P-10
TRO X
CASO
WVBNX

NO. 2015-44444

THE STATE OF TEXAS AND THE CITY OF HOUSTON	§	IN THE DISTRICT COURT
Plaintiffs	§	
v.	§	OF HARRIS COUNTY, TEXAS
CENTER CONVENIENCE, INC. CENTER REALTY, INC. TAMIE PHAM TRUNG PHAM REAL PROPERTY KNOWN AS 10720-10722 KINGSPOINT RD., HOUSTON, TEXAS *Defendants*	§	281st JUDICIAL DISTRICT

FILED
Chris Daniel
District Clerk
JUL 31 2015
Time: _____ Harris County, Texas
By _____ Deputy

EX PARTE
TEMPORARY RESTRAINING ORDER

Plaintiffs, the State of Texas and City of Houston, have filed an original petition in this cause seeking a Temporary and Permanent Injunction and in the same petition presented an Application for a Temporary Restraining Order. Based on the findings below, the Application for Temporary Restraining Order is **GRANTED.**

RECORDER'S MEMORANDUM
This instrument is of poor quality at the time of imaging

This Court **FINDS** it has jurisdiction over the subject matter of this case and jurisdiction over the parties, and venue in this district is proper.

With respect to the Plaintiff's claims under the Texas Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com. Code §§17.41 *et seq.*, ("DTPA"), this Court **FINDS** that there is good cause to believe the Defendants, and their agents and employees, have engaged in and are likely to engage in acts and practices that violate §§ 17.46(a) and (b) of the Tex. Bus. & Com. Code. §§ 17.41-17.63. The Court **FINDS** that this action is in the public interest and a Temporary

Plaintiffs gave personal notice to all of the Defendants via process server of the petition and hearing, None of the Defendants appeared.

Restraining Order should be issued to restrain and prevent the continuing acts and practices of Defendants that may be violating the DTPA. DTPA § 17.47(b). The Court **FINDS** from the evidence set forth in Plaintiffs' Original Petition, the affidavits, attached exhibits, and evidence presented, that unless Defendants are immediately restrained from the acts prohibited below, Defendants will continue to commit such acts before notice can be given and a hearing can be held on Plaintiffs' request for a temporary injunction. The State will suffer the following immediate and irreparable injury, loss or damage: interference with the public health, safety, peace, comfort and convenience of its citizens caused by the Defendants' illegal sale of controlled substances and dangerous synthetic drugs from a retail establishment. Issuance of a temporary restraining order is in the public interest. The Court **FINDS** that there is good cause to believe irreparable loss or injury would occur unless Defendants are immediately enjoined. DTPA § 17.47(a). The Court **FINDS** this Temporary Restraining Order may be issued without bond posted by the State. DTPA § 17.47(b).

With respect to the Plaintiffs' claims to abate a common nuisance under Chapter 125 of the Texas Civil Practice and Remedies Code, the Court **FINDS** Plaintiffs are likely to succeed on the merits under Section 125.002 and that a temporary restraining order is necessary to prevent the Defendants from maintaining a common nuisance. The Court further **FINDS** that the State and the City are not required to post a bond in support of injunctive relief, and the State and the City are not required to verify the allegations in support of its petition to abate the nuisance. Tex. Civ. Prac. & Rem. Code §125.002(a); Tex. Civ. Prac. & Rem. Code §6.002.

I. DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Defendants" shall mean Center Convenience, Inc., d/b/a Almeda Food Mart; Center Realty, Inc.; the Real Property Known As 10720-10722 Kingspoint Rd, Houston, Texas; Tamie Pham; and Dr. Trung Pham.

2. "Controlled Substance" means a substance, including a drug, an adulterant, and a dilutant, listed in Schedules I through V or Penalty Groups 1, 1-A, or 2 through 4, as defined in Tex. Health & Safety Code Chapter 481. The term includes the aggregate weight of any mixture, solution, or other substance containing a controlled substance, as defined in Tex. Health & Safety Code §481.002(5).

3. "Controlled Substance Analogue" means (A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2; or (B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1, 1-A, or 2, as defined in Tex. Health & Safety Code §481.002(6).

4. "Abusable Synthetic Substance" means a substance that: (A) is not otherwise regulated under this title or under federal law; (B) is intended to mimic a Controlled Substance or Controlled Substance Analogue; and (C) when inhaled, ingested, or otherwise introduced into a person's body:

(i) produces an effect on the central nervous system similar to the effect produced by a Controlled Substance or Controlled Substance Analogue;

(ii) creates a condition of intoxication, hallucination, or elation similar to a condition produced by a Controlled Substance or Controlled Substance Analogue; or

(iii) changes, distorts, or disturbs the person's eyesight, thinking process, balance, or coordination in a manner similar to a Controlled Substance or Controlled Substance Analogue.

