

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Sheila Sullivan Polk  
Yavapai County Attorney  
Arizona State Bar No. 007514  
Jack H. Fields  
Deputy County Attorney  
Arizona State Bar No. 012470  
Scott W. Blake  
Deputy County Attorney  
Arizona State Bar No. 025068  
255 E. Gurley Street  
Prescott, Arizona 86301  
YCAO@yavapai.us

Attorneys for the YAVAPAI COUNTY ATTORNEY

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

Sheila Sullivan Polk, in her capacity )  
as Yavapai County Attorney, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Hawaiian Honey Swimwear LLC dba )  
Hawaiian Honey; Giannico Family Trust; )  
Alphonso Giannico and Cynthia Giannico, )  
Trustees of Giannico Family Trust; Steven )  
Ogden dba Pipe Dreamz Smoke Shop; )  
Munday Living Trust; David Munday and )  
Lorraine Lovel, Trustees of the Munday )  
Living Trust; A & N Arizona Enterprises, )  
Inc. dba Prescott Quick Stop; Willis Family )  
Trust; William Willis and Joanne Willis, )  
Trustees of the Willis Family Trust; Hardip )  
Singh; Lewman LLC dba Mike's Mini )  
Market; The Island Store LLC dba The )  
Island Store; Wes Lance dba Wes Lance )  
Trading Co.; Coffey Commercial Center )  
LLC; Paula Farley dba X-Hale Smoke Shop;)

Case No.  P1300CV2012 80342  
Division PTA

VERIFIED COMPLAINT  
APPLICATION FOR PRELIMINARY  
AND PERMANENT INJUNCTION, AND  
TEMPORARY RESTRAINING ORDER

ORIGINAL FILED THIS AUG 09 2012  
DAY OF @ 4:13 pm  
SANDRA K MARKHAM  
Clerk of Superior Court  
By: Jacqueline Markham  
Deputy

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2012 AUG -9 PH 4:09  
SANDRA K MARKHAM, CLERK  
BY: Jacqueline Markham

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Quesnell Property Management Grand )  
2 Prairie LLC; Nabulsy, LLC dba Mario's PV )  
3 Quick Stop; Fernando Gonzalez; Eyup )  
4 Ozaltin dba Mike's Connection, LLC; )  
5 B-Desh Enterprises, LLC dba Texaco; )  
6 Texaco Refining and Marketing, Inc.; )  
7 Daniel Wildes dba Hobby Glass; Charlene )  
8 Karecki and Donald Karecki; Jeffrey Russell )  
9 dba Smoke N Thingz; Maneely Family )  
10 Irrevocable Trust; Jason Maneely and )  
11 Cynthia Maneely, Trustees of the Maneely )  
12 Family Irrevocable Trust; John and Jane )  
13 Does I – X, and Doe Corporations I – X, )  
14 )  
15 Defendants. )  
16 )

## PRELIMINARY STATEMENT

### I.

17 This action is brought by the Yavapai County Attorney on behalf of the people of Yavapai  
18 County, who asks the Court to abate activities of the Defendants that constitute a public nuisance.  
19 Defendants are selling, or allowing to be sold, dangerous synthetic drugs (commonly called  
20 "Spice" and "Bath Salts") that present a serious and ongoing health hazard to the public, and are  
21 illegal under the federal Controlled Substances Act. Users of the drugs possessed and sold by the  
22 Defendants engage in violent and bizarre behavior, presenting a serious health and safety concern  
23 to themselves; the emergency first responders and medical personnel that are forced to respond to  
24 the serious violence; injury and sickness resulting from the use of these dangerous drugs; and the  
25 general citizenship of the county through increased crime and violence. The activities of the  
26 Defendants pose a serious threat to the health, safety, and welfare to all of the citizens of the  
County. This serious threat to the health and safety of Yavapai County citizens constitutes a  
public nuisance and this Court should enjoin the acquisition, possession and distribution of these

1 dangerous synthetic drugs pursuant to A.R.S. §13-2917 and the common law. Plaintiff requests  
2 that the Court enjoin Defendants from acquiring, possessing, or transferring these dangerous  
3 synthetic drugs. A Motion for Temporary Restraining Order and Preliminary Injunction, and a  
4 Motion to Accelerate Trial on the Merits are filed with this Complaint. Throughout this  
5 Complaint, the drugs sought to be enjoined are referred to as “Novelty Powder” drugs or  
6 “dangerous synthetic drugs.”  
7

