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**GARY FITZSIMMONS
DISTRICT CLERK
DALLAS COUNTY, TEXAS
DEPUTY**

CAUSE NO. 07-03967

STATE OF TEXAS,

Plaintiff,

IN THE DISTRICT COURT OF

VS.

REDUX BEVERAGES, LLC., a Nevada Corp;
REDUX, LLC., a California Corp.;
KIMBALL DISTRIBUTING, INC., f/k/a
CALVERT DISTRIBUTING, INC. ;
TEXAS WHOLESALE VENTURE # 1 LTD,
d/b/a TEXAS WHOLESALE # 2;
and IMPORT WAREHOUSE, INC.,

Defendants.

DALLAS COUNTY

B-44th

JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
EX PARTE TEMPORARY RESTRAINING ORDER, TEMPORARY INJUNCTION,
AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS ("State"), acting by and through Attorney General GREG ABBOTT ("State"), filing Plaintiff's Original Petition complaining of and against REDUX BEVERAGES, LLC., a Nevada Corp.; REDUX, LLC., a California Corp. ("REDUX"); KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC. ("KIMBALL"); TEXAS WHOLESALE VENTURE # 1 LTD, d/b/a TEXAS WHOLESALE # 2 ("TEXAS WHOLESALE"); and IMPORT WAREHOUSE, INC. ("IMPORT WAREHOUSE") (collectively "Defendants"), and would respectfully show the court the following:

DISCOVERY CONTROL PLAN

1. Discovery shall be conducted under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

AUTHORITY

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §§431.060, 431.047, and 431.0585 of the Texas Food, Drug and Cosmetic Act, TEX. HEALTH & SAFETY CODE ANN. §431.001 *et seq.* (“TFDCA”). Section 431.060 of the TFDCA specifically provides that the Attorney General to whom the Commissioner of the Texas Department of State Health Services (“TDSHS”) reports a violation of the TFDCA, shall initiate and prosecute appropriate proceedings. In addition, §431.047 authorizes the Attorney General to seek injunctive relief under certain circumstances and recover any costs and attorney fees incurred in obtaining that relief. This action is also brought pursuant to §431.0585 that authorizes the Commissioner of Health to refer to the Attorney General to seek civil penalties in favor of the State per day per violation of §431.021 of the TFDCA and regulations pursuant to this Act.

3. This action is brought by Attorney General Greg Abbott, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.21 *et seq.* (“DTPA”), upon the grounds that Defendants

have engaged in false, misleading or deceptive acts or practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

PARTY DEFENDANTS

4. REDUX BEVERAGES, LLC., a Nevada corporation, is doing business in Texas by introducing its product, Cocaine, into Texas, and it may be served with process by serving its registered agent Nevada Corporate Headquarters, Inc., at 101 Convention Center Dr., Suite 700, Las Vegas, Nevada 89109.

5. REDUX, LLC., a California corporation, is doing business in Texas by introducing its product, Cocaine, into Texas, and its principal office is located at 41605 Elm Street, #6, Murrieta, California 92562 and receives mail at P.O. Box 130, Palomar Mountain, California 92060 and may be served with process by serving its registered agent Hannah Kirby at 18187 Nate Harrison Grade, Palomar, California 92060.

6. KIMBALL DISTRIBUTING, INC., f/k/a CALVERT DISTRIBUTING, INC., is conducting business at 1226 Corporate Dr., Suite D, Arlington, Texas 76006, and may be served with process through its President and registered agent Kimball Smith at this address. Mr. Smith is the registered agent for both entities and filed a Certificate of Amendment to change the name of the entity from CALVERT DISTRIBUTING, INC. to KIMBALL DISTRIBUTING, INC.

7. TEXAS WHOLESALE VENTURE #1 LTD, d/b/a TEXAS WHOLESALE #2 is conducting business at 11409 Denton Drive, Dallas, Texas and at 550A N. Beach St., Fort Worth, Texas, and may be served with process through its President Mohammad Hussain

Wazirali at the Dallas address.

8. IMPORT WAREHOUSE, INC., is conducting business at 11029 Harry Hines Blvd., Bldg. A, Dallas, Texas 75229, and may be served with process through its President Ravi Bhatia at this address.

