴ Ex. 33. The average retail priced charged by Defendants for KLIMAXX 10XX is \$25 for 10 grams. Defendants attempt to push the sale of their own brand of Kush called Black Lotus for \$10 per 4 gram bag.

Entity Defendants are exposed to the physical dangers of AB-CHMINACA and NM2201, as well as serious potential criminal liabilities.

40. The Defendants knowingly participated in and tolerated the illegal activity of selling, delivering, and possessing controlled substances at Happie Hippie Smoke Shop, located at 8908 North Freeway Houston, Texas. The Defendants have at all relevant times been involved in the day to day operations and management of the 8908 North Freeway store and based on information and belief, knowingly participated in and/or tolerated the illegal activities described herein. Additionally, without Michelle Hartman’s capital contribution to the Happie Hippie Partnership in the form of inventory; furniture and fixtures; machinery and other equipment; and computers, there would be no Happie Hippie Smoke Shop through which Defendants could make hundreds of thousands of dollars in profits from selling synthetic cannabinoids.

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

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

42. Chapter 125 of the Texas Civil Practice & Remedies Code defines a common nuisance. Section 125.0015(a) states “[a] person who maintains a place to which persons habitually go for [certain] purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.” The purposes that give rise to a common nuisance include “delivery, possession, manufacture or use of a controlled substance in violation of Chapter 481 of the [Texas] Health & Safety Code.” Tex. Civ. Prac. & Rem. Code § 125.0015(a)(4).

43. The Happie Hippie Smoke Shop at 8908 North Freeway, Houston, Texas constitutes a common nuisance under Texas Civil Practice & Remedies Code § 125.0015(a)(4) because

persons habitually have gone to this store to purchase and possess a controlled substance in violation of Chapter 481 of the Texas Health & Safety Code. The Defendants own, maintain, operate, or use the store and knowingly tolerate the nuisance activity and further fail to make reasonable attempts to abate the nuisance activity. Tex. Civ. Prac. & Rem. Code §§ 125.002(b), 125.0015(a)(4). 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 the store as a common nuisance. Tex. Civ. Prac. & Rem. Code § 125.002(b),(e). Plaintiff requests that upon issuance of injunctive relief each of the 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 Defendants will not knowingly allow a common nuisance to exist..

44. 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. By law, the judgment must order that the location where the nuisance was found is closed for one year.

45. 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 & 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 any of the Defendants violate the temporary or permanent injunction, under § 125.045(b), the Court may make additional orders to abate the nuisance.

46. 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.

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

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

48. As alleged and detailed above Defendants have, in the conduct of trade and commerce, engaged in false, misleading, or deceptive acts or practices in violation of DTPA § 17.46(a).

49. Defendants, in the course and conduct of trade and commerce, have directly or indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA by:

- (a) Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of DTPA, § 17.46(b)(2);
- (b) Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of DTPA, § 17.46(b)(3);
- (c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person

has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of DTPA, § 17.46(b)(5);

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

XII. APPLICATION FOR TEMPORARY INJUNCTION AND PERMANENT INJUNCTION

50. 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 Injunction and Permanent Injunction as set forth in the Prayer.

51. 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 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).

52. Plaintiff believes and has shown herein that immediate injunctive relief by way of a Temporary Injunction is necessary to prevent continuing harm prior to trial.

53. 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).

54. 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 a nuisance, and (ii) require that each of the Defendants execute a bond of not less than \$5,000 nor more than \$10,000, payable to the State, with sufficient sureties and conditioned such that a common nuisance will not be maintained. Tex. Civ. Prac. & Rem. Code § 125.045(a).

XIII. REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

55. Plaintiff requests leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to the Defendants' answer date. There are a number of victims and other witnesses who may need to be deposed prior to any scheduled injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys. Also, Plaintiff requests 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

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

XV. CONDITIONS PRECEDENT

57. All conditions precedent to Plaintiff's claims for relief have been performed or have occurred.

XVI. REQUEST FOR DISCLOSURE

58. 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

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

60. Plaintiff prays that 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, as well as their officers, agents, servants, employees, attorneys—and any other person in active concert or participation with any or all defendants named in this case—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, including Kush, that are currently or hereafter in any of the Defendants’ possession, custody or control except in response to further orders or subpoenas in this cause;
- (b) Selling or offering for sale controlled substances on Defendants’ premises, including but not limited to synthetic substances containing AB-CHMINACA and NM2201;
- (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 AB-CHMINACA and NM2201;
- (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; and
- (l) Failing to preserve video surveillance of the Defendants' store premises and to maintain and operate video surveillance of the premises and provide copies of the video surveillance to Plaintiff's counsel upon request.

61. 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;

62. Plaintiff further prays that upon final hearing that this Court orders each Defendant to pay the Plaintiff's attorney fees and costs of court pursuant to the Tex. Gov't. Code § 402.006(c). 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).

63. 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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**ATTORNEYS FOR PLAINTIFF,
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I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this October 19, 2016

Certified Document Number: 72358660 Total Pages: 30

Chris Daniel, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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