8  
9 **JURISDICTION AND VENUE**

10 II.

11 This Court has jurisdiction to issue injunctive relieve pursuant to A.R.S. §§ 12-1801 and  
12 13-2917 (C). All acts of the Defendants complained of occurred or are occurring in Yavapai  
13 County, Arizona.  
14

15 III.

16 The Yavapai County Attorney may bring an action in superior court to abate a public  
17 nuisance that is injurious to health pursuant to A.R.S. § 13-2917(C).  
18

19 IV.

20 Venue is proper in Yavapai County Superior Court pursuant to A.R.S. §12-401 because  
21 all of the actions complained of occurred in Yavapai County, and because at least one defendant  
22 resides in Yavapai County.

23 **PARTIES**

24 V.

25 Plaintiff Sheila Polk is the duly elected and serving Yavapai County Attorney.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

VI.

Defendant Puffin Stuff Boutique, LLC operates a retail business known as “Puffin Stuff Boutique” at 403 Clark Street, Jerome, Arizona. Plaintiff is informed and believes the property on which Puffin Stuff Boutique, LLC operates is owned by Defendant Niagara Holdings LLC.

VII.

Defendant Hawaiian Honey Swimwear LLC operates a retail business known as “Hawaiian Honey” at 3545 E. State Route 89A, Cottonwood, Arizona. Plaintiff is informed and believes the property on which Hawaiian Honey Swimwear LLC operates is owned by Defendant Giannico Family Trust.

VIII.

Defendant Steven Ogden operates a retail business known as “Pipe Dreamz” at 3800 Western Drive, Ste. B, Cottonwood, Arizona. Plaintiff is informed and believes the property on which Steven Ogden operates is owned by Defendant Munday Living Trust.

IX.

Defendant A & N Enterprises operates a retail business known as “Prescott Quick Stop” at 447 S. Montezuma St., Prescott, Arizona. Plaintiff is informed and believes the property on which A & N Enterprises operates the retail business is owned by Defendant Willis Family Trust.

X.

Defendant Lewman, LLC operates a retail business known as “Mike’s Mini Market” at 924 E. Gurley St., Prescott, Arizona. Plaintiff is informed and believes the property on which Lewman, LLC operates the retail business is owned by Defendant Lewman, LLC.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

XI.

Defendant Island Store, LLC operates a retail business known as the “Island Store” at 649 Miller Valley Rd., Prescott, Arizona. Plaintiff is informed and believes the property on which Island Store, LLC operates the retail business is owned by Defendant Steven B. Wells.

XII.

Defendant Wes Lance operates a retail business known as “Wes Lance Trading Co.” at 873 E. Howard Rd., Camp Verde, Arizona. Plaintiff is informed and believes the property on which Wes Lance operates the retail business is owned by Defendant Coffey Commercial Center LLC.

XIII.

Defendant Paula Farley operates a retail business known as “X-Hale Smoke Shop” at 8198 E. Spouse Dr. #A and #B, Prescott Valley, Arizona. Plaintiff is informed and believes the property on which Paula Farley operates the retail business is owned by Defendant the Quesnell International LTD.

XIV.

Defendant Nabulsy LLC operates a retail business known as “Mario’s PV Quick Stop” at 8182 E. Spouse Dr., Prescott Valley, Arizona. Plaintiff is informed and believes the property on which Nabulsy LLC operates the retail business is owned by Defendant Fernando Gonzalez.

**STATEMENT OF FACTS**

XV.