VENUE

9. Venue of this action lies in Dallas County on the basis of §§431.047(c) and 431.0585(d) of the TFDCA by virtue of the fact that Defendants are engaged in the business of manufacturing, distributing, holding, advertising, offering for sale, and selling unapproved new drugs throughout Texas, including Dallas, Texas.

10. Venue of this action lies in Dallas County on the basis of §17.47(b) of the DTPA because Defendants' acts and practices that violate these statutes occurred throughout Texas, including Dallas County, Texas.

PUBLIC INTEREST

11. Because the State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, the State has reason to believe that Defendants have caused and will cause immediate and irreparable injury, loss and damage to the State of Texas, and its citizens, and will also cause adverse effects to legitimate business enterprises which conduct their trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

ACTS OF AGENTS

12. Whenever in this petition it is alleged Defendants did any act or thing, it is meant that Defendants performed or participated in such act or thing or that such act was performed by agents or employees of Defendants and in each instance, the agents or employees of Defendants were then authorized to and did in fact act on behalf of Defendants or otherwise acted under the guidance and direction of Defendants.

TRADE AND COMMERCE

13. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the DTPA.

NOTICE BEFORE SUIT

14. The State did not inform Defendants herein at least seven (7) days before instituting this action of the alleged unlawful conduct of which complaint is now made, pursuant to DTPA §17.47(a), for the reason that the State is of the opinion that there is good cause to believe that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order by allowing Defendants to continue to advertise, offer for sale, and sell Defendant REDUX’s product named “Cocaine” in Texas.

NATURE OF DEFENDANTS’ CONDUCT

15. REDUX manufactures, advertises, offers for sale, and sells its product Cocaine as an alternative to an illicit street drug throughout the United States, including Texas, by using the

following statements and claims on its label and on their websites:

- A. The product name is Cocaine;
 - B. The letters in the product name appear to be spelled out in a white granular substance that resembles cocaine powder;
 - C. “Legal Alternative” above the name Cocaine;
 - D. “Speed in a Can”;
 - E. “Liquid Cocaine”;
 - F. “Cocaine-Instant Rush”;
 - G. “The question you have to ask yourself is: ‘Can I handle the rush?’”; and
 - H. “Warning-this beverage should be consumed by responsible adults. Failure to adhere to this warning may result in excess excitement, stamina, fun and possible felling of euphoria.” (See Exhibits 1 and 2.)
16. REDUX’s inventor, James Kirby, indicated to ABC News that a “throat-numbing” ingredient is added to Cocaine to emulate its namesake. Kirby also admits that the product’s promotion is targeted to consumers from high schoolers to 30 year-olds. (See Exhibits 1 and 2.)
17. REDUX also uses pseudo-warnings that continue the theme of Cocaine providing a high and euphoria similar to the illicit drug cocaine on its websites that promote, offer for sale, and sell Cocaine by including the following statements in its “Terms and Conditions”: “You purchase Cocaine Energy Drink at your own risk. We are not responsible for any damages or

crazy activity.” This statement, as well as the warning listed above in paragraph 15. H., is intended to induce consumers to purchase the product to get high, rather than function as warnings to educate consumers as to the risks of a product. In addition, the statement “Keep in mind-This product may not be suitable for children, pregnant women and anyone sensitive to caffeine” is inadequate to warn consumers of the possible side-effects and adverse reactions from ingesting this product. (See Exhibits 1 and 2.)

18. REDUX continues to advertise, offer for sale, and sell its product Cocaine as a street alternative to an illicit drug even in the naming of the variety of their products. REDUX labels one variety “Cut Cocaine” as the “New Flavor-Same great flavor without the burn.” Another variety is labeled “Free Cocaine” as the “New Flavor-All energy without the sugar.” REDUX also markets a “Cocaine Sampler” with just two cans to price the product at \$4.99 versus \$39.99 for a case. (See Exhibits 1 and 2.)

19. REDUX also advertises, offers for sale, and sells Cocaine by claiming on its websites that five minutes after consumption the drinker will achieve a “high” which is then followed by a caffeine boost 15 minutes later with the effects lasting up to five hours. REDUX also proposes that consumers will experience a psychological boost after hearing the name of the drink. (See Exhibits 1 and 2.)

