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Clerk of Superior Court
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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. ~~P~~1300CV2012 80342 Division PTA MOTION FOR PRELIMINARY INJUNCTION, PERMANENT INJUNCTION AND TEMPORARY RESTRAINING ORDER

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Quesnell Property Management Grand)
Prairie LLC; Nabulsy, LLC dba Mario's PV)
Quick Stop; Fernando Gonzalez; Eyup)
Ozaltin dba Mike's Connection, LLC;)
B-Desh Enterprises, LLC dba Texaco;)
Texaco Refining and Marketing, Inc.;)
Daniel Wildes dba Hobby Glass; Charlene)
Karecki and Donald Karecki; Jeffrey Russell)
dba Smoke N Thingz; Maneely Family)
Irrevocable Trust; Jason Maneely and)
Cynthia Maneely, Trustees of the Maneely)
Family Irrevocable Trust; John and Jane)
Does I – X, and Doe Corporations I – X,)
)
Defendants.)
)

Plaintiff Sheila Polk, in her capacity as the Yavapai County Attorney, by and through her undersigned deputies, hereby moves this court for the following orders:

(1) For a Temporary Restraining Order, without notice to Defendants, enjoining Defendants, and any and all other persons in concert or participation with them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813.

(2) For an Order directing Defendants to Appear before this Court within 10 days of the Court's Order and show cause, if any there may be, why this Court should not issue a Preliminary Injunction enjoining Defendants, and any and all other persons in concert or participation with them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and

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cathinones (referred to as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813, pending a trial on the merits;

(3) For an Order accelerating the trial on the merits in this matter and consolidating the same with the hearing on the Court's Order to Show Cause;

(4) For Preliminary and Permanent Orders enjoining Defendants, and any and all other persons in concert or participation with them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813.

This Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This action is brought pursuant to A.R.S. § 13-2917 by the Yavapai County Attorney as representative of the people of Yavapai County, who asks the Court to abate activities of the Defendants that constitute a public nuisance. Defendants are selling, or allowing to be sold, dangerous synthetic drugs (commonly called "Novelty Powder" drugs) that present a serious and ongoing health hazard to the public. The possession and sale of these "Novelty Powder" drugs is illegal under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq. As detailed in the

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over 100 affidavits attached to this Motion, users of these dangerous "Novelty Powder" synthetic drugs sold by the Defendants engage in violent, bizarre and dangerous behavior, presenting a serious health and safety concern to themselves, to law enforcement officers, to the emergency first responders and medical personnel that attempt to treat the sickness and injuries resulting from these dangerous drugs, and the general citizenship of the county through increased crime and violence. Children and adults are suffering severe injuries and death as a result of the use of these dangerous synthetic drugs.

By selling or allowing these dangerous "Novelty Powder" synthetic drugs to be sold, the Defendants are engaging in illegal activity that seriously threatens the health, safety, and welfare of all of the citizens of Yavapai County. The activities of the Defendants thus constitute a public nuisance under A.R.S. §13-2917 and the common law. Plaintiff petitions this Court for orders permanently enjoining Defendants from engaging in the acquisition, possession, sale and/or transfer of these dangerous synthetic drugs pursuant to A.R.S. §13-2917 and the common law.

Defendants have been warned of the dangerous effects of "Novelty Powder" synthetic drugs, and that their possession and sale of these drugs is a violation of the federal Controlled Substances Act, yet they continue to possess and sell these dangerous synthetic drugs. Because the substances represent such a dangerous and immediate threat to the health and safety of the citizens of Yavapai County, and because Defendants know they are dangerous and possession and sale is a violation of federal law, the Court should issue Temporary Restraining Orders without notice to Defendants, and Preliminary Injunctions against the Defendants, forbidding them from selling, transferring or further acquiring any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§802(32)(A) and 813, pending a trial on the merits.

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STATEMENT OF FACTS

The Defendants in this action operate retail stores, or are the owners of the real property on which these retail stores operate. As part of the retail operation, Defendants are selling or allowing to be sold merchandise commonly called "Novelty Powder" drugs which are versions of powerful synthetic *illegal* drugs known as cannabinoids and cathinones. *See Exhibits F-4, F-5, F-19, F-20.* While the particular versions of the "Novelty Powder" drugs Defendants are holding and offering for sale or allowing to be sold are not currently illegal under Arizona law, the sales of these drugs are a public nuisance in that the "Novelty Powder" drugs being distributed by Defendants are injurious to the health and safety of a substantial number, if not all, of the residents of Yavapai County.