The Defendants operate retail stores or are the owners of the real property on which these stores operate. Defendants are selling or allowing to be sold merchandise commonly called “Novelty Powder” drugs which are in fact versions of powerful synthetic illegal drugs known as

1 cannabinoids and cathinones. While the particular versions of the “Novelty Powder” drugs  
2 Defendants are holding and offering for sale or allowing to be sold are not currently illegal under  
3 Arizona state law, the sales of these drugs are a public nuisance in that the “Novelty Powder”  
4 drugs being distributed by Defendants are injurious to the health and safety of a substantial  
5 number, if not all, of the residents of Yavapai County. The Defendants operating retail stores  
6 have been notified of the harmful effects of “Novelty Powder” drugs, and have refused to  
7 discontinue sales of these dangerous synthetic drugs.  
8

9 XVI.

10 The drugs Defendants sell or allow to be sold include synthetic *Cannabinoids*, a group of  
11 synthetically made psycho-active drugs similar to the active ingredients of cannabis or marijuana  
12 (*Marriam-Webster MedlinePlus*, <http://www.merriam-webster.com/medlineplus/cannabinoids>);  
13 and synthetic *Cathinones*, a group of synthetically made psycho-active drugs similar to  
14 monoamine alkaloids found in the shrub *Catha edulis* (khat), chemically similar to ephedrine,  
15 cathine and other amphetamines (*National Institute of Health -National Institute for*  
16 *Biotechnology Information*, <http://www.ncbi.nlm.nih.gov/pubmed/22108839>). Manufactured  
17 cannabinoids, cathinones and psilocybins are known by a variety of names including “Spice” or  
18 “K-2” (typical for cannabinoids), “bath salts” (typical for cathinones) and collectively as  
19 “Novelty Powder” drugs.  
20  
21

22 XVII.

23 As a group, “Novelty Powder” drugs are synthetically produced variants of dangerous  
24 drugs that are illegal under Arizona law. See A.R.S §13-3401(6)(b)(v), (vi), (xiv), (xix), (xxi),  
25 (xxii), (xxiii), (xxvi) (cathinones); §13-3401(6)(a)(xxxiv)-(xlili), §13-3401(20)(w)  
26 (cannabinoids). However, because the “Novelty Powder” drugs are synthetically made, chemical

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

alteration of the drugs is easily and cheaply done. Slight alteration in chemical composition creates an “Analogue” drug – a drug that is slightly different chemically from a banned drug, but one that has an almost identical effect on the human body as the chemically similar (and dangerous) illegal drug. The “Novelty Powder” drugs sold by the Defendants are Analogue drugs to those banned by Arizona law. 21 U.S.C.A. § 802 defines an “Analogue drug”: as:

(32)(A) Except as provided in subparagraph (C), the term “controlled substance analogue” means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

XVIII.

Because the chemical formulation of an Analogue drug is slightly different from the chemical formula of the parent (banned) drug, it is not criminally unlawful in Arizona to manufacture, possess, or sell until the State legislature acts to specifically ban the new chemical formulation. Thus, in Arizona, the criminal justice system has been engaged in a “cat-and-mouse” game with the manufacturers and sellers of “Novelty Powder” drugs. When in 2011 and 2012 the Arizona legislature outlawed specific versions of the drugs, the manufacturers created slightly different, and therefore legal, Analogues of “Novelty Powder” drugs by slightly altering the chemical makeup of the drugs so they no longer fit the statutory definition of the illegal drug.

XIX.

1 Under federal law Analogue drugs are illegal. As Analogue drugs, under the Federal  
2 Controlled Substances Act possession or sale of the “Novelty Powder” drugs by the Defendants is  
3 illegal. 21 U.S.C. §802(32)(A); 21 U.S.C. §813.

4 XX.

5 “Novelty Powder” drugs have proven to be a dangerous threat to the health of the people  
6 of Yavapai County.

7 XXI.

8 Attached to the Motion for Temporary Restraining Order are over 85 affidavits from  
9 Yavapai County community leaders, sworn law enforcement and probation officers, medical  
10 professionals, mental health care professionals, forensic scientists, education professionals, public  
11 health officials, and citizens of Yavapai County personally affected by these dangerous synthetic  
12 drugs. See Exhibits “A” to “J” in Plaintiff’s Motion for Preliminary Injunction and Motion for  
13 Restraining Order filed contemporaneously with this Complaint.

14 As the affidavits show, ingestion of “Novelty Powder” drugs often leads to bizarre,  
15 threatening, and unpredictable behavior by the user. Users become unpredictably aggressive and  
16 unreasonable (“out of their minds”), and can display inexhaustible strength and stamina. Users  
17 will often become physically aggressive toward others without reason, enter the homes and  
18 businesses of others without reason, and injure themselves without reason. The user themselves  
19 may die as a result of “Novelty Powder” drugs.

