

IN THE COURT OF COMMON PLEAS
BELMONT COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MICHAEL DEWINE
ATTORNEY GENERAL OF OHIO
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

Plaintiff/Relator,

v.

FRED'S PARTY CENTERS, INC.
D/B/A MARTINS FERRY PARTY
CENTER AND BRIDGEPORT
PARTY CENTER
c/o Frederick P. Fryman
Statutory Agent
811 Virginia Street
Martins Ferry, Ohio 43935

and

FREDERICK P. FRYMAN
Individually and as Owner of
Fred's Party Centers, Inc.
D/B/A Martins Ferry Party Center
and Bridgeport Party Center
811 Virginia Street
Martins Ferry, Ohio 43935

and

FREDERICK & JOYCE FRYMAN
As Property Owners of
Martins Ferry Party Center
811 Virginia Street
Martins Ferry, Ohio 43935

and

:
: CASE NO.

:
: JUDGE

:
: COMPLAINT, REQUEST FOR
: DECLARATORY JUDGMENT,
: PRELIMINARY INJUNCTION, AND
: OTHER INJUNCTIVE RELIEF, AND
: CIVIL PENALTIES

FREDERICK FRYMAN :
C/O BRIDGEPORT PARTY CENTER :
As Property Owner of :
Bridgeport Party Center :
895 National Road :
Bridgeport, Ohio 43912 :

and :

THE REAL PROPERTY AT :
819 S. Zane Highway :
Parcel ID 24-03789.000 :
819 S. Zane Highway :
Martins Ferry, Ohio 43935 :
(in rem) :

and :

THE REAL PROPERTY at :
895 National Road :
Parcel ID 23-00276.000 :
895 National Road :
Bridgeport, Ohio 43912 :
(in rem) :

Defendants/Respondents.¹ :

JURISDICTION AND VENUE

1. Plaintiff/Relator, Ohio Attorney General Michael DeWine, having reasonable cause to believe that violations of Ohio’s Consumer Protection and Public Nuisance laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and its Substantive Rules, Ohio Administrative Code, 109:4-3-01 et seq., and by Chapter 3767 of the Ohio Revised Code.

¹ The action brought pursuant to the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., only applies to Defendants/Respondents Fred’s Party Centers, Inc., doing business as Martins Ferry Party Center and Bridgeport Party Center, and Frederick P. Fryman, Individually and as Owner of Fred’s Party Centers, Inc. The action brought pursuant to Ohio’s Public Nuisance laws pertains to all named Defendants/Respondents in this matter.

2. Plaintiff/Relator Michael DeWine is charged at law and in equity with preventing, prosecuting, and abating any public nuisance in the State of Ohio. This action is brought in DeWine's official capacity.
3. The actions of Defendants/Respondents, hereinafter described, have occurred in Belmont County and the State of Ohio, and as set forth below are in violation of the CSPA and its Substantive Rules, as well as the statutory and common law prohibitions against public nuisances.
4. This court has subject matter jurisdiction over this action pursuant to R.C. 1345.04, R.C. 3767.03 and R.C. 4729.53.
5. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of Defendants/Respondents' actions complained of herein, and out of which this action arose, occurred in Belmont County, Ohio.

DEFENDANTS/RESPONDENTS

6. Defendant/Respondent Fred's Party Centers, Inc. ("Fred's Party Centers") is an Ohio corporation with its principal place of business located at 895 National Road, Bridgeport, Ohio 43912.
7. Defendant/Respondent Fred's Party Centers does business as Martins Ferry Party Center, a registered fictitious business name with the Ohio Secretary of State's Office, which has its principal place of business located at 819 S. Zane Highway, Martins Ferry, Ohio 43935.
8. Defendant/Respondent Fred's Party Centers also does business as Bridgeport Party Center, which has its principal place of business located at 895 National Road,

Bridgeport, Ohio 43912. Bridgeport Party Center is not registered as a fictitious business name with the Ohio Secretary of State's Office.

9. Defendant/Respondent Frederick P. Fryman ("Fryman") is a resident of the State of Ohio and Belmont County is the owner of Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center.
10. On information and belief, Fryman, at all times relevant hereto, operated, dominated, controlled and directed the activities of Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, causing, personally participating in, and/or ratifying the acts and practices of Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, as described in this Complaint.
11. The real property located at 819 S. Zane Highway, Martins Ferry, Ohio 43935 is owned by Defendants/Respondents Frederick and Joyce Fryman ("Frederick and Joyce Fryman").
12. The real property located at 895 National Road, Bridgeport, Ohio 43912 is owned by Defendant/Respondent Frederick Fryman, c/o Bridgeport Party Center ("Fryman").
13. Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, are "suppliers," as defined in R.C. 1345.01(C), as Fryman and Fred's Party Centers are, and have been, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting, offering, and selling "incense" and "potpourri" products to individuals in Belmont County in the State of Ohio for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

14. For purposes of this Complaint, the term “Defendants/Respondents,” unless otherwise specified, shall refer to all Defendants/Respondents; and when used in conjunction with allegations of unlawful conduct, shall mean that each Defendant/Respondent committed such act and/or is legally accountable for such act.

STATEMENT OF FACTS

15. Fryman and Fred’s Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, are, and have been at all relevant times, engaged in the business of soliciting, offering for sale, and selling, *inter alia*, to consumers, synthetic narcotics/illegal drugs which were represented as “incense” and “potpourri.”
16. Fryman and Fred’s Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, sell synthetic narcotics/illegal drugs in packets that fail to disclose the full list of ingredients contained in the products and further omit the illegal ingredients contained in the products.
17. Between February 16, 2013 and March 22, 2013, the Belmont County Drug Task Force conducted undercover investigations into Fred’s Party Centers’ sale of synthetic narcotics/illegal drugs as legal products. The undercover investigations occurred at both the Martins Ferry and Bridgeport locations in Belmont County.

