



- (b) The claims for monetary relief—including penalties, costs, expenses, 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 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 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. 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 and Safety Code and constitutes a common nuisance as defined by Texas Civil Practice and Remedies Code § 125.0015(4). Therefore,

Defendants' conduct is subject to abatement under Texas Civil Practice and Remedies Code § 125.002.

7. This Court is statutorily authorized to issue the Temporary Restraining Order *ex parte*. Pre-suit notice is not required under DTPA § 17.47(a) because there is good cause to believe 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.

#### IV. VENUE

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

- (a) The transactions forming the basis of this suit occurred in Bexar County, Texas.
- (b) Defendants have done business in Bexar County, Texas.

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

11. Defendant **SUNG KYU CHOE** is an individual who resides in Bexar County at 12314 Hart Cliff, San Antonio, Texas 78249-2483. Mr. Choe (“Choe”) regularly conducts

business in Bexar County at 4709 Pecan Valley, San Antonio, Texas 78223, d/b/a Stop by Mart. Based upon Texas Comptroller franchise tax reports and assumed name records, Defendant Choe is the owner of the business at 4709 Pecan Valley Drive, San Antonio, Bexar County, Texas operating as Stop By Mart.<sup>1</sup> Defendant Choe may be served with process at his place of business at 4709 Pecan Valley, San Antonio, Texas 78233, his residence at 12314 Hart Cliff, San Antonio, Texas 78249 or wherever he may be found.

12. Defendant **THE REAL PROPERTY KNOWN AS 4709 PECAN VALLEY, SAN ANTONIO, TEXAS** is sued *in rem*. This property is owned and controlled by Pecan Valley Center, LLC,<sup>2</sup> a Texas Corporation that may be served with process by serving its registered agent, David B. McGill at 1301 Black Oak Drive, Carrollton, Texas 75007.

## VII. ACTS OF AGENTS

13. 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.

## VIII. FACTUAL BACKGROUND

### A. Overview of the Synthetic Marijuana Problem

14. 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

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<sup>1</sup> Ex. 20, Assumed Name Record for Stop By Mart, Bexar County Clerk.

<sup>2</sup> Ex. 21, Bexar County Appraisal District, Real Property Account Information, 4709 Pecan Valley, San Antonio, Bexar County, Texas 78223.

purposefully altered by designer drug manufacturers (often overseas) in order to attempt to circumvent controlled substance drug laws.

15. Synthetic marijuana is a designer drug, often manufactured overseas, that is marketed as a “safe” and “legal” alternative to marijuana.<sup>3</sup> 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.<sup>4</sup> Synthetic marijuana has no medical use.<sup>5</sup> Some products are sold as incense, but more closely resemble potpourri.<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>

16. 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

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<sup>3</sup> 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).

<sup>4</sup> Ex. 1, p.1; Ex. 2, 78 Fed. Reg. at 28,736.

<sup>5</sup> Ex. 2, 78 Fed. Reg. at 28,735–36.

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

<sup>7</sup> *Id.*; Ex. 2, 78 Fed. Reg. at 28,736.

<sup>8</sup> 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).

“Scooby Snax” and costs between \$5 and \$40 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>

17. 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; and
- Suicidal thoughts and other harmful thoughts and actions.

18. 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

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<sup>9</sup> 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](http://www.aapc.org/alerts/synthetic-marijuana) (last visited May 21, 2015), Ex 12, page 3; Ex 17.

<sup>10</sup> Ex.1, p. 2; Ex. 3, p. 1.

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

<sup>12</sup> 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).