5. "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

II. PRESERVATION OF EVIDENCE

IT IS ORDERED that the Defendants and their officers, agents, servants, employees (including, but not limited to, employee Thien Mai Nguyen and employee Linda Thi Nguyen), and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this Order by personal service or otherwise, are hereby prohibited from the following:

a) Transferring, concealing, destroying, altering or removing from the jurisdiction of this Court any books, records, documents, invoices or other written materials—including electronic documents—relating to the wholesale or retail purchase or sale of any Controlled Substances, Controlled Substance Analogues, or Abusable Synthetic Substances, as defined herein and including, but not limited to, the products labeled as "Kush," "Klimax Potpourri," "Scooby Snax," "Down 2 Earth," "Geeked Up," "Psycho," "Klassic Klimax," "Mr. High," "OMG," and "Master Kush;" and any synthetic drugs generally known as Kush or any synthetic drugs or any substance that produces pharmacological effects in unlabeled or minimally-labeled packages (collectively "Products") that are currently or hereafter in the possession, custody or control of any

Defendant. The foregoing includes preservation of i) any receipts reflecting payment made to or other consideration issued to the Defendants' suppliers of these Products; ii) any credit card transaction information and checks used to pay the Defendants' suppliers of these Products; iii) any cellular phones used by any Defendant or agent of any Defendant, including Thien Mai Nguyen, to communicate with the suppliers of of these Products; iv) all accounting records, including invoices and inventory balance records, reflecting the order, purchase, receipt, stocking, and sale of all these Products.

b) Transferring, concealing, destroying, altering or removing from the jurisdiction of this Court any video recordings, including all recordings made by in-store security cameras and Digital Video Recorders (DVRs), as well as the hardware that made said records, such that all video records made at the Almeda Food Mart are viewable without additional hardware or software;

c) Transferring, concealing, destroying, altering or removing from the jurisdiction of this Court online account access information, including internet web addresses, user login information, and password information necessary to access any information, including all login information necessary for an individual to access any documents or data stored with information technology providers, such as alarm system providers and online cloud storage providers.

III. DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

IT IS ORDERED that, based upon the good cause shown by Plaintiffs and to protect the public, and as permitted by the applicable Texas Rules of Civil Procedure, that

a) Plaintiffs may obtain documents and other written discovery from Defendants within 5 calendar days of service of a written request upon Defendants or their attorneys. Further, Plaintiff may conduct depositions of witnesses and parties, including relevant third parties, prior to the

Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with ~~reasonable, shortened~~ 3 days notice to Defendants and their attorneys; and

b) The advance filing and notice requirements for business records and the associated records custodian affidavits under Tex. R. Evid. 902 shall not be required prior to the Temporary Injunction Hearing.

IV. PROHIBITED BUSINESS CONDUCT

IT IS ORDERED that the Defendants and their officers, agents, servants, employees (including, but not limited to, employee Thien Mai Nguyen and employee Linda Thi Nguyen), and any other person or entity in active concert or participation with them—whether acting directly or through any corporation, company, partnership, trust, entity, subsidiary, division, or other device—who receive actual notice of this order by personal service or otherwise, are hereby enjoined from engaging in the following conduct until further order of this Court:

(a) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any Controlled Substance or Controlled Substance Analogue or products containing a Controlled Substance or Controlled Substance Analogue, including, but not limited to, the products labeled as "Kush," "Klimax Potpourri," "Scooby Snax," "Down 2 Earth," "Geeked Up," "Psycho," "Klassic Klimax," "Mr. High," "OMG," and "Master Kush;" any synthetic drugs generally known as Kush; any synthetic drugs or any substance that produces pharmacological effects in unlabeled or minimally-labeled packages;

(b) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any Abusable Synthetic Substance (as defined herein), including, but not limited to, the products labeled as "Kush," "Klimax Potpourri," "Scooby

Snax," "Down 2 Earth," "Geeked Up," "Psycho," "Klassic Klimax," "Mr. High," "OMG," and "Master Kush;" any synthetic drugs generally known as Kush; any synthetic drugs or any substance that produces pharmacological effects in unlabeled or minimally-labeled packages;

(c) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any products labeled as household products, including but not limited to potpourri, incense, bath salts, or herbal cigarettes, when the products contain a Controlled Substance, a Controlled Substance Analogue, or Abusable Synthetic Substances (as defined herein);

(e) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any products labeled as "not for human consumption" when the product is intended to be used by consumers to inhale, ingest, or introduce into the human body;

(f) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any products labeled as "legal" unless Defendants know with certainty the product is legal;

(g) Selling, offering for sale, distributing, offering to distribute, holding, storing, possessing, purchasing or offering to purchase any products labeled as "lab certified" unless Defendants know with certainty that the product is certified by an actual, bona-fide laboratory, the operations and practices of which are certified a generally-recognized third-party accreditation organization;

(h) Failing to disclose information regarding possible side-effects, such as paranoia, hallucinations, pains like a heart attack or rapid heartbeat, seizures, panic, passing out, any undesired pharmacological effect, 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.

V.

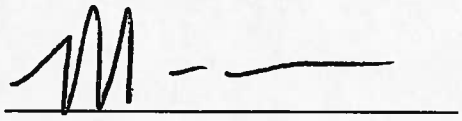
IT IS ORDERED that Defendants in this cause be and hereby are commanded forthwith to comply with this Order from the date of entry until and to the fourteenth (14th) day after entry or until further order of this Court.

The Clerk of the above-entitled Court shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order.

This Order shall be effective without the execution and filing of a bond because Plaintiffs, the State of Texas, Harris County, Texas, and the City of Houston, are exempt from such bond under Tex. Civ. Prac. & Rem. Code § 6.001 and DTPA § 17.47(b).

A temporary injunction hearing in this cause is hereby set for the 14 day of August, 2015, at 11:00 o'clock A. M.

SIGNED this 31 day of July, 2015 at _____ o'clock, ____ m.



JUDGE PRESIDING

ENTRY REQUESTED BY:

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First Assistant Attorney General

JAMES E. DAVIS
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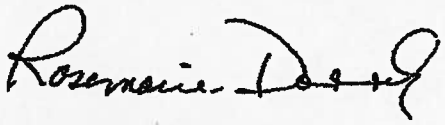

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