

**SUMMONS ON FIRST AMENDED  
(CITACION JUDICIAL) COMPLAINT**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

FILED  
CIVIL BUSINESS OFFICE 10  
CENTRAL DIVISION

2016 SEP 13 P 3:50

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

OSSAM YOUNISE SHABA

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

THE PEOPLE OF THE STATE OF CALIFORNIA

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Diego Superior Court  
330 West Broadway, San Diego, CA 92101

CASE NUMBER:  
(Número del Caso):

37-2016-00021588-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Office of the City Attorney, 1200 Third Avenue, Suite 700, San Diego, CA 92101 (619) 533-5500

DATE:  
(Fecha)

**SEP 23 2016**

Clerk, by  
(Secretario)

**C. VILLEGAS**

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
 under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 JAN I. GOLDSMITH, City Attorney  
JOHN C. HEMMERLING, Assistant City Attorney  
2 KATHRYN LANGE TURNER, Chief Deputy City Attorney  
California State Bar No. 151477  
3 Office of the City Attorney  
1200 Third Avenue, Suite 700  
4 San Diego, CA 92101-4103  
Telephone: (619) 533-5500  
5 Facsimile: (619) 533-5504  
E-mail: [klturner@sandiego.gov](mailto:klturner@sandiego.gov)  
6

FILED  
CIVIL BUSINESS OFFICE 10  
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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

Exempt from fees per Gov't Code § 6103

7 BONNIE M. DUMANIS, District Attorney  
THOMAS A. PAPAGEORGE, Deputy District Attorney  
California State Bar No. 77690  
8 STEPHEN M. SPINELLA, Deputy District Attorney  
California State Bar No. 144732  
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330 W. Broadway, Suite 750  
10 San Diego, CA 92101  
Telephone: (619) 515-8160  
11 Facsimile: (619) 515-8879  
E-mail: [steve.spinella@sdcda.org](mailto:steve.spinella@sdcda.org)  
12

13 Attorneys for Plaintiff

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SAN DIEGO

16 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

17 Plaintiff,

18 v.

19  
20 ANDY'S SMOKE SHOP, INC., a California  
corporation; GHADA SHABA; OSSAM  
21 YOUNISE SHABA and DOES 1 through 10,  
inclusive,

22 Defendants.  
23

Case No. 37-2016-00021588-CU-BT-CTL

**FIRST AMENDED COMPLAINT  
FOR INJUNCTION, CIVIL  
PENALTIES AND OTHER  
EQUITABLE RELIEF**

UNLIMITED CIVIL CASE (Amount  
demanded exceeds \$10,000)

Judge: Katherine Bacal  
Dept: 69

Trial Date: Not Set

24 The PEOPLE OF THE STATE OF CALIFORNIA, by and through Jan I. Goldsmith,  
25 City Attorney for the City of San Diego, State of California, and Bonnie M. Dumanis, the  
26 District Attorney of San Diego County, acting on information and belief, allege:

27 ////

28 ////

1 **VENUE AND JURISDICTION**

2 1. Jan I. Goldsmith, City Attorney for the City of San Diego, and Bonnie M.  
3 Dumanis, the District Attorney of San Diego County, acting to protect the general public from  
4 unlawful business practices, brings this suit in the public interest in the name of THE PEOPLE  
5 OF THE STATE OF CALIFORNIA (PLAINTIFF).

6 2. PLAINTIFF'S authority to bring this action is derived from Business and  
7 Professions Code sections 17203, 17204 and 17206.

8 3. Defendants, at all times mentioned herein, have transacted business in the City  
9 and County of San Diego. The violations of law hereinafter described have been committed  
10 within and from the City and County of San Diego. California Code of Civil Procedure section  
11 393 mandates that proper venue for this case is the County of San Diego.

12 **DEFENDANTS**

13 4. Defendant, ANDY'S SMOKE SHOP, INC., is, and at all times mentioned herein  
14 was, a California corporation, doing business in the State of California and within the City and  
15 County of San Diego as Andy's Smoke Shop located at 550 Fifth Avenue, San Diego, California,  
16 92103.

17 5. Defendant GHADA SHABA is, and at all times mentioned herein was, an officer  
18 of ANDY'S SMOKE SHOP, INC., and an individual residing in the State of California, County  
19 of San Diego.

20 6. Defendant OSSAM YOUNISE SHABA at all times mentioned herein, is or was a  
21 manager, employee, agent or representative of ANDY'S SMOKE SHOP, INC., and an  
22 individual residing in the State of California, County of San Diego. Defendants ANDY'S  
23 SMOKE SHOP INC., GHADA SHABA, and OSSAM YOUNISE SHABA are referred to  
24 collectively herein as "DEFENDANTS."