20 XXII.

21 “Novelty Powder” drugs create other serious health hazards for users and those forced to  
22 confront their violent and bizarre behavior. Children and adults that ingest these drugs are  
23 hospitalized with life-threatening conditions as a result of ingesting these dangerous drugs. The  
24  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

entire community or neighborhood or by a considerable number of persons.

XXIV.

In Mutschler v. City of Phoenix, the court, citing the Restatement (Second) of Torts §821B, stated that at common law a public nuisance is “[A]n unreasonable interference with a public right [that] includes circumstances in which ‘the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience.’” Mutschler, 212 Ariz. 160, 166, 129 P.3d 71, 77 (App. 2006).

XXV.

Conduct need not be criminal to constitute a public nuisance. “We hold, therefore, that conduct which unreasonably and significantly interferes with the public health, safety, peace, comfort or convenience is a public nuisance within the concept of tort law, even if that conduct is not specifically prohibited by the criminal law.” Armory Park Neighborhood Ass'n v. Episcopal Cmty. Services in Arizona, 148 Ariz. 1, 10, 712 P.2d 914, 923 (1985).

XXVI.

In Heyne v. Loges, 68 Ariz. 310, 205 P.2d 586 (1949), the Arizona Supreme Court addressed the duty of a court to grant an injunction prohibiting the use of real property as a “common gambling house,” (an illegal activity) and stated “Under the authority of State v. Phoenix Sav. Bank & Trust Co., supra, the trial court had the power *and the duty* to enjoin the *unlawful* use of the premises by these defendants and it constituted a clear abuse of judicial discretion to deny the injunctive relief which was asked for.” Id. at 68 Ariz. 313, 205 P.2d 588 (emphasis added).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**CAUSE OF ACTION**

**COUNT ONE – STATUTORY PUBLIC NUISANCE**

**XXVII.**

“Novelty Powder” drugs are a public nuisance as defined by A.R.S. §13-2917(A). “Novelty Powder” drugs are creating significant, even deadly, health issues for large numbers of Yavapai County residents because of the bizarre and violent effect the drugs have on its users. Citizens of Yavapai County suffer serious physical injury and even death as a result of these dangerous drugs. Law enforcement, first responders, and medical professionals in the county face the serious threat of physical injury as a result of “Novelty Powder” drugs. The users themselves face the real threat of physical harm or death.

**XXVIII.**

Yavapai County citizens are subject to random acts of violence and theft by crazed individuals under the influence of these drugs. Those that maintain order and health in our community, such as law enforcement officers, paramedics, doctors and nurses, are met with violent resistance when they try to lawfully restrain or assist an individual under the influence of these dangerous synthetic drugs, sometimes with the law enforcement officer or medical professional incurring injury as a result of the violence caused by these dangerous synthetic drugs. Children are obtaining “Novelty Powder” drugs, with serious health consequences to them, to their parents, and to the county school system. Significant numbers of Yavapai County citizens are users of these dangerous drugs, and as a result place themselves in great danger. Some have engaged in dangerous and demented behavior such as stripping off their clothes and running naked, intentionally injuring themselves, and provoking confrontations with others. In short, the

1 menace presented by “Novelty Powder” drugs threatens large numbers of county residents,  
2 including children, as well as law enforcement and medical personnel within Yavapai County.

3 XXIX.

4 The dangerous activity associated with “Novelty Powder” drugs is occurring throughout  
5 the county. The Yavapai County Sheriff, as well as law enforcement from most of the cities and  
6 towns within the county, has reported violent contacts with users of “Novelty Powder” drugs in  
7 all segments of the county. All of the major hospitals in the county have reported a substantial  
8 number of patients, both children and adult, that present to the emergency room with life-  
9 threatening conditions brought on by the use of “Novelty Powder” drugs, as well as violent  
10 confrontations with those under the influence of the drugs. School districts throughout the county  
11 have reported that children are obtaining and using these drugs, leading to serious and sometimes  
12 life-threatening health issues for the child, violent confrontations between the child and school  
13 staff, and disruption of school mission and routine. Parents living throughout the county have  
14 reported the serious consequences for their children resulting from the child’s use of “Novelty  
15 Powder” drugs, including hospitalization, delinquency, and long term mental health issues.  
16 Citizens throughout the county have reported incidents of bizarre and violent behavior from  
17 individuals under the influence of “Novelty Powder” drugs. In sum, the health menace presented  
18 by “Novelty Powder” drugs is widespread in Yavapai County, and growing.  
19  
20  
21