20. REDUX uses a www.myspace.com site to promote Cocaine and offers free samples to some persons who request them. In a message from Cocaine’s inventor, James Kirby, consumers are told to use the following format using a made-up name of “Joe Cokehead” as the

requestor to continue promoting the theme of a street alternative to an illicit drug. (See Exhibits 1 and 2.)

FDA Warning Letter:

21. The Federal Food and Drug Administration (“FDA”) issued a Warning Letter to James Kirby, REDUX BEVERAGES, LLC., on April 4, 2007, for the firm’s marketing of the product “Cocaine” on its website. FDA found that REDUX marketed its product “Cocaine” as an alternative to an illicit street drug. FDA further stated that “street drug alternatives, *i.e.*, products that claim to mimic the effects of recreational drugs are not intended to supplement the diet and, as a result, cannot lawfully be marketed as dietary supplements.” (See Exhibit 3.)

22. In the Warning Letter, FDA found the statements on Cocaine’s label and on REDUX’s website listed in paragraph 15 above, including the name of the product written in white powder and statements of euphoria and getting high, make this product an alternative to an illicit street drug. (See Exhibit 3.)

23. These claims make Cocaine a drug which is also supported by FDA’s Guidance for Industry on Street Drug Alternatives¹ that states that street drug alternatives are marketed for the intended use of “recreational purposes to effect psychological states (*e.g.*, to get high, to promote euphoria, or to induce hallucinations) and have potential for abuse.” FDA’s Guidance for Industry goes on to state that “FDA considers these street drug alternatives to be unapproved new drugs and misbranded drugs under sections 505 and 502 of the Act.” (See Exhibit 4.)

¹U.S. Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research (CDER), Compliance, March 2000.

24. FDA's Guidance for Industry on Street Drug Alternatives states that illicit street drugs are not food or drink, and neither they, nor alternative street drugs, can be said to supplement the diet and are, therefore, not dietary supplements. (See Exhibit 4.)

25. In its April 4, 2007 Warning Letter, FDA also finds that Cocaine is also a drug, as defined by Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321(g)(1) because it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. FDA cited to REDUX's statements on its websites that one of the ingredients in Cocaine has the following benefits: "Inositol...reduces cholesterol in the blood; it helps prevent hardening of the arteries, and may protect nerve fibers from excess glucose damage. Inositol has a natural calming effect and may be used in the treatment of anxiety, depression, and obsessive-compulsive disorder without the side effects of prescription medications." (See Exhibit 3.)

Findings by TDSHS:

26. TDSHS determined that REDUX manufactures, advertises, offers for sale, and sells its product Cocaine as an alternative to an illicit street drug throughout the United States, including Texas, by using the statements and claims on its label and on their websites as listed in paragraphs 15-20 above that make this product Cocaine an unapproved drug which cannot be legally sold in Texas. (See Exhibit 5.)

27. TDSHS determined that REDUX's product Cocaine was an unapproved drug because illicit street drugs are not food or drink, and neither they, nor alternatives to illicit street drugs, can be said to supplement the diet and are, therefore, not dietary supplements. (See

Exhibit 5.)

28. TDSHS determined that Cocaine is also a drug pursuant to §431.002(14) of the TFDCa because it is intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. FDA cited to REDUX's statements on its websites that one of the ingredients in Cocaine has the following benefits: "Inositol-...reduces cholesterol in the blood; it helps prevent hardening of the arteries, and may protect nerve fibers from excess glucose damage. Inositol has a natural calming effect and may be used in the treatment of anxiety, depression, and obsessive-compulsive disorder without the side effects of prescription medications." Since Cocaine has not been approved by FDA to treat, cure, prevent, or mitigate the above diseases, Cocaine cannot be legally sold in Texas. (*See Exhibit 5.*)

29. TDSHS also determined that advertising of the unapproved drug Cocaine constituted false advertising under the TFDCa because any advertising for an unapproved drug is false and misleading and misbrands the product. In addition, Cocaine is also misbranded under the terms of the TFDCa because its labeling is false or misleading and fails to bear adequate directions for the uses for which these drugs are intended and being promoted in Texas. (*See Exhibit 5.*)

30. TDSHS determined that Defendants introduced a new drug into commerce in Texas without an approved new drug application having been submitted to FDA in violation of both federal and state law. (*See Exhibit 5.*)

TDSHS Inspections:

31. TDSHS determined that REDUX advertises, offers for sale, and sells its unapproved drug "Cocaine" in Texas by sales to wholesalers and distributors and makes claims for its unapproved drug over the internet and on its label. TDSHS conducted inspections in Texas at the following locations and determined that these companies had purchased, sold, offered for sale, and/or held the unapproved drug Cocaine, in addition to those entities included as Defendants. TDSHS found this unapproved drug in commerce in Texas.