25 7. The true names and capacities of DEFENDANTS sued in this Complaint under  
26 the fictitious names of DOES 1 through 10, inclusive, are unknown to PLAINTIFF, who  
27 therefore sues those DEFENDANTS by such fictitious names under the provisions of California  
28 Code of Civil Procedure section 474. Defendants DOES 1 through 10 are in some manner

1 responsible for the events and happenings alleged in this Complaint. PLAINTIFF will amend this  
2 Complaint to show their true names and capacities when the same have been ascertained.

3 8. DEFENDANTS engage in the business of operating a smoke shop, open to the  
4 general public, under the name "Andy's Smoke Shop," located at 550 University Avenue, San  
5 Diego, California, 92103.

6 9. Whenever reference is made in this Complaint to any representation, act, or  
7 transaction of DEFENDANTS, such allegation shall be deemed to mean that the principals,  
8 officers, directors, employees, agents and representatives of said DEFENDANTS, while actively  
9 engaged in the course and scope of their employment, did or authorized such representations,  
10 acts or transactions on behalf of said DEFENDANTS.

11 10. At all times mentioned in this Complaint, each DEFENDANT was the agent,  
12 employee or principal of each of the remaining DEFENDANTS and was acting in the course and  
13 scope of his/her/its agency and employment.

14 **GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

15 11. Defendants openly sell synthetic cannabis, commonly referred to by its "street"  
16 name of "spice", at their smoke shop in San Diego, California. Spice typically consists of dried  
17 plant material which is sprayed with synthetic chemical compounds. When spice is ingested or  
18 smoked, it produces psychoactive effects which mimic those of cannabis. Many of the chemical  
19 compounds used in the manufacture of spice are exponentially more potent than marijuana and  
20 there are numerous documented cases of very serious health side-effects tied to synthetic  
21 cannabinoid usage.

22 12. The spice sold by Defendants, as hereinbelow described, was sold in various small  
23 clear baggies or colorful packets bearing names such as "Fruit Punch", "Joker", "OMG Next  
24 Generation", "Purple Diesel", "Strawberry Smacked!", and "Tropical Punch Smacked". The  
25 contents of each of these packets of "spice" consist of plant material resembling cannabis which  
26 has been sprayed or otherwise treated with various chemical compounds which, when ingested,  
27 smoked or otherwise consumed by humans, mimic the psychoactive effects of cannabis.

28 ////

1           13.     The typical packet of spice contains between three and five grams of plant material  
2 which has been treated with synthetic chemical compounds, as alleged above. The outer labeling  
3 on the spice sold by Defendants usually states “not for human consumption”. Additionally, many  
4 of the labels on the various brands of spice sold by Defendants may also contain verbiage such as  
5 “aromatic” or “potpourri.”

6           14.     The labels on the spice packets sold by Defendants do not: (a) indicate the name  
7 and place of business of the manufacturer, packer, or distributor; (b) contain adequate directions  
8 for its intended use; (c) contain such adequate warnings against use in pathological conditions or  
9 by children where its use may be dangerous to health; (d) contain adequate warning against unsafe  
10 dosage or methods or duration of administration or application.

11           15.     Despite the labels on the spice sold by Defendants which state the product is “not  
12 for human consumption”, Plaintiff is informed and believes, and thereon alleges, that Defendants  
13 sold spice knowing and intending it would be ingested or smoked by humans. Plaintiff is informed  
14 and believes, and thereon alleges, Defendants knew and understood that the spice they sold was  
15 not potpourri or incense and would not be used by consumers as such; instead, the sole use for the  
16 spice sold by Defendants was to achieve a “high” by the end-user which mimicked that of cannabis.

17           16.     The chemicals used in the manufacture of spice sold by Defendants are controlled  
18 substances, the sale or distribution of which is expressly prohibited under California Health and  
19 Safety Code section 11357.5 and/or Title 21 U.S.C. § 841 (2010); or are analogues of controlled  
20 substances such that their sale or distribution is prohibited under Title 21 U.S.C. § 802 (2016).

21           17.     During three undercover purchases conducted by law enforcement at Defendants’  
22 place of business in or about December 2015 and January 2016, Defendants sold to law  
23 enforcement six packets of spice, all of which were hidden from public view and none of which  
24 were displayed behind a glass countertop for sale like other merchandise in the store.

25           18.     The spice packets purchased or acquired from Defendants by law enforcement were  
26 forensically identified as the following controlled compounds: XLR-11; AB-FUBINACA;  
27 Fluoro-AMB, and Fluoro-ADB, and/or their isomers.