22 CAUSE OF ACTION

23 COUNT TWO – COMMON LAW PUBLIC NUISANCE

24 XXX.

25 Defendants’ possession and sale (or their acquiescence to the use of their property for the  
26 keeping and sale) of dangerous “Novelty Powder” drugs also constitute a public nuisance under

1 the common law. In Mutschler v. City of Phoenix, the court, citing the Restatement (Second) of  
2 Torts §821B, stated that a public nuisance is “[A]n unreasonable interference with a public right  
3 [that] includes circumstances in which ‘the conduct involves a significant interference with the  
4 public health, the public safety, the public peace, the public comfort or the public convenience.’”  
5 Mutschler, 212 Ariz. 160, 166, 129 P.3d 71, 77 (App. 2006). The Restatement gives examples of  
6 the circumstances that lead to a finding of public nuisance, including conduct involving  
7 significant interference with the public health, the public safety, or the public peace, *and conduct*  
8 *that is proscribed by statute*. Restatement (Second) of Torts, §821B(2).

10 XXXI.

11 As noted in Count One of this Complaint, Defendants’ possession and sale (or their  
12 acquiescence to the use of their property for the keeping and sale) of dangerous “Novelty  
13 Powder” drugs is clearly a serious and immediate threat to the health and safety of large numbers  
14 of Yavapai County citizens. In addition, the possession and sale of these dangerous Analogue  
15 drugs are violations of the federal Controlled Substances Act. 21 U.S.C. §802(32)(A); 21 U.S.C.  
16 §813. Thus, Defendants’ actions, which are both a threat to the health and safety of the public of  
17 Yavapai County *and* are proscribed by the federal Controlled Substances Act, clearly constitute a  
18 common law public nuisance as well.

20 **PERMANENT INJUNCTIVE RELIEF**

22 XXXII.

23 Pursuant to A.R.S. §13-2917 and the common law, Plaintiff is entitled to permanent  
24 injunctive relief against the Defendants. The Defendants are possessing and selling, or allowing to  
25 be sold on their property, substances dangerous to the health of Yavapai County citizens, and are  
26 thus creating a public nuisance. “Under the authority of State v. Phoenix Sav. Bank & Trust Co.,

1 *supra*, the trial court had the power *and the duty* to enjoin the *unlawful* use of the premises by  
2 these defendants and it constituted a clear abuse of judicial discretion to deny the injunctive relief  
3 which was asked for.” Heyne v. Loges, *supra*, 68 Ariz. at 313, 205 P.2d at 588 (emphasis added).  
4 Defendants should be permanently enjoined from possessing or transferring any “Novelty  
5 Powder” drugs that are Analogue Drugs as defined by 21 U.S.C. §802 and §813.  
6

### PRELIMINARY INJUNCTION

#### XXXIII.

9  
10 Plaintiff is entitled to a Preliminary Injunction under Ariz. R. Civ. P. 65 ordering that the  
11 Defendants cease sale or other distribution of the dangerous “Novelty Powder” drugs, and that  
12 they refrain from the acquisition of such drugs. Plaintiff can show that there is a strong likelihood  
13 she will prevail on the merits of the claims she asserts; that there is a possibility of irreparable  
14 injury that cannot be remediable by damages should the Defendants’ conduct not be enjoined;  
15 that the balance of hardships favors Plaintiff on behalf of the citizens of Yavapai County; and that  
16 public policy favors the requested relief. Ariz. R. Civ. P. 65; See Powell-Cerkoney v. TCR-  
17 Montana Ranch Joint Venture, 176 Ariz. 275, 860 P.2d 1328 (App. 1993).  
18