<sup>13</sup> Ex. 4.

reported overdoses on synthetic marijuana.<sup>14</sup> Throughout the United States, including Texas, reports of synthetic marijuana use have been linked to overdoses and other serious injuries, including bizarre and violent self-mutilations, and deaths:

- 17-year old girl became paralyzed and permanently brain damaged from suffering multiple strokes and violent hallucinations after smoking synthetic marijuana;<sup>15</sup>
- A 22-year Houston man reported being heavily addicted to synthetic marijuana, which damaged his kidneys and caused severe memory loss;<sup>16</sup>
- Three Dallas teenagers experienced heart attacks after smoking synthetic marijuana in 2011;<sup>17</sup>
- An 18-year old Amarillo man died after smoking synthetic marijuana;<sup>18</sup>
- Police have received multiple reports of users high on synthetic marijuana standing in the middle of the street, disoriented, and with no recollection of how they got there;<sup>19</sup>
- Synthetic marijuana is also blamed for the death of a soldier from Fort Hood;<sup>20</sup>

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<sup>14</sup> Ex. 6, David Winograd, *Nearly 120 People Overdose on Synthetic Marijuana in 5-Day Period*, TIME (May 6, 2014), <http://time.com/89835/synthetic-marijuana-overdoses-k2/>; see also Ex. 7, Kirstin Tate, *Synthetic Marijuana Hospitalizes 45 In Texas*, BREITBART (May 5, 2014), <http://www.breitbart.com/texas/2014/05/05/synthetic-marijuana-hospitalizes-45-smokers-in-texas/>; Ex. 12, 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.myfoxfhouston.com/story/28416320/synthetic-marijuana-becomes-growing-concern-in-houston-area>.

<sup>15</sup> 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>.

<sup>16</sup> Ex. 9.

<sup>17</sup> 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/>.

<sup>18</sup> Ex. 11, Abby Haglage, *When Synthetic Pot Kills*, THE DAILY BEAST (Nov. 21, 2013), <http://www.thedailybeast.com/articles/2013/11/21/when-synthetic-pot-kills.html>.

<sup>19</sup> Ex. 12.

<sup>20</sup> Ex. 13, *Synthetic Pot Blamed for Death of U.S. Soldier Deployed to Ebola Zone*, CBS NEWS (Apr. 17, 2015), <http://www.cbsnews.com/news/synthetic-pot-blamed-for-death-of-fort-hood-soldier-deployed-to-ebola-zone/>.

- Over 120 people in the Dallas area were reported to have overdosed on synthetic marijuana in a 5-day period;<sup>21</sup>
- A 30-year old man was found dead in his car, due to poisoning from synthetic marijuana;<sup>22</sup>
- A patient presented at an emergency room with self-inflicted fourth-degree burns to his hands and forearms, leading to amputation, due to synthetic marijuana known as Black Diamond;<sup>23</sup>
- More than 60 people in Austin, Texas, were reported to have been sickened by a synthetic drug, known as K-2, including reports of seizures, convulsions and extremely violent behavior;<sup>24</sup>
- A man in Houston had a psychotic break on a “bad batch” of synthetic marijuana and stabbed, beat, and fatally choked his girlfriend;<sup>25</sup>
- Two men in Houston, after smoking synthetic marijuana, attacked and shot at the hosts of a neighborhood barbeque fundraiser;<sup>26</sup>
- 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;<sup>27</sup>

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<sup>21</sup> Ex. 6.

<sup>22</sup> 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>.

<sup>23</sup> 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>

<sup>24</sup> 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>.

<sup>25</sup> Ex. 15B, Brian Rodgers, “*Synthetic Marijuana*” is Blamed in Death, HOUSTON CHRONICLE, July 9, 2015, at B2.

<sup>26</sup> 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>.

<sup>27</sup> 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>.

- In Dallas, Texas, emergency services received approximately 192 emergency calls related to synthetic marijuana between December 1, 2015, and January 7, 2016;<sup>28</sup>
- In February 2017, the South Texas Poison Center and San Antonio Fire Department issued warnings that more and more people who use synthetic marijuana are being taken to the hospital by emergency personnel. At least one downtown San Antonio hospital has seen an increase of patients who have overdosed and are nearly comatose from synthetic drugs;<sup>29</sup>
- In San Antonio, Texas, there has been a rise in homeless patients using synthetic marijuana. Between 2010 and 2015, the Texas Poison Control Network received over 3,500 calls regarding people using synthetic marijuana. Many of the calls included reports that individuals were experiencing the following symptoms: confusion, vomiting, agitation. More serious symptoms included seizures, hallucinations and tremors;<sup>30</sup> and
- Health officials in San Antonio, Texas are working to educate the community about the growing problem of synthetic pot, which can cause users to become agitated, psychotic, and dangerous. Kush can also cause heart attacks, strokes, high blood pressure and seizures.<sup>31</sup>

19. 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.”<sup>32</sup>

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<sup>28</sup> 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/>.