MARTINS FERRY PARTY CENTER

18. On February 20, 2013, an undercover officer operating under the direction of the Belmont County Drug Task Force, went to Martins Ferry Party Center, located at 819 S. Zane Highway, Martins Ferry, Ohio 43935, for the purpose of purchasing synthetic narcotics/illegal drugs. (Affidavit of Officer Timothy Starkey, Exhibit 1 at ¶¶1-3)

19. The undercover officer drove a vehicle through the Martins Ferry Party Center drive-thru and was approached by a clerk. (Id. at ¶5)
20. The undercover officer asked the clerk if they sold “Diablo,” to which the clerk replied that they did. (Id.)
21. The undercover officer asked to purchase “Diablo” as well as “White Cat Cigars.” (Id.)
22. The undercover officer purchased a pack of “Diablo” and a pack of “White Cat Cigars” for a total of \$23.51, but did not receive a receipt. (Id.)
23. The 3-gram packet of “Diablo” was labeled as “Botanical Incense” and had a label on the back noting that it was “sold as incense only” and was “not for human consumption.” (Photographs of “Diablo,” Exhibit 2)
24. The “Diablo” packet listed the following Ingredients: “Bay Bean, Siberian Motherwort, Mugwort, Blue Lotus, Lion Tail, Aroma Essence.” (Id.)
25. The “Diablo” packet further claimed the following: “Potpourri does not contain any of the following: JWH-018, JWH-073, HU-210, HU-211, CP-47, 497” and that “It’s Legal in 50 States, 100% Legal.” (Id.)
26. Although the “Diablo” packet claimed it was legal and did not contain any illegal and prohibited ingredients, when tested, the vegetation inside the packet of “Diablo” did contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (“XLR11”). (April 9, 2013 Bureau of Criminal Information & Investigation (“BCI&I”) Laboratory Report No. 13-12528 and April 9, 2013 Affidavit of Forensic Chemist Erin Reed, Exhibit 3)²
27. XLR11 is a Schedule I Controlled Substance. (See R.C. 3719.41(C)(41))

² The original lab report and affidavit for Exhibit 3 are in the possession of the Belmont County Drug Task Force.

BRIDGEPORT PARTY CENTER

28. On February 16, 2013, Lieutenant Jerry Delman of the Bridgeport Police Department, and a member of the Belmont County Drug Task Force, went to the Bridgeport Party Center, located at 895 National Road, Bridgeport, Ohio 43912, for the purpose of determining if the business sold synthetic narcotics/illegal drugs. (Affidavit of Lieutenant Jerry Delman, Exhibit 4 at ¶¶1-3)
29. Upon entering to the Bridgeport Party Center, Lt. Delman observed ten boxes behind the counter labeled as “Herbal Incense.” (Id.)
30. Lt. Delman then asked the clerk to see one of the herbal incense packages. (Id.)
31. In response, the clerk handed Lt. Delman a pack of “Diablo” Herbal Incense and stated that the cheaper incense sold for around \$22.00 per pack. (Id.)
32. Lt. Delman then asked the clerk why the package said “must be 18.” (Id.)
33. In response, the clerk replied, “Because it’s a tobacco product.” (Id.)
34. Lt. Delman then inquired if they had any other incense for sale, to which the clerk replied that “You mean the stuff you burn for the aroma?” and pointed to a shelf with stick incense being sold for \$0.25 cents per stick. (Id.)
35. The stick incense was available to customers to pick up, while the herbal incense, such as the “Diablo,” was behind the counter. (Id.)
36. Lt. Delman left the Bridgeport Party Center without making any purchases.
37. On February 20, 2013, an undercover officer operating under the direction of the Belmont County Drug Task Force went to the Bridgeport Party Center, located at 895 National Road, Bridgeport, Ohio 43912, for the purpose of purchasing synthetic narcotics/illegal drugs. (Exhibit 4 at ¶4)

38. Upon entering the Bridgeport Party Center, the undercover officer engaged the clerk in conversation where the undercover officer requested to purchase “fake weed” and asked the clerk for her recommendations. (Id. at ¶6)
39. In response, the clerk suggested “Mr. Happy,” which sold for \$67.00. (Id.)
40. The undercover officer purchased “Platinum” for \$23.97 and two cigar wraps, for which the undercover officer received a receipt. (Id.)
41. The 3-gram packet of “3rd Generation” “Platinum” was labeled as “CAUTION” “Super Strong Incense” and contained the following on the label: “You think you can handle it?” (Photographs of “Platinum,” Exhibit 5)
42. In addition, the front of the “Platinum” packet contained the following labels: “For aromatherapy only. Burn in a well-ventilated area. Not for human consumption. Manufacturers and retailers of this product take no responsibility for the incorrect use or misuse of this product.” (Id.)
43. The back of the “Platinum” packet contained the following warning: “CAUTION” “NOT FOR HUMAN CONSUMPTION.” (Id.)
44. The “Platinum” packet claimed “This product has been certified by an independent laboratory to not contain any banned substances, including JWH-018, 073, 081, HU-210, CP47 or 497.” (Id.)
45. In addition, the back of the “Platinum” packet contained the following labeling: “For Fragrance Purposes Only. Keep Out of Reach of Children and Pets. Never Leave Burning Incense Unattended and Make Sure All Ashes Fall in Ashtrays or Burners. Burn In A Well Ventilated Area.” (Id.)

46. Finally, the “Platinum” packet claimed it was “ABSOLUTELY LEGAL IN 50 STATES” and noted that “MUST BE 18+ TO PURCHASE.” (Id.)
47. On March 22, 2013, an undercover officer operating under the direction of the Belmont County Drug Task Force went to the Bridgeport Party Center, located at 895 National Road, Bridgeport, Ohio 43912, for the purpose of purchasing synthetic narcotics/illegal drugs. (Exhibit 4 at ¶7)
48. Upon entering the Bridgeport Party Center, the undercover officer purchased one 11-gram packet of “Kush,” one 10-gram packet of “Klimax,” and a strawberry zig-zag wrap, for a total cost of \$127.06. The undercover officer did not receive a receipt. (Id. at ¶9)
49. The 11-gram packet of “Kush, Pineapple” claimed that it contained the following ingredients: “Mullien Leaf, hops, Lemon balm, Indian Leaves, passion flower, and Wild Lettuce” and that it contained “no nicotine or tobacco products.” (Photographs of “Kush,” Exhibit 6)
50. The “Kush” packet contained a warning to “KEEP OUT OF REACH OF CHILDREN” and that it was “NOT INTENDED FOR HUMAN CONSUMPTION.” (Id.)
51. Finally, the “Kush” packet claimed that it was “Lab Certified” and stated that “This product contains no prohibited chemicals or materials. This product is legal for sale in all 50 states as of September 1, 2011.” (Id.)
52. The 10-gram packet of “Klimax Potpourri” purported to carry the “Kush” trademark and noted it had a “New Improved Strong Aroma.” (Photographs of “Klimax,” Exhibit 7)
53. The back of the “Klimax” packet noted that the ingredients were simply “various herbs.” (Id.)