#### XXXIV.

#### (LIKELIHOOD OF SUCCESS ON THE MERITS)

19  
20  
21 The drugs possessed, sold or allowed to be sold by the Defendants are creating an  
22 immediate and serious health hazard in Yavapai County. Substantial numbers of Yavapai County  
23 citizens – including law enforcement and health care professionals, some of the most valuable  
24 members of our community – are every day having their safety, health, and even lives threatened  
25 by the effect of these “Novelty Powder” drugs. In possessing, selling or allowing the sale of these  
26 drugs on their property, Defendants are actively engaged in violating the federal Controlled

1 Substances Act. There can be little doubt that the activity of the Defendants with regard to  
2 dangerous “Novelty Powder” drugs constitutes a public nuisance. Plaintiff has a strong  
3 likelihood of success on the merits of her Complaint.

4 XXXV.  
5 (IRREPARABLE INJURY)

6 The people of Yavapai County face a strong likelihood of irreparable injury if injunctive  
7 relief is not granted. Use of dangerous “Novelty Powder” drugs often leads to violent and bizarre  
8 behavior that threatens the health of Yavapai County citizens. Every day that the dangerous  
9 “Novelty Powder” drugs are sold is another day that seriously threatens the health and the lives of  
10 the citizens of Yavapai County. Simply put, these drugs can kill people. These dangerous drugs  
11 are being sold to children who have substantially less experience and skill in assessing the risk of  
12 ingesting unknown drugs in their bodies. First responders and medical personnel, such as law  
13 enforcement, paramedics, doctors and nurses, risk serious injury or death as a result of the  
14 activities of the Defendants in distributing these dangerous drugs. Finally, every day all citizens  
15 of Yavapai County face the possibility that a “Novelty Powder” drug user will threaten them with  
16 bizarre and violent behavior. Clearly, death and serious injury constitute irreparable injury that  
17 cannot be compensated by mere damages alone.  
18

19 XXXVI.  
20 (BALANCE OF HARDSHIPS)

21 The balance of hardships is in favor of the citizens of Yavapai County. As noted above,  
22 the citizens of Yavapai County face serious threats to their health, safety and enjoyment of  
23 property as a result of the distribution of these drugs. People may die, or be seriously injured. In  
24 contrast, Defendants face the minor monetary loss of their profit from the sale of dangerous  
25 “Novelty Powder” drugs.  
26

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

XXXVII.  
(PUBLIC POLICY)

Public policy favors the requested relief. Arizona prohibits the possession and sale of cathinones and cannibinoids; the “Novelty Powder” drugs the Plaintiff seeks to enjoin are analogue drugs to the banned substances. It is only by virtue of the speed at which the chemical make-up of “Novelty Powder” drugs can be changed that keeps them one step ahead of the Arizona legislature. In addition the “Novelty Powder” drugs are illegal under the federal Controlled Substances Act, a clear and unequivocal statement about the public policy on this issue. Clearly, public policy is in favor of enjoining the acquisition, possession, sale or transfer of dangerous “Novelty Powder” drugs.

XXXVIII.

Plaintiff requests that the Court order that the trial on the merits of this matter be accelerated pursuant to Rule 65(A)(2) of the Arizona Rules of Civil Procedure and consolidated with the hearing on Plaintiff’s Application for Preliminary Injunction.

**TEMPORARY RESTRAINING ORDER**

XXXIX.

Pursuant to Rule 65(d) of the Ariz. Rules of Civil Procedure, the Court may issue a Temporary Restraining Order without notice if it appears from affidavit or verified Complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition, and that the applicant certifies the efforts made to give notice of the request to the adverse party, or states why notice should not be required.

XL.