<sup>29</sup> Ex. 16, Mary Ann Martinez, *S. A. Health Officials Warn Against “Kush,” or Synthetic Marijuana*, KENS5.com; <http://www.kens5.com/news/sa-health-officials-warn-against-kush-or-synthetic-marijuana/395...>

<sup>30</sup> Ex. 17, Michael Marks, *Smoking Synthetic Marijuana Is Dangerous But Common for S.A.’s Homeless*, <http://www.sacurrent.com/sanantonio/smoking-synthetic-marijuana-is-dangerous-but-common-for-sas-homeless.com>.

<sup>31</sup> Ex. 18, Charlie Cooper, *Health Officials Warn of Deadly Impact of Kush*, KENS5.com, <http://www.kens5.com/news/health/health-officials-warn-of-deadly-impact-of-Kush>.

<sup>32</sup> Ex. 19, *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).

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

20. Under Texas law, it is a crime to manufacture, deliver, or possess a synthetic cannabinoid, and synthetic cannabinoids are classified as Penalty Group 2-A drugs.<sup>33</sup> Tex. Health & Safety Code §§ 481.1031, 481.113, 481.1161.

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

***C. August 2015 Inspection***

22. On August 7, 2015, Detectives with San Antonio Police Department (“SAPD”) performed a routine Tobacco Alcohol Beverage Commission (“TABC”) inspection at the Stop By Mart, located at 4709 Pecan Valley, San Antonio, Texas 78223.<sup>34</sup> SAPD issued citations for violations and informed Defendant Choe that a follow up inspection would take place at a later date.

23. On August 20, 2015, SAPD detectives received information that Stop By Mart was selling “Klimax,” an illegal synthetic cannabinoid. SAPD conducted a follow up TABC inspection

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<sup>33</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 . . . .”

<sup>34</sup> Ex. 22, Affidavit of SAPD Detective Clancy.

at Stop By Mart and identified themselves to Choe. While inspecting the location, detectives noticed that there were several bags of “Klimax” in Choe’s wife’s apron. Choe’s wife pulled six bags out of her apron and when asked if there was any more in the store, Choe’s wife gave the detectives six more bags that were located on the counter in the store’s office. During the inspection of the store, another 303 bags were located in the refrigerator in the store office.<sup>35</sup> The evidence, weighing approximately 6 pounds and 15 ounces, included sealed packages with labels that read, “KLIMAX potpourri By KUSH;” “RED DRANK,” “Red Rave,” “Double Melon,” “COCONUT” “Gummy Bear,” “Blue Wave,” “Double Apple,” “Pine Apple + Hypnotic Fusion,” and “Bubble Gum.” Labels also included the following language: “LAB CERTIFIED LEGAL,” “THIS PRODUCT DOES NOT CONTAIN ILLEGAL OR BANNED INGREDIENTS,” “This product is not intended to be burned or smoked,” and “Ingredients: various herbs.” Some of the packages also included a UPC barcode, which is a number commonly required for products sold by retailers.<sup>36</sup> Lab results revealed that the bags contained chemicals known as 5F-AKB48, 5-fluoro AMB, XLR-11, AB-PINACA, 5-fluoro ADB, AB-CHMINACA.<sup>37</sup> These substances are synthetic cannabinoids, Penalty Group 2-A drugs under Texas law, and Schedule I drugs. *See* Tex. Health & Safety Code § 481.1031(b)(5); 40 Tex. Reg. 2007 (Apr. 3, 2015). Defendant Choe was arrested for Possession of a Controlled Substance, but criminal charges were never pursued even though products sold by Choe were, in fact, illegal.