54. The “Klimax” packet warned that “This Product Is Not To Be Burned or Smoked” and that it was “Not Intended for Human Consumption!” (Id.)
55. In addition, the “Klimax” packet cautioned that one “Must be 18 years or age or older to purchase.” (Id.)
56. Finally, the “Klimax” packet contained the following statement regarding the legality of the product: “This product does not contain 122 and AM2201, AM678, JWH-018, 073, 200, CP-47, 497, C8, cannabicyclohexanol, or HU-210.” (Id.)
57. Approximately thirty minutes after making the purchases described in Paragraphs 48-57 above, the undercover officer drove through the Bridgeport Party Center drive-thru and purchased one 4-gram packet of “OMG,” one 3-gram packet of “Diablo,” and a strawberry zig-zag wrap for a total cost of \$48.54. The undercover officer did not receive a receipt for these purchases. (Id.)
58. The 3-gram packet of “Diablo” was labeled as “Botanical Incense” and had a label on the back nothing that it was “sold as incense only” and was “not for human consumption.” (Photographs of “Diablo,” Exhibit 8)
59. The “Diablo” packet listed the following Ingredients: “Bay Bean, Siberian Motherwort, Mugwort, Blue Lotus, Lion Tail, Aroma Essence.” (Id.)
60. The “Diablo” packet further claimed the following: “Potpourri does not contain any of the following: JWH-018, JWH-073, HU-210, HU-211, CP-47, 497” and that “It’s Legal in 50 States, 100% Legal.” (Id.)
61. Although each of the “Platinum,” “Kush,” “Klimax, and “Diablo” packets purchased claimed they were legal and did not contain any illegal and prohibited ingredients, when tested, the vegetation inside each packet did contain XLR11. (April 8, 2013 BC&I

Laboratory Report NO. 13-40083 and April 10, 2013 Affidavit of Forensic Chemist Michele Taylor, Exhibit 9)³⁴

62. “Incense” is defined as “material used to produce a fragrant odor when burned” or “the perfume exhaled from some spices and gums when burned.” (<http://www.merriam-webster.com/dictionary/incense>)
63. “Potpourri” is defined as “a mixture of flowers, herbs, and spices that is usually kept in a jar and used for scent.” (<http://www.merriam-webster.com/dictionary/potpourri>)
64. Unlike typical incense, which is composed of certain biotic materials, and typical potpourri, which is composed of naturally fragrant plant materials, the vegetation misrepresented as “botanical incense” and “potpourri” products and sold by Fryman and Fred’s Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, is coated with illegal and dangerous synthetic compounds that, when consumed, mimic the psychoactive and physiological effects of tetrahydrocannabinol (“THC”), the active ingredient in cannabis, which is also an illegal Schedule I Controlled Substance. (See R.C. 3719.41(C)(27))(www.dea.gov)
65. Fryman and Fred’s Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, sold products labeled as “incense” and “potpourri” which contained illegal Schedule I Controlled Substances and for which the ordinary and customary use for such products is to be smoked and consumed as a drug by humans.

³ When tested, the “OMG, Herbal Potpourri” packet did not contain any controlled substances.

⁴ The original lab report and affidavit for Exhibit 9 are in the possession of the Bridgeport Police Department.

66. Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, offered for sale and sold synthetic narcotics/illegal drugs as legal products.

PLAINTIFF/RELATOR'S FIRST CAUSE OF ACTION:

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT I

UNFAIR AND DECEPTIVE ACTS AND PRACTICES

67. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
68. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by offering for sale and selling synthetic narcotics/illegal drugs as legal products.
69. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A), by failing to clearly and conspicuously disclose that their products contained Schedule I Controlled Substances, thus making the products illegal.
70. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

UNCONSCIONABLE ACTS OR PRACTICES

71. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
72. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.03(A), by offering for sale and selling synthetic narcotics/illegal drugs as legal products.
73. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

EXCLUSIONS AND LIMITATIONS IN ADVERTISEMENTS

74. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
75. Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, have committed unfair and deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A), and the Exclusions and Limitations in Advertising Rule, Ohio Admin. Code 109:4-3-02(A)(1), by failing to clearly and conspicuously disclose certain material exclusions related to their "incense" and "potpourri" products. Specifically, while the products sold by Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, contained statements that they were

legal, that they did not contain any banned substances or prohibited ingredients and that they only contained certain ingredients, Defendants/Respondents Fryman and Fred's Party Centers, doing business as Martins Ferry Party Center and Bridgeport Party Center, failed to disclose that the products contained other Schedule I Controlled Substances, thus making the products illegal.

PLAINTIFF/RELATOR'S SECOND CAUSE OF ACTION:

PUBLIC NUISANCE

COUNT I: PUBLIC NUISANCE (R.C. 3719.10)

76. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
77. Defendants/Respondents have committed, participated in the commission of, and/or aided and abetted in the commission of felony violations of R.C. 2925.03, Trafficking in Drugs, at Martins Ferry Party Center and Bridgeport Party Center.
78. Defendants/Respondents have had reasonable cause to believe that a public nuisance existed or exists at the Martins Ferry Party Center and the Bridgeport Party Center and have failed to abate the nuisance.
79. The property at 819 S. Zane Highway, Martins Ferry, Ohio 43935 is a public nuisance as defined by R.C. 3719.10 and is subject to abatement.
80. The property at 895 National Road, Bridgeport, Ohio 43912 is a public nuisance as defined by R.C. 3719.10 and is subject to abatement.
81. Defendants/Respondents are guilty of maintaining a public nuisance.

COUNT II: PUBLIC NUISANCE (R.C. 4729.35)

82. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
83. The chemical XLR11 is a controlled substance as defined in R.C. 3719.41 and is

therefore a “drug of abuse” as defined in R.C. 3719.11(A).

84. Defendants/Respondents have committed, participated in the commission of, and/or abetted the commission of violations of R.C. 2925.03, a law of the State of Ohio controlling the distribution of a drug of abuse.
85. The property at 819 S. Zane Highway, Martins Ferry, Ohio 43935 is a public nuisance subject to abatement as defined in R.C. 4729.35.
86. The property at 895 National Road, Bridgeport, Ohio 43912 is a public nuisance subject to abatement as defined in R.C. 4729.35.