28     ////



1 shall consist of the drugs and other substances, by whatever official name, common or usual name,  
2 chemical name, or brand name designated, listed therein, and includes AB-PINACA.

3 26. Title 21 U.S.C.A. § 813 states that a controlled substance analogue shall, to the  
4 extent intended for human consumption, be treated, for the purposes of any federal law as a  
5 controlled substance in schedule I.

6 27. California Health and Safety Code section 111330 provides that any drug or device  
7 is misbranded if its labeling is false or misleading in any particular.

8 28. California Health and Safety Code section 109925 defines drug, *inter alia*, as any  
9 article other than food that is used or intended to affect the structure or any function of the body  
10 of human beings or any other animal.

11 29. California Health and Safety Code section 111440 makes it unlawful for any person  
12 to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded.

13 30. California Health and Safety Code section 111340 states that a drug is misbranded  
14 unless, *inter alia*:

15 a. It bears a label which contains the name and place of business of the  
16 manufacturer, packer or distributor; and/or

17 b. Its label bears, *inter alia*, adequate directions for use; adequate warnings against  
18 use in pathological conditions or by children where its use may be dangerous to  
19 health; and adequate warning against unsafe dosage or methods or duration of  
20 administration or application.

21 31. Title 21 U.S.C. § 331 (2015) makes it unlawful for any person to receive in  
22 interstate commerce, or to introduce into interstate commerce, any drug that is misbranded.

23 32. Title 21 U.S.C. § 352 (2013) states that a drug is misbranded if its labeling is false  
24 or misleading in any particular.

25 33. Title 21 U.S.C. § 352 (2013) states further that a drug is misbranded unless, *inter*  
26 *alia*:

27 a. It bears a label a label containing the name and place of business of the  
28 manufacturer, packer, or distributor; and/or

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- b. Its labeling bears the name and quantify of each active ingredient; and/or
- c. Its labeling bears adequate directions for use; and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users.

34. San Diego Municipal Code section 52.3303 makes it unlawful to manufacture, sell, offer to sell, distribute or possess for sale only Federal Schedule 1 Drug, Novel Synthetic Drug or Novel Psychoactive Drug as defined in Municipal Code section 52.3302.

35. "Unfair competition" is defined in Business and Professions Code section 17200 as "any unlawful, unfair or fraudulent business act or practice" and any act prohibited by Chapter 1 (commencing with section 17500) of Part 3 of Division 7 of the Business and Professions Code.

36. Pursuant to Business and Professions Code section 17206, any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed \$2,500 dollars for each violation.

37. Pursuant to Business and Professions Code section 17203, any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction and the court may make such orders or judgments to prevent the use of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property which may have been acquired by means of such unfair competition.

38. Pursuant to Business and Professions Code section 17205, the remedies or penalties provided for violations of Business and Professions Code section 17200, et seq., are cumulative to each other and to the remedies or penalties available under all other laws of the state.

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1 FIRST CAUSE OF ACTION

2 **Unfair Competition**

3 **(Business and Professions Code Section 17200 – sale of cannabinoid compounds).**

4 39. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 38,  
5 inclusive, of the within Complaint as though set forth fully at length herein.

6 40. Plaintiff is informed and believes and therefore alleges that, beginning on an  
7 unknown date, but at least within the four years prior to the filing of Plaintiff's original complaint  
8 herein, Defendants have engaged in unlawful business conduct which constitutes unfair  
9 competition within the meaning of Business and Professions Code section 17200 *et seq.*, which,  
10 in part, defines unfair competition as any "unlawful, unfair, or fraudulent business act or practice."

11 41. Defendants' acts of unfair competition include, but are not limited to, the following  
12 unlawful, unfair and/or fraudulent acts, omissions, and/or practices:

13 a. Violating Title 21 U.S.C. § 841 (2010) by knowingly or intentionally  
14 manufacturing, distributing, or dispensing, or possessing with intent to manufacture,  
15 distribute, or dispense, a federally-controlled substance, including, but not limited to,  
16 cannibimimetic agents, or analogues thereof.

17 b. Violating Municipal Code section 52.3303 by selling, offering to sell,  
18 distributing and possessing for sale any Federal Schedule 1 Drug, Novel Synthetic Drug or  
19 Novel Psychoactive Drug as defined in Municipal Code section 52.3302.