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<sup>35</sup> *Id.* at 3.

<sup>36</sup> Ex. 23, 2015 Inspection Pictures; Ex. 24, 2016 Inspection Pictures.

<sup>37</sup> Ex. 25, Bexar County Criminal Investigation Laboratory Drug Identification Report #15-04505.

**D. August 2016 Inspection**

24. The following year, on September 30, 2016, SAPD received information from a caller that synthetic marijuana was still being sold to consumers at Stop By Mart, located at 4709 Pecan Valley, San Antonio, Texas 78223.<sup>38</sup> As done in 2015, SAPD conducted a TABC inspection on the location. An undercover officer entered the location prior to the arrival of the inspection team. Upon the inspection team's arrival to Stop By Mart, the undercover officer observed Choe attempting to conceal a trash can under the front counter.<sup>39</sup> During the inspection, several packets of alleged synthetic marijuana were found in the trash can inside a plastic bag and more bags were found behind the door of Defendant's office. After a search of Choe's vehicle, more alleged synthetic marijuana was found in the covered bed of his vehicle. There were a total of 177 packets found, weighing approximately 5.5 pounds. The SAPD team also found zip lock baggies in different colors such as black, light blue, gold and pink. The black, light blue, and gold in color zip lock baggies were labeled "Blueberry 6x." The pink zip lock baggies were labeled as "Orange Jungle 6x." The bags contained a green leafy substance which resembled synthetic marijuana.<sup>40</sup> The laboratory report revealed that the bags contained chemicals known as XLR-11, 5-fluoro ADB and MMB-FUBINACA.<sup>41</sup> These chemicals are synthetic cannabinoids, Penalty Group 2-A drugs under Texas law, and Schedule I drugs. *See* Tex. Health & Safety Code § 481.1031; 40 Tex. Reg. 2007 (Apr. 3, 2015). Choe was arrested a second time for Possession of a Controlled Substance, and charges are currently pending.

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<sup>38</sup> Ex. 26, Pictures of Stop By Mart.

<sup>39</sup> Ex. 27, Affidavit of SAPD Detective Kory.

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

<sup>41</sup> Ex. 28, Bexar County Criminal Investigation Laboratory Drug Identification Report #16-05517.

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

25. By selling, offering for sale, and distributing synthetic marijuana, Defendants and their agents own, operate and maintain a common nuisance in violation of Chapter 125 of the Texas Civil Practice & Remedies Code.

26. In addition, specifically with respect to selling and offering to sell the synthetic marijuana, Defendant Sung Kyu Choe d/b/a Stop by Mart has also engaged in false, misleading and deceptive acts and practices declared unlawful under the DTPA. *See* DTPA § 17.46(a).

27. Defendant Sung Kyu Choe d/b/a Stop by Mart knew or should have known the actual content of the products they are selling to consumers is illegal and dangerous, and Choe deliberately fails to disclose this information in order to induce consumers to buy the products. The suspicious circumstances of the synthetic marijuana by Defendants—hiding it from view, the lack of any identifying markings on some packets, all confirm that Choe and their agents knew or should have known that the product being sold is illegal and harmful to consumers. By selling and distributing synthetic marijuana at their store, with no display or label giving any warning or description as to the effects of 5F-AKB48, MMB-FUBINACA, 5-fluoro AMB, XLR-11, AB-PINACA, 5-fluoro ADB, and AB-CHMINACA, Choe misleads consumers into believing that these products are legal and safe. Unsuspecting consumers who purchase these products from Choe are exposed to the physical dangers of 5F-AKB48, MMB-FUBINACA, 5-fluoro AMB, XLR-11, AB-PINACA, 5-fluoro ADB, and AB-CHMINACA as well as serious potential criminal liabilities.