Cannabinoids and Cathinones - Dangerous Synthetic drugs. The drugs Defendants sell or allow to be sold include ***Cannabinoids***, a group of synthetically made psycho-active drugs similar to the active ingredients of cannabis or marijuana (*Marriam-Webster MedlinePlus*, http://www.merriam-webster.com/medlineplus/cannabinoids.); ***Cathinones,*** a group of synthetically made psycho-active drugs similar to monoamine alkaloids found in the shrub *Catha edulis* (khat), chemically similar to ephedrine, cathine and other amphetamines (*National Institute of Health -National Institute for Biotechnology Information*, http://www.ncbi.nlm.nih.gov/pubmed/22108839).

Manufactured cannabinoids and cathinones are known by a variety of names including "Spice" or "K-2" (typical for cannabinoids), "bath salts" (typical for cathinones) and collectively known as "Novelty Powder" drugs.

As a group, "Novelty Powder" drugs are synthetically produced variants of dangerous drugs that are illegal under Arizona law. *See* A.R.S §13-3401(6)(b)(v), (vi), (xiv), (xix), (xxi),

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(xxii), (xxiii), (xxvi) (cathinones); §13-3401(6)(a)(xxxiv)-(xliii), §13-3401(20)(w) (cannabinoids). However, because the "Novelty Powder" drugs are synthetically made, chemical 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.

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. 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.

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Under federal law Analogue drugs are illegal. As Analogue drugs, under the federal Controlled Substances Act, possession or sale of the "Novelty Powder" drugs by the Defendants is illegal. 21 U.S.C. §802(32)(A); 21 U.S.C. §813. *See also Exhibits C-1and C-2 (Casandra Prioleau, Ph.D, Pharmacologist with DEA Drug and Chemical Evaluation Section; Thomas DiBerardino, Ph.D., Chemist with DEA Drug and Chemical Evaluation Section.)*

The dangerous effects of synthetic drugs. "Novelty Powder" drugs have proven to be a dangerous threat to the health of the people of Yavapai County. Attached to this Motion for Temporary Restraining Order and Preliminary and Permanent Injunctions are over 100 affidavits from Yavapai County community leaders, sworn law enforcement and probation officers, medical professionals, mental health care professionals, forensic scientists, education professionals, public health officials, and citizens of Yavapai County. *See Exhibits A-1 to J-6.* The affidavits document how these leaders, professionals, and citizens have personally experienced the dangerous effects of these dangerous synthetic drugs.

Medical Professionals. Affidavits contained in Exhibit "B" document the personal experiences of medical professionals in Yavapai County of the harm they have seen caused by "Novelty Powder" drugs. The affidavits prove ingestion of "Novelty Powder" drugs often leads to life threatening illness and injury. Doctors report physical symptoms that include dangerously high body temperature (hyperthermia), dangerously high heart rate and blood pressure, arrhythmia, permanent organ damage, heart attacks and stroke. *See Exhibit B-10 (Dr. Martin DeKort, Yavapai Regional Medical Center); B-11 (Dr. Harry Alberti, Medical Director, Verde Valley Medical Center); B-12 (Doctor Kelly Robinson, Director, Verde Valley Medical Center).* They also report that patients under the influence of "Novelty Powder" drugs exhibit bizarre, threatening, and unpredictable behavior.

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The "Novelty Powder" drugs cause serious psychotic symptoms as well. Users experience hallucinations and paranoia, often becoming unpredictably aggressive and unreasonable ("out of their minds"), and can display inexhaustible strength and stamina. *See Exhibits B-4 (Michael Connally, EMT); B-5 (Royce Taghon, EMT); B-10 (Dr. Martin DeKort, Yavapai Regional Medical Center)); B-11 (Dr. Harry Alberti, Medical Director, Verde Valley Medical Center); B-12 (Kelly Robinson, Emergency Department Medical Director, Verde Valley Medical Center).* Users will often become physically aggressive toward paramedics, doctors, and nurses trying to treat them for sickness and injury caused by these dangerous synthetic drugs without reason, enter the homes and businesses of others without reason, and injure themselves without reason. The psychotic effects of these dangerous synthetic drugs often last for days, longer than methamphetamine or cocaine. *See Exhibit B-10 (Dr. DeKort).* Emergency Department directors in the Prescott area and the Verde Valley report a steady flow of patients coming to their hospitals for emergency treatment of sickness and injury due to "Novelty Powder" drugs. Dr. DeKort reports that Yavapai Regional Medical Center is seeing an average of ten (10) patients per week presenting to the Emergency Department with sickness or injury due to dangerous synthetic drugs. *See Exhibit B-10. B-12.* Dr. Kelly Robinson reports an average of 1 to 2 patients per day in the emergency rooms of the Sedona and Cottonwood Campuses of the Verde Valley Medical Center presenting with sickness or injury due to dangerous synthetic drugs. *See Exhibit B-12, Kelly Robinson, Emergency Department Medical Director, Verde Valley Medical Center).* In addition, the Arizona Poison Control Information Center reports there has been a marked increase in calls for help from Yavapai County due to dangerous synthetic drugs. *See Exhibit B-8.*