Inspection of April 13, 2007 of KIMBALL:

32. TDSHS inspected KIMBALL on April 13, 2007, and found that KIMBALL was in possession of Cocaine which is a drug because it is intended to be used as an alternative to an illicit street drug. Cocaine is also a new drug because FDA has not approved an application under Section 505 of the Federal Food, Drug, and Cosmetic Act for this drug. (See Exhibits 6 and 7.)

33. TDSHS determined that KIMBALL also held, offered for sale, and sold the unapproved drug Cocaine in Texas in violation of the TFDCA. KIMBALL sold the unapproved drug Cocaine to Import Warehouse, Inc., in Dallas, Texas; to Texas Wholesale Venture #1 LTD., d/b/a Texas Wholesale # 2 in Dallas, Texas and Fort Worth, Texas; Texas Wholesale Distributor in Arlington, Texas; and to Dallas Tobacco & Imports, Inc., in Dallas, Texas. (See Exhibits 6 and 7.)

34. TDSHS determined that KIMBALL distributed a drug, the unapproved drug Cocaine, without being licensed as a wholesale drug distributor as required by the TFDCA. (See

Exhibits 6 and 7.)

35. TDSHS determined that KIMBALL stored and sold foods as a wholesaler and was not licensed with TDSHS as required by the TFDCA. (See Exhibits 6 and 7.)

36. TDSHS issued a detention on April 13, 2007, to KIMBALL for all of the unapproved drugs found in the inspection. TDSHS detained 3,751 cases (24 cans in a case) of Cocaine and 61 cans (8.4 ounce size) of Cocaine that are unapproved drugs. KIMBALL was instructed that these unapproved drugs could not be moved or sold without violating state law. (See Exhibits 6 and 7.)

Inspection of April 16, 2007 of TEXAS WHOLESale:

37. TDSHS inspected TEXAS WHOLESale on April 16, 2007, and found that TEXAS WHOLESale was in possession of Cocaine which is a drug because it is intended to be used as an alternative to an illicit street drug. Cocaine is also a new drug because FDA has not approved an application under Section 505 of the Federal Food, Drug, and Cosmetic Act for this drug. (See Exhibits 8, 9, and 10.)

38. TDSHS determined that TEXAS WHOLESale also held, offered for sale, and sold the unapproved drug Cocaine in Texas in violation of the TFDCA. (See Exhibits 8, 9, and 10.)

39. TDSHS determined that TEXAS WHOLESale distributed a drug, the unapproved drug Cocaine, without being licensed as a wholesale drug distributor as required by the TFDCA. (See Exhibits 8, 9 and 10.)

40. TDSHS issued a detention on April 16, 2007 to TEXAS WHOLESale for all of the unapproved drugs found in the inspection. TDSHS detained 2,392 cases of Cocaine that are unapproved drugs. TEXAS WHOLESale was instructed that these unapproved drugs could not be moved or sold without violating state law. (See Exhibits 8, 9, and 10 .)

Inspection of April 11-12, 2007 of IMPORT WAREHOUSE:

41. TDSHS inspected IMPORT WAREHOUSE on April 11-12, 2007, and found that IMPORT WAREHOUSE was in possession of Cocaine which is a drug because it is intended to be used as an alternative to an illicit street drug. Cocaine is also a new drug because FDA has not approved an application under Section 505 of the Federal Food, Drug, and Cosmetic Act for this drug. (See Exhibits 11 and 12.)

42. TDSHS determined that IMPORT WAREHOUSE also held, offered for sale, and sold the unapproved drug Cocaine in Texas in violation of the TFDCA. (See Exhibits 11 and 12.)