28. Packages sold by Choe contain either no ingredient lists or misleading ingredient lists [“various herbs”] and no warnings that the contents actually contain harmful, illegal substances. Some of the packaging has images of marijuana leaves on them. However, no

marijuana is contained in the packages, but rather highly addicting dangerous chemicals. There is no mention that the key ingredients, 5F-AKB48, MMB-FUBINACA, 5-fluoro AMB, XLR-11, AB-PINACA, 5-fluoro ADB, or AB-CHMINACA were contained in the contents of the packages. The packaging itself is misleading due to the failure to disclose the dangers of the substances.

29. Some of the packets' labeling also states the product is "lab certified legal" and does not contain "illegal or banned ingredients," yet marijuana leaves, which are not legal, are pictured on the packages. The fact that the same package which states the product has no illegal or banned substances also warns consumers that the product is "NOT FOR HUMAN CONSUMPTION," but is sold strictly as a "potpourri" to be "burned," but is also a "fire hazard" is nonsensical and, most likely, an attempt to protect Choe and Stop by Mart in case they were questioned by law enforcement. Additionally, if this product was truly "potpourri" as advertised, there would be no need to warn the consumer that he or she "must be 18 years of age or older to purchase." By selling synthetic marijuana at his store, Choe deliberately misleads consumers believing that these products are "safe" and "legal." Choe's deception to the public is even more appalling because SAPD had previously seized illegal and dangerous synthetic cannabinoids from Stop By Mart in 2015, which provided clear notice to Choe that selling synthetic cannabinoids is illegal. However, Choe continued to sell to the illegal substances in his store, blatantly disregarding consumers' health and safety.

30. Defendants knowingly participated in and tolerated the illegal activity of selling, distributing, delivering, and possessing controlled substances at the Stop By Mart, located at 4709 Pecan Valley, San Antonio, Texas 78223. Defendant Choe facilitated and participated in and/or tolerated the illegal activities described herein by continuing to sell the illegal substances after his 2015 arrest. Due to Choe's blatant disregard for the law and his continued selling of a dangerous

and illegal substance, a Temporary Restraining Order is warranted to protect the public from the harmful effects of synthetic cannabinoids.

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

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

32. 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).

33. Stop By Mart, located at 4709 Pecan Valley, San Antonio, Texas 78223, constitutes a common nuisance under Texas Civil Practice & Remedies Code § 125.0015(a)(4) because persons habitually go to this store to purchase and possess controlled substances, such as synthetic marijuana, in violation of Chapter 481 of the Texas Health & Safety Code. 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) and (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

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 \$5,000 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 4709 Pecan Valley location. *Id.*

34. 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. Under § 125.002(e) of the Texas Civil Practice & Remedies Code, the judgment must order that the location where the nuisance was found is closed for one year.

35. 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 make additional orders to abate the nuisance.

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

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

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

38. The 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.

39. Additionally, the 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).

**XI. DISGORGEMENT/CONSTRUCTIVE TRUST/UNJUST ENRICHMENT**

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

41. Plaintiff requests the Court impose a constructive trust over the assets and funds of the Defendants derived from the sale of illegal controlled substances to the public. The Defendants would be unjustly enriched if allowed to retain the proceeds and assets from their criminal activities in selling illegal substances. The Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for the Defendants to retain, including all ill-gotten gains and benefits or profits that have resulted from the Defendants' promotion and sale of illegal substances as legal and safe. Plaintiff prays that the Defendants be ordered to disgorge all monies taken from consumers as a result of the Defendants' deceptive practices, together with all the proceeds, profits, income, interest, and assets acquired with the proceeds of the Defendants' deceptive practices. Plaintiff further prays that the Court enjoin the Defendants from transferring, moving, concealing, spending, or withdrawing funds derived from the sale of illegal controlled substances to the public.

**XII. APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

42. 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),

Plaintiff requests relief by way of a Temporary Restraining Order, Temporary Injunction, and Permanent Injunction as set forth in the Prayer.