The affidavits report that children and adults that ingest these drugs are hospitalized with life-threatening conditions as a result of ingesting these dangerous drugs.

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Law Enforcement and public safety. Affidavits contained in Exhibit "F" are affidavits from Law Enforcement Officers throughout the county, including the Yavapai County Sheriff's Office, the Prescott Police Department, the Prescott Valley Police Department, Chino Valley Police Department, the Camp Verde Marshall's Office, Jerome Police Department, the Yavapai-Apache Indian Tribe, the Yavapai-Prescott Indian Tribe, the US Forest Service, the Arizona Department of Public Safety, and the Sedona Police Department. All are reporting a serious increase in the use of dangerous "Novelty Powder" drugs, as well as a serious increase in violence, injury, and death as a result of these drugs. Chief Charles Wynn of the Chino Valley Police Department notes that his officers routinely are involved in incidents involving dangerous synthetic drugs. *Exhibit F-8.* Chief Bill Fessler of the Prescott Valley Police Department reports a significant increase in the number of "Novelty Powder" drug related cases his agency has responded to in the last year. *Exhibit F-16.* Lieutenant Andy Reinhardt of the Prescott Police Department notes that juveniles are increasingly becoming users of "Novelty Powder" drugs because they can use them and still pass a drug screening for illegal drugs. *Exhibit F-9.*

Exhibit "G" consists of affidavits from adult and juvenile probation officers working for the courts of Yavapai County. The affidavits describe the negative effects "Novelty Powder" drugs have on those attempting to complete court sentences. Probationers are often tempted to use "Novelty Powder" drugs because they can be easily obtained and generally do not result in a positive drug test. However, as the affidavits show, the addictive nature of these drugs and the violent and bizarre behavior caused by the drugs will often cause probationers to fail probation. The probation officers describe probationers developing mental health problems such as paranoia and hallucinations as a result of these dangerous synthetic drugs, as well as a return to a life of crime.

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A heart-wrenching example of how dangerous these "Novelty Powder" drugs is found in the affidavit of Ross Diskin, Detective for the Yavapai County Sheriff *(Exhibit F-17),* along with the affidavits of the parents of Calvin Forrey, now deceased. *(Exhibits E-4 and E-6.)* Detective Diskin describes an incident that occurred in the Lynx Lake area. A young man named Calvin Forrey was running in the forest naked and "out of his mind" due to "Bath Salts." Calvin then stole a vehicle. When a Sheriff's Deputy located Calvin, he was naked and making "snow angels" on the pine-needle covered forest. When the deputy attempted to take Calvin into custody, he fought with the deputy for several minutes, then collapsed and stopped breathing. CPR was administered and eventually his breathing was restored. Calvin was taken to the hospital, where he subsequently died as a result of the effects of dangerous synthetic drugs. Calvin's mother and father describe their son's use of dangerous synthetic drugs and his downward spiral to his recent tragic death.

Death is not an uncommon result of the use of "Novelty Powder" drugs. Probation officer Justin Wetzel's affidavit tells the story of the very recent suicide of a probationer on his caseload due to "Novelty Powder" drugs. *Exhibit G-15.*

Noone in the county is safe from the potentially deadly effects of "Novelty Powder" drugs. In Exhibit F-12, Sgt. G. R. Manera of the Department of Public Safety describes an event that occurred just two days ago, on August 7, 2012. On that date, a serious traffic accident occurred in Prescott at the intersection of Highway 69 and Heather Heights Drive, just below the Prescott Resort. A vehicle traveling at a high rate of speed collided with four other vehicles resulting in the driver of the at-fault vehicle being flown to Flagstaff Medical Center with serious head injuries. Occupants of the other vehicles were also injured. The at-fault vehicle contained nine (9) vials of "Novelty Powder" drugs, as well as a receipt from Defendant "Smoke N Thingz"

located in Prescott Valley dated August 7, 2012. It appears likely that the injured driver was under the influence of "Novelty Powder" drugs at the time of the accident.