43. TDSHS issued a detention on April 11-12, 2007 to IMPORT WAREHOUSE for all of the unapproved drugs found in the inspection. TDSHS detained 1,037 cases of Cocaine and one 8.4 ounce can of Cocaine that are unapproved drugs. IMPORT WAREHOUSE was instructed that these unapproved drugs could not be moved or sold without violating state law. (See Exhibits 11 and 12.)

VIOLATIONS OF THE TEXAS FOOD, DRUG AND COSMETIC ACT

44. Based on the findings in paragraphs 1 through 43, incorporated by reference,

Defendants have manufactured, held, offered for sale, distributed, sold, and/or introduced into commerce in Texas unapproved new drugs, misbranded drugs, and falsely represented that these unapproved new drugs could cure various diseases.

45. Defendants manufacture, distribute, advertise, offer for sell, distribute, and/or sell products that are drugs within the meaning of §431.002(14) of the TFDCA because these products are by definition not a dietary supplement since they are advertised as a street alternative to an illicit drug and/or are intended to cure, mitigate, treat, or prevent disease.

46. Cocaine is additionally classified as a “new drug” within the meaning of §431.002(25) of the TFDCA because the TDSHS is unaware of any evidence that establishes that REDUX’s product Cocaine is generally recognized as safe and effective for its intended uses.

47. Cocaine is also misbranded under the terms of the TFDCA because its labeling is false and misleading and fails to bear adequate directions for the uses for which these drugs are intended and being promoted in Texas. Section 431.112 (f) (1) of the TFDCA states that a drug is deemed to be misbranded unless its labeling bears adequate directions for use, unless the drug has been exempted from those requirements by regulations adopted by the Secretary of the United States Department of Health and Human Services.

48. By federal regulation, 21 CFR § 201.5 “adequate directions for use means directions under which the layman can use a drug safely and for the purposes for which it is intended.” REDUX’s product Cocaine fails to bear adequate directions for their intended use as a drug since adequate directions for use cannot be written providing for the use of an unapproved

drug by a layperson under the terms of §431.112 (f)(1) of the TFDCA.

49. Accordingly, the sale, delivery, offer for sale, hold for sale or give away of any new drugs without an FDA approved new drug application submitted by REDUX violates §431.114 (a)(1) of the TFDCA. The introduction or delivery for introduction into commerce of any article in violation of §431.114 of the TFDCA is prohibited, under §431.021 (e) of the TFDCA.

50. Section 431.021(a) of the TFDCA prohibits the introduction or delivery for introduction into commerce within the State of Texas of any misbranded drug, such as REDUX's product Cocaine which is intended to cure, mitigate, treat, or prevent disease and/or whose label and/or labeling is not in conformance with state and federal standards. Since REDUX's drug is misbranded under Texas law, Defendants who receive, hold, offer for sale, distribute, or sell Cocaine in Texas are in violation of §§431.021 (a) and/or (c) of the TFDCA.

51. Defendants' promotion of unapproved new drugs is false within the meaning of §431.182 of the TFDCA because it is misleading in numerous particulars as set out above and because FDA has not approved these drugs and, therefore, they are illegal to market.

52. Such representations for unapproved new drugs by Defendants constitute advertising within the definition set out in §431.002(1) of the TFDCA since they are intended to induce consumers to purchase Defendants' drugs. Section 431.005 of the TFDCA provides that the selling of drugs includes "...the sale, dispensing, and giving of any such article...."

53. Any such advertisement by Defendants for unapproved new drugs is false by the

terms of §431.183(a) of the TFDCa because it is directed toward the public and is not consistent with labeling claims permitted by the FDA or the approval process of FDA for drugs.

54. TDSHS is authorized by §431.048 of the TFDCa to detain drugs that are unapproved new drugs as defined in §431.114 of the TFDCa and misbranded drugs pursuant to §431.112 of the TFDCa. Defendants KIMBALL, TEXAS WHOLESale, and IMPORT WAREHOUSE were in possession of unapproved new drugs that were also misbranded that were detained by TDSHS.

55. The State can request a court to condemn detained articles that are misbranded or unapproved new drugs pursuant to §431.050 of the TFDCa. Similarly, the State can request a court to order the destruction of a detained article pursuant to §431.051 of the TFDCa if the court finds that the article is misbranded.