43. 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 illegal drugs, synthetic marijuana, in violation of Chapter 481 of the Texas Health & Safety Code at Stop By Mart, located at 4709 Pecan Valley, San Antonio, Texas 78223, and order such requirements as to prevent the ongoing nuisance activity in Bexar County, Texas. Tex. Civ. Prac. & Rem. § 125.002(b) and (e).

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

45. The Plaintiff, the State of Texas, is exempt from any requirements to file and execute a bond. DTPA § 17.47(b); Tex. Civ. Prac. & Rem. Code § 6.001(a).

46. 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 Stop By Mart store 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**

47. Plaintiff requests leave of this Court to conduct depositions of witnesses and parties prior to any scheduled Temporary Injunction Hearing and prior to Defendants' answer date. There are 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 requests that the filing requirements for business records and the associated custodial affidavits be waived for purposes of all temporary injunction hearings.

(a) For depositions, Plaintiff requests a two (2) days' notice to the attorneys for all parties, if known, including taking telephonic, video, written, and other depositions with a request for production of documents prior to any scheduled temporary injunction hearing and prior to Defendant's answer date.

(b) Plaintiff requests that Defendant Choe be ordered to provide the following information to counsel for the Plaintiff and a statement, signed by Defendant Choe and notarized, certifying that the information is true and accurate within three (3) business days of receiving actual notice of this Order:

- (i) Identification and description of all accounts and held or controlled by Defendant at any time during the two (2) years prior to the effective date of this Order, including the names and locations of the financial institutions holding such accounts or assets, the last three digits of any account numbers, the balance of the accounts on the effective date of this Order, and the nature, description, location and estimated value of any other assets;
- (ii) Identification and location of any safe deposit box, commercial mail box, or storage facility that is either titled in the name, individually or jointly, of any Defendant, or is otherwise subject to access or control by any Defendant or other party in whole or in part;
- (iii) Identification of any Defendant or other party that has attempted to access any account, safe deposit box, storage facility, or other asset since the effective date of this Order; and,
- (iv) If the account, safe deposit box, storage facility, or other asset has been closed or removed, the date closed or removed, the balance or value on said date, and the current location of the removed funds or assets, and the identity of any immediate and subsequent transferees of such funds or assets.

#### **XIV. TRIAL BY JURY**

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

#### **XV. CONDITIONS PRECEDENT**

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

#### **XVI. PRAYER**

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

51. 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) Deleting any data or communications pertaining to any suppliers of synthetic cannabinoids on any phones or electronic devices used by any Defendants;
- b) 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;

- c) Selling, offering for sale, distributing, offering to distribute, delivering, transferring, holding, storing, possessing, purchasing, or offering to purchase any
  - i) Controlled Substance, Controlled Substance Analogue, Illicit Synthetic Drug, or Dangerous Drug or
  - ii) Ingestible Product or Herbal Incense containing a Controlled Substance, Controlled Substance Analogue, Illicit Synthetic Drug, or Dangerous Drug;
- d) Manufacturing, purchasing, distributing, 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 5F-AKB48, MMB-FUBINACA, 5-fluoro AMB, XLR-11, AB-PINACA, 5-fluoro ADB, and AB-CHMINACA;
- e) 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;
- f) 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;
- g) 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;

- 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, and suicidal thoughts, from using products with synthetic substances that mimic the effects of drugs and/or controlled substances, which information was known or reasonably should have been 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;
- i) Failing to cooperate with authorized representatives of the State and Bexar 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;
- j) 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;
- k) Transferring, withdrawing, liquidating, spending, concealing, encumbering, removing, dissipating, distributing, assigning, granting a lien or security interest in, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, other assets, of Defendants which assets and funds were directly or indirectly acquired from the sale of illegal controlled substances to the public; and
- l) Failing to provide a copy of any restraining order or injunction issued by this court in this case to all employees and agents of Defendant Sung Kyu Choe d/b/a Stop

By Mart as soon as reasonably practical and obtain a signed receipt that the employees and agents have read and understood its terms.

52. Plaintiff, the State of Texas, further prays that this Court award judgment for the Plaintiff ordering Defendant Sung Kyu Choe d/b/a Stop by Mart, 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.