Mental Health Providers. Affidavits in Exhibit "C" are from mental health professionals serving Yavapai County. The affidavits describe how "Novelty Powder" drugs not only prevent effective substance abuse and mental disorder treatment, but that the use of these dangerous synthetic drugs can actually create mental disorder in users.

Yavapai County Schools. Affidavits in Exhibit "I" describe the serious consequences "Novelty Powder" drugs are having on Yavapai County Schools. These dangerous synthetic drugs have found their way into schools, causing serious injury to the children that take them, and serious disruption of the school's mission and purpose.

Users, Parents and Citizens. The affidavits contained in Exhibits "A" "J" and "E" are statements from former users of "Novelty Powder" drugs, parents of users, and from concerned Yavapai County citizens. Some of these exhibits are filed under seal with the Court because they contain confidential information about the affiant.

The affidavits of the users and their parents can be especially chilling. Users describe serious injury panic, paranoia, suicidal thoughts, complete black-outs and a host of other physical and mental problems from using "Novelty Powder" drugs. Parents describe children that turn from well-behaved youths to gaunt shells of their former selves that lie and steal to support their "Novelty Powder" habit. The children develop chronic and severe mental and physical disorders. In one instance the parent describes the death of their child do directly to "Novelty Powder" drugs.

Summary. The Exhibits attached show that "Novelty Powder" synthetic drugs create serious health hazards for users and those forced to confront their violent and bizarre behavior.

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Emergency first-responders (law enforcement officers, paramedics, and firefighters) attempting to care for individuals acting "out of their minds" as a result of these dangerous "Novelty Powder" drugs are being physically endangered by the bizarre and unpredictable behavior caused by the drugs. Hospital employees are being endangered by "Novelty Powder" drugs because of the dangerous aggressive behavior of users under the influence of these drugs, as well as the chronic mental health issues resulting from use of the drugs. Public and private school employees are endangered by the use of "Novelty Powder drugs by students acting in bizarre and dangerous manners. The resources of law enforcement and medical care in the county are being diverted to cope with these dangerous drugs, taking resources away from these important missions. The public at large is endangered by "Novelty Powder" drugs as a result of increased crime in the form of bizarre and threatening behavior toward others, including assault, burglary, and property theft. Users of "Novelty Powder drugs are endangered by these drugs because the drugs cause bizarre and dangerous actions by the users while under the influence of the drugs, and chronic mental health disorders plaguing users for an unknown period of time.

APPLICABLE LAW

A.R.S. §13-2917 (A) states in part:

> It is a public nuisance, and is no less a nuisance because the extent of the annoyance or damage inflicted is unequal, for anything: 1. To be injurious to health, indecent, offensive to the senses or an obstruction to the free use of property that interferes with the comfortable enjoyment of life or property by an entire community or neighborhood or by a considerable number of persons.

As the affidavits attached to this motion clearly attest, "Novelty Powder" drugs constitute a public nuisance pursuant to A.R.S. §13-2917 (A). The Yavapai County Attorney may bring an action in superior court to abate a public nuisance that is injurious to health pursuant to A.R.S. § 13-2917(C).

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These "Novelty Powder" drugs also constitute a common law public nuisance. In *Mutschler v. City of Phoenix*, the court, citing the Restatement (Second) of Torts §821B, stated that at common law a public nuisance is "An unreasonable interference with a public right 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). Clearly, the possession and sale of "Novelty Powder" drugs do constitute significant interference with public health, safety and peace.

In addition, 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)

Once a public nuisance is found, the courts have a duty to abate the nuisance. 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).

ARGUMENT

There is little doubt that "Novelty Powder" drugs are a public nuisance as defined by A.R.S. §13-2917(A) and by the common law. See *Mutschler*, 212 Ariz. At 166, 129 P.3d at 77.

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First, "Novelty Powder" drugs are Analogue drugs and therefore possession and transfer of these dangerous drugs is illegal under federal law. *21 U.S.C. §802(32)(A); 21 U.S.C. §813.* They are illegal under federal law because, as we are experiencing in Yavapai County, "Novelty Powder" drugs are creating significant, even deadly health issues for large numbers of people including many children 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.