1 The Plaintiff acts on behalf of the people of Yavapai County in this matter. This  
2 Complaint details the immediate and irreparable injury, loss or damage to the people of Yavapai  
3 County. It is highly likely that this immediate and irreparable injury will continue should the  
4 Defendants continue to engage in the acquisition, possession or sale of these “Novelty Powder”  
5 drugs. Furthermore, Defendants are engaged in the possession and sale of dangerous illegal drugs  
6 in violation of the federal Controlled Substances Act.  
7

8 XLI.

9 Defendants have had notice that their acquisition, possession and sale of “Novelty  
10 Powder” drugs is creating substantial harm to the health and safety of the county. Law  
11 enforcement agents working with the Plaintiff have informed the Defendants selling dangerous  
12 “Novelty Powder” drugs that said substances are being consumed by children and adults; that  
13 consuming the “Novelty Powder” drugs sold by the Defendants has, and will likely, lead to  
14 bizarre and violent behavior when taken; that consuming these “Novelty Powder” drugs can, and  
15 has, led to death or serious medical emergencies; that consuming these drugs can lead to chronic  
16 mental health issues; and that the activities of the Defendants represent a serious threat to the  
17 public health and safety of Yavapai County. Notice was given to Defendants that legal action  
18 against them was possible if they did not stop selling “Novelty Powder” drugs. The Defendants  
19 have refused to stop possessing or selling these dangerous synthetic drugs.  
20  
21

22 XLII.

23 The menace posed by these dangerous synthetic drugs to the community is too high to  
24 allow Defendants to sell dangerous synthetic drugs for another day. The life of one person,  
25 whether a child or an adult, is irreplaceable and Defendants are putting all of the citizens of  
26 Yavapai County at risk of death or serious injury with their conduct. Given the severe danger

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 these dangerous synthetic drugs represent to the citizens of Yavapai County, the knowing and  
2 flagrant violation of federal law by the Defendants, and Plaintiff's notification to the Defendants  
3 of possible legal action, a Temporary Restraining Order, issued without notice of the current  
4 action to the Defendants, is justified.

5  
6 WHEREFORE Plaintiff requests that this Court:

7 1. Grant a temporary restraining order that prohibits all Defendants, and any and all other  
8 persons in concert or participation with them, from acquiring, possessing, selling or transferring  
9 any and all synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and  
10 known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz,"  
11 "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet  
12 Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any substance that meets  
13 the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813, pending final  
14 determination in this case;

15  
16 2. Order that the Trial on the Merits of this matter be accelerated pursuant to Rule 65(A)(2) of  
17 the Arizona Rules of Civil Procedure so that the trial may be consolidated with the hearing on  
18 Plaintiff's Application for Preliminary Injunction;

19  
20 3. Set a Hearing for a Preliminary Injunction and Trial on the Merits to abate Defendants'  
21 public nuisance;

22 4. Grant a Preliminary and Permanent Injunction on Final Hearing perpetually enjoining  
23 Defendants, and any and all other persons in concert or participation with them, from acquiring,  
24 possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to  
25 as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast,"  
26 "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt

Office of the Yavapai County Attorney  
255 E. Gurley Street, Suite 300  
Prescott, AZ 86301  
Phone: (928) 771-3344 Facsimile: (928) 771-3110

1 Cleaner,” “Go Fast Carpet Cleaner,” “Exuberance Powder,” “Tickle Talc,” and “Bath Salts”), and  
2 any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A)  
3 and 813.

4 5. Award Plaintiff its court costs incurred in pursuit of this action;

5 6. Order that the Court shall retain jurisdiction in this matter for the purpose of enforcing the  
6 judgment and orders prayed for herein;

7 7. Such other and further relief as the Court deems just and proper.

8 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of August, 2012.

9  
10  
11 By: Sheila S Polk  
12 SHEILA SULLIVAN POLK  
13 YAVAPAI COUNTY ATTORNEY

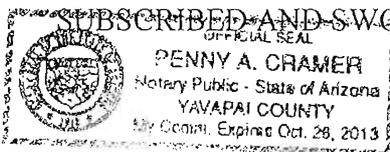
14 VERIFICATION

15 STATE OF ARIZONA )  
16 County of Yavapai ) ss.

17 Sheila Sullivan Polk, being duly sworn, upon oath deposes and says: That she is the  
18 Yavapai County Attorney; that she has read the foregoing Complaint and that all the facts stated  
19 therein are true to the best of her knowledge, information, and belief.

20 DATED: Aug. 9, 2012.

21  
22 Sheila S Polk  
23 Sheila Sullivan Polk  
24 Yavapai County attorney



Penny A. Cramer  
Notary Public

My Commission Expires:

10-20-2013