COUNT III: COMMON LAW NUISANCE

87. Paragraphs 1-66 of this Complaint are incorporated herein by reference.
88. Defendants/Respondents have committed, participated in, or acquiesced to the commission and participation in trafficking in drugs in violation of R.C. 2925.03.
89. Violations of R.C. 2925.03 at 819 S. Zane Highway, Martins Ferry, Ohio 43935 unreasonably interfere with the public right to health, safety, peace, and comfort, thereby creating a public nuisance.
90. The public nuisance that exists at 819 S. Zane Highway, Martins Ferry, Ohio 43935 creates a potential risk of harm that has resulted in injury to others.
91. Defendants/Respondents have created, maintained, fostered, or acquiesced to the public nuisance that exists at 819 S. Zane Highway, Martins Ferry, Ohio 43935, and are therefore liable for the nuisance.
92. Violations of R.C. 2925.03 at 895 National Road, Bridgeport, Ohio 43912 unreasonably interfere with the public right to health, safety, peace, and comfort, thereby creating a public nuisance.

93. The public nuisance that exists at 895 National Road, Bridgeport, Ohio 43912 creates a potential risk of harm that has resulted in injury to others.
94. Defendants/Respondents have created, maintained, fostered, or acquiesced to the public nuisance that exists at 895 National Road, Bridgeport, Ohio 43912, and are therefore liable for the nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Relator respectfully prays that this Court:

- A. ISSUE A DECLARATORY JUDGMENT declaring that each act or practice described in Plaintiff/Relator's Complaint as noted in the Statement of Facts and Plaintiff/Relator's First Cause of Action violates the CSPA, R.C. 1345.01 et seq., and its Substantive Rules, in the manner set forth in this Complaint.
- B. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendants/Respondents Frederick Fryman and Fred's Party Centers, Inc., doing business as Martins Ferry Party Center and Bridgeport Party Center, under their own names or any other names, and all persons acting on behalf of Defendants/Respondents Frederick Fryman and Fred's Party Centers, Inc., doing business as Martins Ferry Party Center and Bridgeport Party Center, directly or indirectly, through any corporate or private device, partnership or associations, jointly and severally, from engaging in the acts or practices of which Plaintiff/Relator complains and from further violating the CSPA, R.C. 1345.01 et seq., and its Substantive Rules.
- C. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants/Respondents Frederick Fryman and Fred's Party Centers, Inc., doing business as Martins Ferry Party Center and Bridgeport Party Center, from acting as suppliers and soliciting or engaging in

any consumer transactions in the State of Ohio as suppliers until the final ordered resolution of this matter is satisfied in its entirety.

- D. ASSESS, FINE, AND IMPOSE upon Defendants/Respondents Frederick Fryman and Fred's Party Centers, Inc., doing business as Martins Ferry Party Center and Bridgeport Party Center, a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 1345.07(D).
- E. ISSUE A DECLARATORY JUDGMENT, in accordance with R.C. 3767.02, declaring that all Defendants/Respondents be declared guilty of maintaining a nuisance.
- F. ISSUE A DECLARATORY JUDGMENT declaring that the property located at 819 S. Zane Highway, Martins Ferry, Ohio 43935 (Parcel ID No. 24-03789.000) is a public nuisance as defined in R.C. 3719.10, and R.C. 4729.35, and that Defendants/Respondents be found guilty of maintaining that nuisance.
- G. ISSUE A DECLARATORY JUDGMENT declaring that the property located at 895 National Road, Bridgeport, Ohio 43912 (Parcel ID No. 23-00276.000) is a public nuisance as defined in R.C. 3719.10, and R.C. 4729.35, and that Defendants/Respondents be found guilty of maintaining that nuisance.
- H. ISSUE PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, in accordance with Chapter 3767, enjoining Defendants/Respondents, and any heirs, assigns, successors in interest or title, from conducting, maintaining, using, occupying, or in any way permitting the use of the premises at 819 S. Zane Highway, Martins Ferry, Ohio 43935, as a public nuisance.
- I. ISSUE PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, in accordance with Chapter 3767, enjoining Defendants/Respondents, and any heirs, assigns, successors

in interest or title, from conducting, maintaining, using, occupying, or in any way permitting the use of the premises at 895 National Road, Bridgeport, Ohio 43912, as a public nuisance.

- J. ISSUE PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF enjoining Defendants/Respondents, along with any owners, members, or partners of the business, from occupying, using, or being at 819 S. Zane Highway, Martins Ferry, Ohio 43935.
- K. ISSUE PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF enjoining Defendants/Respondents, along with any owners, members, or partners of the business, from occupying, using, or being at 895 National Road, Bridgeport, Ohio 43912.
- L. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants/Respondents Frederick Fryman and Joyce Fryman from operating, owning, having an ownership interest in, a retail grocery, drive-thru, or convenience store.
- M. ORDER that the property located at 819 S. Zane Highway, Martins Ferry, Ohio 43935 be padlocked and closed against all use for a period of one year from final judgment.
- N. ORDER that the property located at 895 National Road, Bridgeport, Ohio 43912 be padlocked and closed against all use for a period of one year from final judgment.
- O. ORDER that upon final judgment, that the Belmont County Sheriff's Office and/or BCI&I be ordered to sell the furniture, fixtures, moveable property, and any other item located on the property located at 819 S. Zane Highway, Martins Ferry, Ohio 43935 and used in maintaining the nuisance in the manner provided for the sale of chattels under execution.
- P. ORDER that upon final judgment, that the Belmont County Sheriff's Office and/or BCI&I be ordered to sell the furniture, fixtures, moveable property, and any other item

located on the property located at 895 National Road, Bridgeport, Ohio 43912 and used in maintaining the nuisance in the manner provided for the sale of chattels under execution.

- Q. Order that Defendants/Respondents be taxed Three Hundred Dollars (\$300.00) in accordance with R.C. 3767.09, plus the costs of this action.
- R. ORDER Defendants/Respondents to reimburse the Ohio Attorney General for all costs incurred in bringing this action.
- S. ORDER Defendants/Respondents to pay all court costs associated with this action.
- T. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General



MELISSA G. WRIGHT (0077843)
Senior Assistant Attorney General
Consumer Protection Section
30 East Broad Street, 14th Floor
Columbus, Ohio 43215-3428
(614) 466-8169; (866) 528-7423 (facsimile)
melissa.wright@ohioattorneygeneral.gov
Counsel for Plaintiff/Relator
Ohio Attorney General



CHARISSA D. PAYER (0064452)
Senior Assistant Attorney General
Health and Human Services Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215
(614) 466-8162; (866) 473-4885 (facsimile)
charissa.payer@ohioattorneygeneral.gov
Counsel for Plaintiff/Relator
Ohio Attorney General

7. On March 25, 2013, the substance in the "Diablo" packet was submitted to the Ohio Bureau of Criminal Identification and Investigation (BCI&I) Laboratory with instructions to test for the presence of a controlled substance.