20 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew that  
21 the spice they sold was treated with chemical compounds, or their derivatives, isomers or  
22 analogues, which such chemical compounds, or their derivatives, isomers or analogues, were  
23 illegal compounds which may not be sold, dispensed or distributed, or offered by sale, dispensation  
24 or distribution under local, state and/or federal law, and/or that Defendants knew that the spice  
25 they sold had the same features and/or would produce the same or similar effects, as cannabis  
26 when ingested or smoked by humans, and that Defendants specifically knew and intended that the  
27 spice they sold would be ingested or smoked by humans.

28 43. Laboratory testing of the spice sold by Defendants revealed that the spice they sold

1 contained synthetic cannabinoid compounds or their derivatives, isomers or analogues, the sale or  
2 distribution of which is a violation of Title 21 U.S.C. § 841 (2010) and Title 21 U.S.C. § 802  
3 (2016), California Health and Safety Code section 11357.5, and/or Municipal Code  
4 section 52.3303, and therefore constitutes unfair competition within the meaning of Business and  
5 Professions Code section 17200 *et seq.*

6 44. Plaintiff is further informed and believes and thereon alleges that unless enjoined  
7 by an order of the court, Defendants will continue to engage in or resume the unlawful acts,  
8 practices, and course of conduct set forth in this cause of action.

9 **SECOND CAUSE OF ACTION**

10 **Unfair Competition**

11 **(Business and Professions Code Section 17200 – sale of misbranded products)**

12 45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 44,  
13 inclusive, of the within Complaint as though set forth fully at length herein.

14 46. Plaintiff is informed and believes and therefore alleges that, beginning on an  
15 unknown date, but at least within the four years prior to the filing of Plaintiff's original complaint  
16 herein, Defendants have engaged in unlawful business conduct which constitutes unfair  
17 competition within the meaning of Business and Professions Code section 17200 *et seq.*, which,  
18 in part, defines unfair competition as any "unlawful, unfair, or fraudulent business act or practice."

19 47. Defendants' acts of unfair competition include, but are not limited to, the following  
20 unlawful, unfair and/or fraudulent acts, omissions, and/or practices:

- 21 a. Violating California Health and Safety Code section 111440 by manufacturing,  
22 selling, delivering, holding, or offering for sale or delivery misbranded drugs in  
23 that the spice sold by Defendants did not bear labels which contained the name  
24 and place of business of the manufacturer, packer or distributor; and/or did not  
25 bear labels which contained adequate directions for use; adequate warnings  
26 against use in pathological conditions or by children where its use may be  
27 dangerous to health; and/or adequate warning against unsafe dosage or methods  
28 or duration of administration or application.

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b. Violating Title 21 U.S.C. § 331 (2015) by introducing into interstate commerce, or receiving from interstate commerce, drugs that did not bear labels containing the name and place of business of the manufacturer, packer, or distributor; and/or introducing into interstate commerce, or receiving from interstate commerce drugs that failed to establish the name and quantity of each active ingredient; and/or introducing into interstate commerce, or receiving from interstate commerce, drugs that did not contain adequate directions for use; and/or such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users.

48. Plaintiff is further informed and believes and thereon alleges that unless enjoined by an order of the court, Defendants will continue to engage in or resume the unlawful acts, practices, and course of conduct set forth in this cause of action.

**PRAYER**

*WHEREFORE*, PLAINTIFF prays judgment against the DEFENDANTS and each of them, as follows:


- 1. That pursuant to Business and Professions Code section 17203, and the Court's inherent equity powers, DEFENDANTS and their employees, agents, representatives, successors, assigns and all other persons, corporations or other entities acting under, by, through or on behalf of DEFENDANTS, or acting in concert or participation with or for them with actual or constructive notice of this injunction, be permanently restrained and enjoined from directly or indirectly engaging in unfair competition as defined in Business and Professions Code section 17200;
- 2. That pursuant to Business and Professions Code section 17206, DEFENDANTS be assessed a civil penalty in the amount of \$2,500 for each and every violation of Business and Professions Code section 17200, according to proof; and in a sum not less than \$100,000;
- 3. That PLAINTIFF recover its costs of suit herein;

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4. That PLAINTIFF be provided such other and further relief as the nature of this case may require and the court deems proper.

Dated: September 13, 2016

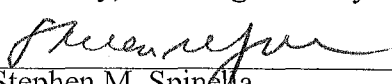
JAN I. GOLDSMITH, City Attorney

By   
Kathryn Lange Turner  
Chief Deputy City Attorney

Attorneys for PLAINTIFFS

Dated: September \_\_, 2016

BONNIE M. DUMANIS  
District Attorney, San Diego County

By   
Stephen M. Spinola  
Deputy District Attorney

Attorneys for PLAINTIFFS