PROHIBITED ACTS UNDER THE TEXAS FOOD, DRUG AND COSMETIC ACT

56. Based on the conduct alleged above in paragraphs 1 through 55, Defendants have committed or caused to be committed the following acts prohibited and declared to be unlawful by §431.001 *et seq.* of the TFDCa:

- A. Introducing a new drug into commerce in Texas without an approved new drug application having been submitted to FDA, in violation of §431.021(e) of the TFDCa;
- B. Receiving, introducing, or delivering for introduction into commerce a misbranded drug by manufacturing, advertising, offering to sell, and selling a drug

that has not been approved by the FDA, in violation of §§431.021(a) and/or (c) of the TFDCA;

- C. Engaging in the wholesale distribution of any drug in Texas without a license, as required by §431.202 of the TFDCA and in violation of §431.021(x) of the TFDCA;
- D. Failing to submit an application required by the TDSHS in violation of §431.021(bb) of the TFDCA;
- E. Failing to provide adequate directions for use of a drug pursuant to §431.112(e)(1) of the TFDCA, in violation of §431.021(a) of the TFDCA;
- F. Misbranding a product because its labeling is false or misleading pursuant to §431.112(a)(1) of the TFDCA, in violation of §431.021(a) of the TFDCA
- G. Falsely advertising a drug is effective for treating diseases of the body, when FDA has not approved these drugs, in violation of §431.021(f) of the TFDCA;
- H. Falsely advertising a drug by representing that the drug has benefits which it does not have, in violation of §431.021(f) of the TFDCA;
- I. Falsely advertising a drug by representing that the drug is a legal alternative to an illicit street drug when it is not, in violation of §431.021(f) of the TFDCA; and
- J. Failing to register and list in accordance with Section 510 of the Federal Food, Drug and Cosmetic Act in violation of §431.021(s) of the TFDCA.

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

57. Defendants as alleged above in paragraphs 1 through 56, have in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §17.46(a). Additionally, Defendants have violated §17.46(b) of the DTPA as follows:

- A. Causing confusion or misunderstanding as to the approval of the drugs manufactured by Defendants, in violation of §17.46(b)(2) of the DTPA;
- B. Representing that Defendants' drugs have benefits which they do not have, in violation of §17.46(b)(5) of the DTPA;
- C. Representing that Defendants' drugs are of a particular standard, quality, or grade, if they are of another, in violation of §17.46(b)(7) of the DTPA;
- D. Failing to disclose that a product is not a dietary supplement if it is marketed as a alternative to an illicit street drug, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA; and
- E. Failing to disclose the side-effects of Cocaine, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of §17.46(b)(24) of the DTPA.

INJURY TO CONSUMERS

58. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

59. The State requests an order for the condemnation and destruction of all of Defendants' unapproved drug Cocaine pursuant to §§431.050 and 431.051 of the TFDC.

**APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION, AND PERMANENT INJUNCTION**

60. The State alleges that by reason of the foregoing, Defendants should not continue to operate as drug distributors, receive, advertise, offer for sale, hold, or sell the unapproved drug Cocaine in violation of the laws of Texas. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the laws as alleged in this Petition. Unless immediately restrained by this Honorable Court, the Defendants will continue to violate the laws of the STATE OF TEXAS and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. The interests of the State of Texas and the public require immediate action to keep this unapproved drug out of commerce in Texas. Therefore, the State requests an Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, as indicated below.

**REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY
INJUNCTION HEARING**

61. The State requests leave of this Court to conduct telephone, oral, written, and other depositions of witnesses, including Defendants or employees of Defendants, 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 Temporary Injunction Hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable shortened notice to Defendants and their attorneys if known.