FURTHER AFFIANT SAYETH NAUGHT.



Officer Timothy Starkey
OFFICER TIMOTHY STARKEY

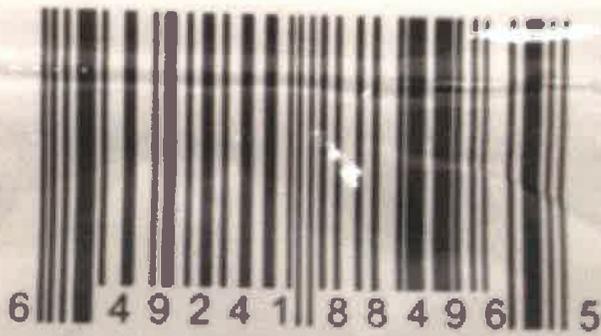
Sworn to and subscribed in my presence this 2nd day of July, 2013
in the City of Marietta County of BELMONT, State of Ohio.

Richard A. Davis
NOTARY PUBLIC
My Commission Expires 12-16-13



STATE'S
EXHIBIT

2



Ingredients:
Bay Bean, Siberian Motherwort,
Mugwort, Blue Lotus,
Lion Tail, Aroma Essence

sold as incense only
not for human consumption

Potpourri does not contain any of the following:
JWH-018, JWH-073, HU-210, HU-211, CP-47,497
It's Legal in 50 States, 100% Legal



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Bureau of Criminal Investigation

Laboratory Report

To: Belmont County Drug Task Force
Tom Siburt
35 S. Fifth
Martins Ferry, OH 43935

BCI Laboratory Number: 13-12528
Date: April 09, 2013
Agency Case Number: 13-0024-TF

Offense: Drug Trafficking
Subject(s): Fred's Party Center
Victim(s): State of Ohio

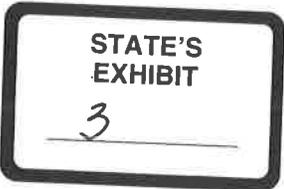
Submitted on March 25, 2013 by Jerry Delman:

1. One manila envelope containing a packet containing vegetation.

Findings

1. One (1) multi-colored zip packet, marked "Diablo," containing vegetable matter - 3.4 grams - found to contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (XLR11).

Erin C. Reed
Forensic Scientist
(740) 845-2204
erin.reed@ohioattorneygeneral.gov



Please address inquiries to the office indicated, using the BCI case number.

[] BCI -Bowling Green Office
1616 E. Wooster St.-18
Bowling Green, OH 43402
Phone:(419)353-5603

[X] BCI -London Office
1560 St Rt 56 SW P.O. Box 365
London, OH 43140
Phone:(740)845-2000

[] BCI -Richfield Office
4055 Highlander Pkwy. Suite A
Richfield, OH 44286
Phone:(330)659-4600

Ohio Bureau of Criminal Identification & Investigation
BCI&I London

Laboratory: 13-12528
Date: April 09, 2013
Agency Case: 13-0024-TF

Analytical findings offered above were determined using accepted forensic drug chemistry methods. Hypergeometric sampling may be specified in the findings above. The application of hypergeometric sampling establishes a ninety-five percent (95) confidence level that at least ninety percent (90) of the units in the sample are as reported.

Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.

AFFIDAVIT

STATE OF OHIO)
)
) SS.
COUNTY OF MADISON)

I, Erin C. Reed, being duly sworn state as follows:

I am an Ohio Bureau of Criminal Identification and Investigation (BCI&I) Laboratory employee and performing laboratory analysis is part of my regular duties. My education, training and experience for performing analyses of material are outlined as follows:

EDUCATION

1. Juris Doctor degree from Capital University Law School, 2009. Courses in Evidence, Criminal Law, Criminal Procedure, Constitutional Law, and Trial Advocacy.
2. Bachelor of Science degree in Chemistry from the College of Mount Saint Joseph, Cincinnati, Ohio, 2003. Courses in Biology, General Chemistry, Analytical Chemistry, Organic Chemistry, Advanced Organic Chemistry, Physical Chemistry, Inorganic Chemistry, Biochemistry, Physics, Instrumental Analysis, and Mathematics.

TRAINING

1. Drugs, Analogs, and Controlled substance analogs workshop with BCI&I.
2. Forensic Chemistry Seminar with the Federal Drug Enforcement Administration, Special Research and Testing Laboratory, Dulles, Virginia.
3. Specialized training at Ohio BCI&I's Northeast Laboratory in the analysis of controlled substances and dangerous drugs.
4. Chemical research specializing in Organic Synthesis at Miami University of Ohio.
5. Chemical research specializing in Organic Synthesis at the College of Mount Saint Joseph.
6. Chemical research specializing in NMR Spectroscopy at the University of Cincinnati.

EXPERIENCE

1. Employed with the BCI&I as a Forensic Chemist from March 2004 to April 2007, and from May 2012 to present, identifying dangerous drugs and controlled substances.

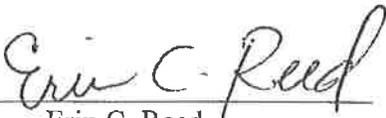
2. Employed as an Assistant Attorney General with the Ohio Attorney General's Office from November 2009 to May 2012.
3. Employed as a Policy & Law Analyst with the Ohio Attorney General's Office from April 2007 to August 2009.

PROFESSIONAL ORGANIZATIONS

1. Midwestern Association of Forensic Scientists (MAFS)
2. Ohio State Bar Association (OSBA)
3. American Bar Association (ABA)

I further attest that in case number 13-12528, scientifically accepted tests were performed with due caution and evidence was handled in accordance with established and accepted procedures while in the custody of BCI&I's laboratory.

FURTHER AFFIANT SAYETH NAUGHT.


 Erin C. Reed

The foregoing instrument was sworn and acknowledged before me this 9th day of April, 20 13 by Forensic Scientist Erin Colleen Reed.