53. Plaintiff further prays that upon final hearing that this Court order each Defendant to pay the Plaintiff's attorney fees and costs of court pursuant to Texas Government 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) and (d).

54. Plaintiff further prays that the Defendants be ordered to disgorge all monies taken from consumers as a result of the Defendants' deceptive practices, together with all the proceeds, profits, income, interest, and assets acquired with the proceeds of the Defendants' deceptive practices.

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

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

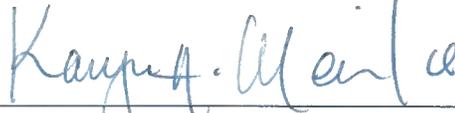
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- EXHIBIT 1 *DrugFacts: K2/Spice (“Synthetic Marijuana”)*, NATIONAL INSTITUTE ON DRUG ABUSE (last updated Dec. 2012).
- EXHIBIT 2 78 Fed. Reg. 28735 (May 16, 2013) (temporary placement of three synthetic cannabinoids, including XLR11, into schedule I).
- EXHIBIT 2A 80 Fed. Reg. 27854 (May 15, 2015) (extension of temporary scheduling of XLR11).
- EXHIBIT 3 *Synthetic Drugs (a.k.a K2, Spice, Bath Salts, etc.)*, THE WHITE HOUSE: OFFICE OF NATIONAL DRUG CONTROL POLICY.
- EXHIBIT 4 *Alerts: Synthetic Marijuana*, AMERICAN ASSOCIATION OF POISON CONTROL CENTERS.
- EXHIBIT 5 *The Dangers of Synthetic Marijuana*, TEXAS POISON CENTER NETWORK.
- EXHIBIT 6 David Winograd, *Nearly 120 People Overdose on Synthetic Marijuana in 5-Day Period*, TIME (May 6, 2014).
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- EXHIBIT 12 Sara Thomas, *East Texas Police Seek Solution to Synthetic Marijuana Problem*, LONGVIEW NEWS JOURNAL (May 8, 2014).
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- EXHIBIT 15 K.A. Meijer et al., *Abstract: Smoking Synthetic Marijuana Leads to Self-Mutilation Requiring Bilateral Amputations*, ORTHOPEDICS, 2014 Apr. 37(4):e391-4.
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- EXHIBIT 15B Brian Rodgers, *“Synthetic Marijuana” is Blamed in Death*, HOUSTON CHRONICLE, July 9, 2015, at B2.

- EXHIBIT 15C Dylan Baddour, *Man Attacks, Shoots Grieving Family in Rage Over BBQ Chicken*, HOUSTON CHRONICLE (Sept. 9, 2015).
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- EXHIBIT 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).
- EXHIBIT 16 Mary Ann Martinez, *S. A. Health Officials Warn Against "Kush," or Synthetic Marijuana*, KENS5.com.
- EXHIBIT 17 Michael Marks, *Smoking Synthetic Marijuana Is Dangerous but Common for S.A.'s Homeless*.
- EXHIBIT 18 Charlie Cooper, *Health Officials Warn of Deadly Impact of Kush*, KENS5.com.
- EXHIBIT 19 *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).
- EXHIBIT 20 Assumed Name Record for Stop By Mart, Bexar County Clerk.
- EXHIBIT 21 Bexar County Appraisal District, Real Property Account Information, 4709 Pecan Valley, San Antonio, Bexar County, Texas 78223.
- EXHIBIT 22 Affidavit of SAPD Detective Clancy.
- EXHIBIT 23 2015 Inspection Pictures.
- EXHIBIT 24 2016 Inspection Pictures.
- EXHIBIT 25 Bexar County Criminal Investigation Laboratory Drug Identification Report #15-04505.
- EXHIBIT 26 Pictures of Stop By Mart.
- EXHIBIT 27 Affidavit of SAPD Detective Kory.
- EXHIBIT 28 Bexar County Criminal Investigation Laboratory Drug Identification Report #16-05517.