Large numbers of 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 by violent resistance when they try to lawfully restrain or assist an individual under the influence of these dangerous drugs, often with the law enforcement officer or medical professional incurring injury themselves as a result of the violence caused by these dangerous 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 – they engage in dangerous and demented behavior such as stripping off their cloths and running naked in the woods, intentionally injuring themselves and provoking confrontations with others. In short, the menace presented by "Novelty Powder" drugs threatens large numbers of county residents, including children, as well as law enforcement and medical personnel within Yavapai County.

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The dangerous activity associated with "Novelty Powder" drugs is geographically widespread as well, occurring throughout the county. The Yavapai County Sheriff, as well as law enforcement from most of the cities and towns within the county, has reported many violent contacts with users of "Novelty Powder" drugs in all segments of the county. All of the major hospitals in the county have reported a substantial number of patients, both children and adult, that report to the emergency room with life-threatening conditions brought on by the use of "Novelty Powder" drugs, as well as violent confrontations with those under the influence of the drugs. Most school districts within the county have reported that significant numbers of children are obtaining and using these drugs, leading to serious and sometimes life-threatening health issues for the child, violent confrontations between the child and school staff, and disruption of school mission and routine. Parents living throughout the county have reported the serious consequences for their children resulting from the child's use of "Novelty Powder" drugs, including hospitalization, delinquency, and long term mental health issues. Citizens throughout the county have reported incidents of bizarre and violent behavior from individuals under the influence of "Novelty Powder" drugs. In sum, the health menace presented by "Novelty Powder" drugs is widespread in Yavapai County, and growing.

Defendants' possession and sale (or their knowing acquiescence to the use of their property for the keeping and sale) of dangerous "Novelty Powder" drugs also constitutes a public nuisance under the common law.

PRELIMINARY INJUNCTION

"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."

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Heyne v. Loges, 68 Ariz. 310, 313, 205 P.2d 586, 588 (1949) (emphasis added). As detailed above, "Novelty Powder" drugs represent an immediate and serious threat to the health, safety, and peace of the citizens of Yavapai County. Plaintiff is entitled to a Preliminary Injunction ordering that the Defendants cease sale or other distribution of the dangerous "Novelty Powder" drugs, and that they refrain from the acquisition of such drugs. Plaintiff can show that there is a strong likelihood she will prevail on the merits of the claims she asserts; that there is a possibility of irreparable injury that cannot be remediable by damages should the Defendant's conduct not be enjoined; that the balance of hardships favors Plaintiff; and that public policy favors the requested relief. *See Powell-Cerkoney v. TCR-Montana Ranch Joint Venture*, 176 Ariz. 275, 860 P.2d 1328 (App. 1993).

The drugs possessed, sold or allowed to be sold by the Defendants are creating an immediate and serious health hazard in Yavapai County. Substantial numbers of Yavapai County citizens – including law enforcement and health care professionals, some of the most valuable members of our community – are every day having their safety, health, and even lives threatened by the effect of these "Novelty Powder" drugs. In possessing, selling or allowing the sale of these drugs on their property, Defendants are actively engaged in violating the federal Controlled Substances Act. There can be little doubt that the activity of the Defendants with regard to "Novelty Powder" drugs constitutes a public nuisance. Plaintiffs have a strong likelihood of success on the merits of their Complaint.

The people of Yavapai County face a strong likelihood of irreparable injury if injunctive relief is not granted. Use of "Novelty Powder" drugs often leads to violent and bizarre behavior that threatens the health of Yavapai County citizens. Every day that the dangerous "Novelty Powder" drugs are sold is another day that seriously threatens the health and even the very lives

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of the citizens of Yavapai County. Simply put, these drugs can kill people. These dangerous drugs are being sold to children who have substantially less experience and skill in assessing the risk of ingesting unknown drugs in their bodies. First responders and medical personnel such as law enforcement, paramedics, doctors and nurses risk serious injury or death, as a result of the activities of the Defendants in distributing these dangerous drugs. Finally, very day all citizens of Yavapai County have to face the possibility that a "Novelty Powder" drug user will threaten them with bizarre and violent behavior. Clearly, the death and serious injury constitutes irreparable injury, and cannot be compensated by mere damages alone.