 Notary Public



KIMBERLY R. FOSTER
 Notary Public, State of Ohio
 My Commission Expires 4-19-14

OHIO REVISED CODE 2925.51 (C) & (D)

THE ATTACHED LAB REPORT IS PRIMA FACIE EVIDENCE OF THE CONTENT, IDENTITY, WEIGHT OR NUMBER OF UNIT DOSES OF THE SUBJECT-SUBSTANCE AND IS ADMISSIBLE WITHOUT FURTHER TESTIMONIAL EVIDENCE.

THE ACCUSED HAS THE RIGHT TO DEMAND THE REPORT SIGNER'S TESTIMONY AND CAN DEMAND THE REPORT SIGNER'S TESTIMONY BY SERVING A DEMAND FOR THE REPORT SIGNER'S TESTIMONY UPON THE PROSECUTING ATTORNEY WITHIN 7 DAYS FROM THE DATE THE ACCUSED OR THE ACCUSED'S ATTORNEY RECEIVES THE ATTACHED LAB REPORT.

STATE OF OHIO)
)
COUNTY OF BELMONT)

AFFIDAVIT OF
SS:
LT. JERRY DELMAN

AFFIDAVIT

I, Lieutenant Jerry Delman, being first duly sworn according to law, depose and say that I am of full legal age, have personal knowledge of all the facts herein, and am competent to testify to the matter set forth. Further, I state that:

1. I am a Lieutenant employed by the Bridgeport Police Department and I am also a member of the Belmont County Drug Task Force. In this position I am involved in a variety of investigations, some of which involve the use of undercover officers to gather information.
2. The Belmont County Drug Task Force received information that the Bridgeport Party Center, located at 895 National Road, Bridgeport, Ohio 43912 was selling synthetic narcotics.
3. On February 16, 2013, I went to the Bridgeport Party Center and observed approximately ten (10) boxes behind the counter labeled as "Herbal Incense." I then asked the clerk to see one of the herbal incense packages. The clerk handed me a pack of "Diablo" Herbal Incense. The clerk stated that the cheaper incense sold for around \$22.00 per pack. I then inquired why the package said "must be 18." The clerk said, "Because it's a tobacco product." I then asked if there were any other incense for sale. The clerk asked, "You mean the stuff you burn for the aroma?", and pointed to a shelf with stick incense being sold for \$0.25 cents per stick. The stick incense was available to customers to pick up, while the herbal incense was behind the counter.
4. On February 20, 2013, an undercover officer operating under the direction of the Belmont County Drug Task Force went to the Bridgeport Party Center for the purpose of purchasing synthetic narcotics. The undercover officer was equipped with a digital audio recorder.
5. After the February 20, 2013 purchase, I reviewed the recordings and conducted an interview with the undercover officer. The interview established the following description of the transaction at the Bridgeport Party Center.
6. The undercover officer entered the Bridgeport Party Center and engaged the clerk in a conversation where he requested to purchase "fake weed" and asked the clerk for her recommendations. The clerk suggested "Mr. Happy," which sold for \$67.00. The undercover officer purchased "Platinum" for \$23.97, and two cigar wraps. The clerk gave the undercover a receipt for the purchases and the



undercover officer exited the store.

7. On March 22, 2013, an undercover officer operating under the direction of the Belmont County Drug Task Force went to the Bridgeport Party Center for the purpose of purchasing synthetic narcotics. The undercover officer was equipped with a digital audio recorder.
8. After the March 22, 2013 purchases, I reviewed the recordings and conducted an interview with the undercover officer. The interview established the following description of the transaction at the Bridgeport Party Center.
9. The undercover officer entered the Bridgeport Party Center and purchased one 11 gram pack of "Kush," one 10 gram pack of "Klimax" and a strawberry zig-zag wrap, for a total cost of \$127.06. There was no receipt given. About thirty minutes after making the purchases, the undercover officer drove through the drive thru at the Bridgeport Party Center and purchased one 4 gram pack of "OMG," one 3 gram pack of "Diablo," and a strawberry zig-zag wrap for \$48.54. Again, no receipt was given to document the purchase.
10. Immediately after the purchases, the undercover officer turned over the purchased items to the Belmont County Drug Task Force.
11. On March 25, 2013, the four (4) substances purchased on February 20, 2013 and March 22, 2013 were submitted to the Ohio Bureau of Criminal Identification and Investigation (BCI&I) Laboratory with instructions to test for the presence of a controlled substance.

FURTHER AFFIANT SAYETH NAUGHT.



LT. JERRY DELMAN

Sworn to and subscribed in my presence this 3rd day of July, 2013
in the City of Bridgeport, County of Belmont, State of Ohio.



NOTARY PUBLIC
My Commission Expires 2-14-17



PLATINUM

Super Strong Incense

You think you can handle it?

3rd Generation



13112083

For aromatherapy use only.
Burn in a well-ventilated area.
Not for use in children's rooms.
The manufacturer is not responsible for any
products used in any way other than intended.
A complete list of ingredients is on the back of the package.

3 gram

STATE'S EXHIBIT
5

PLATINUM CAUTION

NOT FOR HUMAN CONSUMPTION

This product has been certified by an independent laboratory to not contain any banned substances, including JWH-018, 073, 081, HU-210, CP47 or 497.

FOR FRAGRANCE PURPOSES ONLY
KEEP OUT OF REACH OF CHILDREN AND PETS
NEVER LEAVE BURNING INCENSE UNATTENDED
AND MAKE SURE ALL ASHES FALL IN ASHTRAYS
OR BURNERS

BURN IN A WELL VENTILATED AREA

ABSOLUTELY LEGAL IN 50 STATES

MUST BE 18+ TO PURCHASE

www.AllSpice.com



STATE'S
EXHIBIT

6

Main Ingredients:

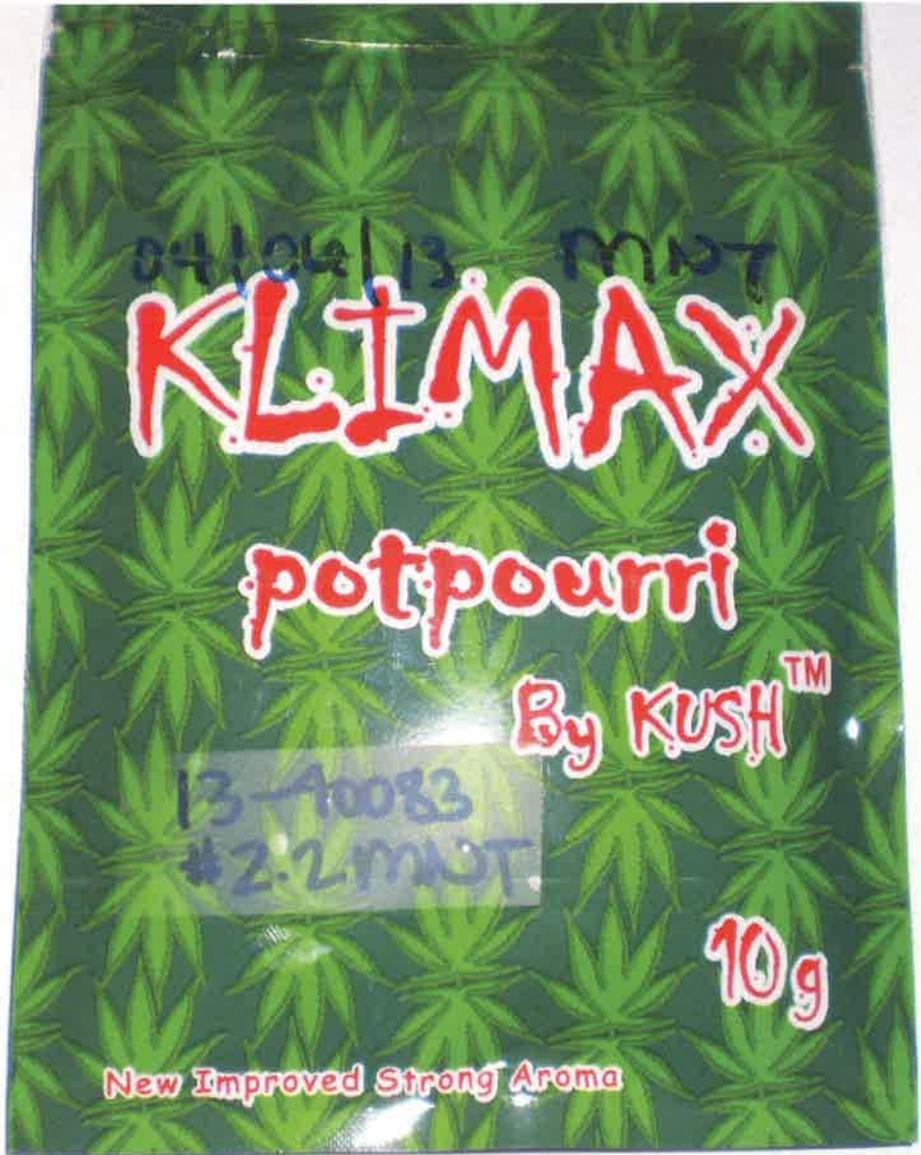
Mullien leaf, hops, lemon balm, Indian leaves, passion flower, and wild lettuce.
Contains no nicotine or tobacco products.

KEEP OUT OF REACH OF CHILDREN.

NOT INTENDED FOR HUMAN CONSUMPTION.

Lab Certified: This product contains no prohibited chemicals or materials. This product is legal for sale in all 50 states as of September 1, 2011.





04/04/13 MNT

KLIMAX

potpourri

By KUSH™

13-40083
#2.2 MNT

10g

New Improved Strong Aroma

STATE'S
EXHIBIT
7

Ingredients: Various herbs

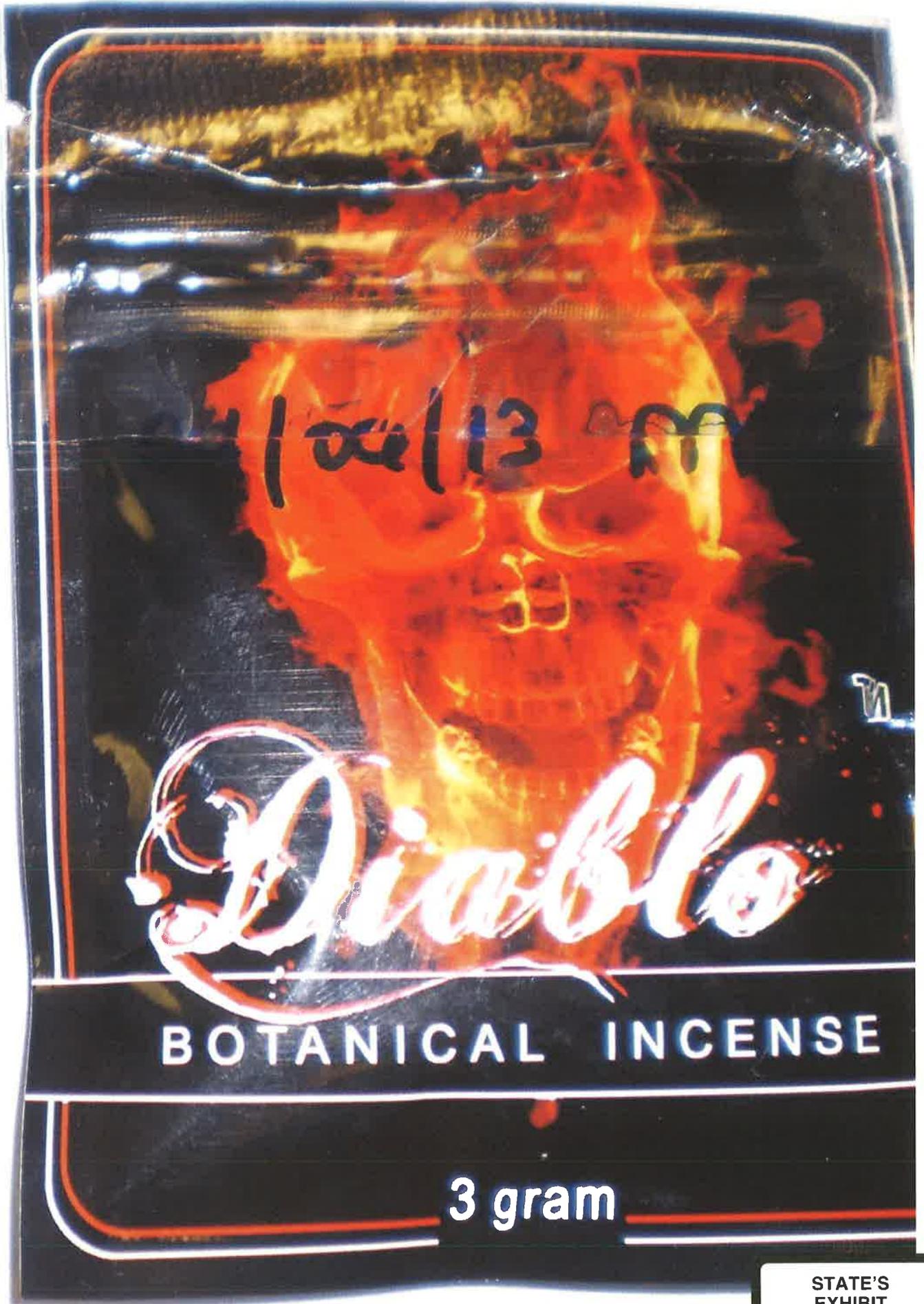
~~This Product Is Not To Be Banned~~
or Smoked!