PRAYER

62. WHEREFORE, the State prays that Defendants be cited according to law to appear and answer herein; that before notice and hearing a TEMPORARY RESTRAINING ORDER be issued; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, and any other person in active concert or participation with Defendants from engaging in the following acts or practices:

- A. Transferring, concealing, destroying or removing from the jurisdiction of this Court any books, records, documents, invoices, or other written materials relating to these allegations which are in each Defendant's possession, custody, or control except in response to further orders or subpoenas in this cause;
- B. Delivering, receiving, offering for sale, holding, selling, or giving away the product Cocaine in Texas;
- C. Advertising that the product Cocaine is effective for treating diseases of the body, when FDA has not approved it as a drug;

- D. Advertising that the product Cocaine is available for sale in Texas since it is an unapproved new drug by state law and cannot legally be sold in Texas;
- E. Advertising that the product Cocaine is available for sale in Texas since it is a misbranded drug by state law and cannot legally be sold in Texas;
- F. Failing to disclose in any advertising for the product Cocaine that this product is not approved for sale in Texas.
- G. Introducing a new drug into commerce in Texas without an approved new drug application having been submitted to FDA;
- H. Receiving, introducing, or delivering for introduction into commerce in Texas a misbranded drug by manufacturing, advertising, offering to sell, and selling a drug that has not been approved by the FDA;
- I. Engaging in the wholesale distribution of any drug in Texas without being licensed or registered as required by federal and state law;
- J. Failing to submit an approved new drug application required by the TDSHS;
- K. Failing to provide adequate directions for use of a drug;
- L. Misbranding a product because its labeling is false or misleading;
- M. Falsely advertising a drug by representing that the drug has benefits which it does not have;
- N. Falsely advertising a drug by representing that the drug is a legal alternative to an illicit street drug when it is not; and

- O. Failing to register and list in accordance with Section 510 of the Federal Food, Drug and Cosmetic Act.
- P. Introducing into commerce a misbranded drug, including Cocaine, by advertising, offering for sale, and selling a drug that has not been approved by the FDA;
- Q. Engaging in the distribution of food in Texas without being licensed;
- R. Causing confusion as to the approval of a good by representing to consumers that the product "Cocaine" can reduce or cure disease, when FDA has not approved this product as a drug;
- S. Representing that Defendants' drugs have benefits which they do not have;
- T. Representing that Defendants' drugs are of a particular standard, quality, or grade, if they are of another;
- U. Failing to disclose that a product is not a dietary supplement if it is marketed as a alternative to an illicit street drug, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; and
- V. Failing to disclose the side-effects of Cocaine, when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;
- W. Representing that Defendants' drugs are of a particular standard, quality, or grade, if they are of another.

63. The State further prays that this court upon final hearing order the condemnation and destruction of all detained cans of Cocaine, unapproved drugs, that are in violation of §431.021 of the TFDCA pursuant to §§431.050 and 431.051 of the TFDCA.

64. The State further prays that this court upon final hearing order each Defendant to pay civil penalties in favor of the STATE OF TEXAS in the amount up to \$25,000.00 per day, per violation of §431.021 of the TFDCA pursuant to §431.0585 of the TFDCA.

65. The State further prays that upon final hearing this Court will order each Defendant to pay civil penalties in favor of the STATE OF TEXAS in the amount up to \$20,000.00 per violation of the DTPA.

66. The State further prays that upon final hearing that this Court order each Defendant to restore all money or other property taken from persons by means of unlawful acts or practices, or, in the alternative, award judgment for damages to compensate for such losses.

67. The State further prays that upon final hearing that this Court order each Defendant to pay to the STATE OF TEXAS attorney fees and costs of court pursuant to the TEX. GOVT. CODE ANN. §402.006(c).

68. The State further prays that upon final hearing that this court order each Defendant to pay to the Office of the Attorney General and to the Texas Commissioner of Health their reasonable expenses incurred in obtaining injunctive relief under §431.047 of the TFDCA, including investigative costs, court costs, reasonable attorneys' fees, witness fees, and deposition expenses pursuant to the TFDCA §431.047(d).

69. The State further prays that all attached exhibits are incorporated by reference as if stated verbatim herein.

70. The State further prays that upon final hearing that this Court grant all other relief to which the State of Texas is entitled.

Respectfully submitted,

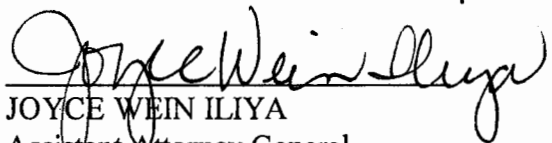
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**Plaintiff's Original Petition and Application for Ex Parte Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

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