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

Public policy favors the requested relief. The police power of the state includes the responsibility to regulate matters that affect the health and safety of its citizens. Arizona prohibits the possession and sale of Analogues to these "Novelty Powder" drugs sold by the Defendants, and it is only by virtue of the speed by which the chemical make-up of "Novelty Powder" drugs can be changed that keeps them one step ahead of the Arizona legislature. However, note that the possession of these drugs is illegal under the federal Controlled Substances Act, a clear and unequivocal statement as to where public policy stands on this issue. Clearly, public policy is in favor of enjoining acquisition, possession or transfer of "Novelty Powder" drugs.

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Plaintiff request 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 Yavapai County's Application for Preliminary Injunction.

TEMPORARY RESTRAINING ORDER

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.

The Plaintiff acts as the representative for the people of Yavapai County in this matter. This Complaint details the immediate and irreparable injury, loss or damage to the people of Yavapai County is highly likely should the Defendants continue to engage in the acquisition, possession or sale of these "Novelty Powder" drugs. The Defendants are engaged in the possession and sale of dangerous illegal drugs in violation of the federal Controlled Substances Act.

Defendants have had notice that their acquisition, possession and sale of "Novelty Powder" drugs are creating substantial harm to the health and safety of the county. Law enforcement agents working with the Plaintiff have informed the Defendants selling "Novelty Powder" drugs that despite the Defendants' claims that the drugs are "not for human consumption" and "for novelty use only," that all of the drugs sold will be consumed by children and adults. The Defendants were told that consuming the "Novelty Powder" drugs sold by the Defendants will likely lead to bizarre and violent behavior when taken, that consuming these

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"Novelty Powder" drugs can lead to death or serious medical emergencies, and that consuming these drugs can lead to chronic mental health issues. Defendants have been told that possessing and selling these drugs is illegal under federal law. Defendants have been fully informed that that their actions in selling these drugs represent a serious threat to the public health and safety of Yavapai County. Notice was given to Defendants that legal action would be taken against them if they did not stop selling "Novelty Powder" drugs. The Defendants have refused to stop possessing or selling these dangerous drugs.

The menace posed by these dangerous drugs to the community is simply too high to allow Defendants to deal these dangerous drugs for another day. Simply put, the life of one person, whether a child or an adult is irreplaceable and Defendants are putting all of the citizens of Yavapai County at risk of death or serious injury with their behavior. Given the severe danger these drugs represent to the citizens of Yavapai County, the knowing and flagrant violation of federal law by the Defendants, and Plaintiff's notification to the Defendants of possible legal action, a Temporary Restraining Order, issued without notice of the current action to the Defendants, is justified.

WHEREFORE Plaintiff requests that this Court:

1. Grant a temporary restraining order pursuant to Rule 65(d) of the Arizona Rules of Civil Procedure that enjoins all Defendants, and any and all other persons in concert or participation with them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any

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substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813 pending final determination in this case;

2. 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 so that the trial may be consolidated with the hearing on Plaintiffs Application for Preliminary Injunction;
3. Set a Hearing for a Preliminary Injunction and Trial on the Merits to abate Defendants' public nuisance;
4. Enter a Preliminary and Permanent Injunction on Final Hearing pursuant to Rule 65(a) of the Arizona Rules of Civil Procedure perpetually enjoining Defendants, and any and all other persons in concert or participation with them, from acquiring, possessing, selling or transferring any and all synthetic cannabinoids and cathinones (referred to as "dangerous synthetic drugs" and known by street names such as, but not limited to: "Go Fast," "K2," "Spice," "Sprinklezz," "Incense," "Potpourri," "Herbal Sachets," "Glass Cleaner," "Felt Cleaner," "Go Fast Carpet Cleaner," "Exuberance Powder," "Tickle Talc," and "Bath Salts"), and any substance that meets the definition of an Analogue drug pursuant to 21 U.S.C. §§ 802(32)(A) and 813.
5. Award Yavapai County its court costs incurred in pursuit of this action;
6. Order that the Court shall retain jurisdiction in this matter for the purpose of enforcing the judgment and orders prayed for herein;

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

RESPECTFULLY SUBMITTED this 9th day of August, 2012.

By: Sheila S Polk
SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

VERIFICATION

STATE OF ARIZONA)
) ss.
County of Yavapai)

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

DATED: August 9, 2012.

Sheila S Polk
SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

SUBSCRIBED AND SWORN to before me this 9th day of August, 2011.

OFFICIAL SEAL
PENNY A. CRAMER
Notary Public - State of Arizona
YAVAPAI COUNTY
My Comm. Expires Oct. 26, 2013

Penny A. Cramer
Notary Public

My Commission Expires:

10-26-2013