Not Intended For Human
Consumption!

Must be 18 years of age or
older to purchase



This product does not contain 122 and AM2201,
AM678, JWH-018, 073, 200, CP-47, 497, C8,
cannabicyclohexano 1, or HU-210



100/13 M

Diablo

BOTANICAL INCENSE

3 gram

STATE'S EXHIBIT
8



Ingredients:

Bay Bean, Siberian Motherwort,
Mugwort, Blue Lotus,
Lion Tail, Aroma Essence

13-40083 #3 | MNT

**sold as incense only
not for human consumption**

Potpourri does not contain any of the following:
JWH-018, JWH-073, HU-210, HU-211, CP-47,497
It's Legal in 50 States, 100% Legal



MIKE DEWINE

OHIO ATTORNEY GENERAL

Bureau of Criminal Investigation

Laboratory Report

To: Bridgeport Police Department
Jerry Delman
301 Main Street
Bridgeport, OH 43912

BCI Laboratory Number: 13-40083
Date: April 08, 2013
Agency Case Number: 13-0020-TF

Offense: Drug Trafficking
Subject(s): Bridgeport Party Center
Victim(s): State of Ohio

Submitted on March 25, 2013 by Jerry Delman:

2. Plastic bag containing packets of unknown substance.
3. Plastic bag containing packets of unknown substance.

Findings:

- 2.1. One (1) black packet labeled "Kush, Pineapple" containing vegetation - 11.0 grams - found to contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (XLR11).
- 2.2. One (1) green packet labeled "Klimax Potpourri" containing vegetation - 8.8 grams - found to contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (XLR11).
- 3.1. One (1) black packet labeled "Diablo, Botanical Incense" containing vegetation - 3.6 grams - found to contain [1-(5-fluoropentyl)indol-3-yl]-(2,2,3,3-tetramethylcyclopropyl)methanone (XLR11).
- 3.2. One (1) multicolored packet labeled "OMG, Herbal Potpourri" containing vegetation - 3.4 grams - No controlled substance found.

Please address inquiries to the office indicated, using the BCI case number.

BCI -Bowling Green Office:
1816 E. Wooster St.-18
Bowling Green, OH 43402
Phone:(419)353-5503

BCI -London Office
1550 St Rt 56 SW P.O. Box 365
London, OH 43140
Phone:(740)845-2000

BCI -Richfield Office
4055 Highlander Pkwy, Suite A
Richfield, OH 44286
Phone:(330)859-4600

Ohio Bureau of Criminal Identification & Investigation
BCI&I London

Laboratory: 13-40083
Date: April 08, 2013
Agency Case: 13-0020-TF



Michele N. Taylor

Forensic Scientist

740-845-2486

Michele.Taylor@ohioattorneygeneral.gov



Analytical findings offered above were determined using accepted forensic drug chemistry methods. Hypergeometric sampling may be specified in the findings above. The application of hypergeometric sampling establishes a ninety-five percent (95) confidence level that at least ninety percent (90) of the units in the sample are as reported.

Based on scientific analyses performed, this report contains opinions and interpretations by the analyst whose signature appears above. Examination documentation and any demonstrative data supporting laboratory conclusions are maintained by BCI and will be made available for review upon request.

A F F I D A V I T

STATE OF OHIO)
)
COUNTY OF MADISON) SS:
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I, Michele N. Taylor, being duly sworn states as follows:

I am an Ohio Bureau of Criminal Identification and Investigation (BCI&I) Laboratory employee and performing laboratory analysis is part of my regular duties. My education, training and experience for performing analyses of material are outlined as follows:

EDUCATION

1. Bachelor of Science degree in Forensic Biology with a Minor in Chemistry and Forensic Science from The Ohio State University, Columbus, Ohio, 2012. Courses in General Chemistry, Organic Chemistry, Analytical Chemistry, Biochemistry, Biology, Molecular Biology, Physics, Forensic Science, Criminal Justice, Anthropology, Calculus, and Statistics.

TRAINING

1. Specialized training in the analysis of controlled substances at the Ohio Bureau of Criminal Identification and Investigation in London, OH.
2. Marijuana Identification at the Ohio Peace Officers Training Academy in London, OH.
3. Mass Spectroscopy Course through the West Virginia University Forensic Science Extended Learning.
4. Introduction to Forensic Drug Chemistry Course through the West Virginia University Forensic Science Extended Learning.
5. The Statistical Sampling Course through the Forensic Science Institute of Ohio (FSIO) in Columbus, Ohio.

EXPERIENCE

1. Employed with the Ohio Bureau of Criminal Identification and Investigation since August 19, 2012, identifying controlled substances.
2. Interned with the Ohio Bureau of Criminal Identification and Investigation August 2011 through August 2012, working in the Chemistry section of the laboratory and assisting in controlled substance analysis.

I further attest that in case number 13-40083, scientifically accepted tests were performed with due caution and evidence was handled in accordance with established and accepted procedures while in the custody of BCI&T's laboratory.

FURTHER AFFIANT SAYETH NAUGHT.

Michelle N. Taylor
Michelle N. Taylor

Sworn and acknowledged before me on April 10, 2012, in London, Madison County, Ohio.

Jennifer L. Brubaker
Notary Public



JENNIFER L. BRUBAKER
Notary Public, State of Ohio
My Commission Expires 4/19/15

OHIO REVISED CODE 2925.51 (C) & (D)

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