

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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THE CITY OF NEW YORK,

Plaintiff,

v.

ENVIROMD GROUP LLC; GT IMPORTS; KAYLA
WHOLESALE, INC., d/b/a The Vapery; KLCC
WHOLESALE INC.; MV TRADING LLC a/k/a
MYVAPORSTORE; PIONEER DISTRIBUTION, INC. a/k/a
WEVAPEUSA.COM a/k/a SELLER SUPREME LLC; RZ
SMOKE INC.; STAR ZONE INC.; URBAN SMOKE
DISTRIBUTORS; VAPE MORE INC. a/k/a MORE LLC;
VAPE PLUS DISTRIBUTION CORP. a/k/a G&A
DISTRIBUTION,

COMPLAINT

Index No. 451009/2024

Defendants.

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Plaintiff the City of New York (the “City”), by counsel, respectfully alleges, with knowledge of its own actions and on information and belief as to the actions of others, as follows:

Nature of the Action

1. By this action the City seeks injunctive and other equitable relief, damages and penalties arising out of the Defendants’ distribution and sale of flavored electronic nicotine delivery devices, also known as “e-cigarettes” or “ENDS.”¹ The Defendants named herein violate nearly every federal, New York State and New York City law regulating the marketing,

¹ The term “electronic nicotine delivery system,” often abbreviated as “ENDS,” refers to a variety of devices – “vapes,” “vaporizers,” “vape pens,” “hookah pens,” “electronic cigarettes,” “e-cigars,” and “e-pipes” among others, which vaporize nicotine-containing solutions (“e-liquids”) to deliver nicotine for inhalation by the user.

distribution, and sale of flavored e-cigarettes.²

2. E-cigarettes, familiarly known as “vapes,” are a type of “electronic nicotine delivery device” – devices that use a battery to heat a nicotine-containing solution (an “e-liquid”) to create a nicotine-infused aerosol or vapor that is inhaled by the user in place of the combustion-generated tobacco smoke of a traditional cigarette. E-liquids are mixtures of natural or most often synthetic nicotine dissolved in propylene glycol and vegetable glycerin. E-liquids can be formulated to produce a vapor tasting of tobacco but the vast majority, and those at issue in this action, are flavored to provide the aerosol with exotic or evocative tastes of fruits, candy or desserts.

3. The most popular electronic nicotine delivery device among young people³ is the “disposable” device, which consists of a plastic tank filled most commonly with a nicotine-containing liquid in which a metal coil is immersed. Suction on the device by the user switches on the battery, which heats the metal coil and the surrounding e-liquid to produce a nicotine-laced aerosol inhaled by the user.

4. Nicotine is among the most addictive substance used by humans, with the ability to addict users comparable to heroin or cocaine.⁴ Nicotine is well-established as the principal driver of traditional cigarette addiction and serves the same role for e-cigarettes, the addictive nature of which is amplified by the availability of e-liquids with nicotine concentrations far

² Electronic nicotine delivery devices can be manufactured to resemble conventional cigarettes, cigars, or pipes, pens or even USB flash drives, but most devices presently on the market bear little or no resemblance to traditional cigarettes that use combustible tobacco. E-cigarette devices may be re-fillable when the e-liquid is depleted (like a fountain pen), or may accept e-liquid cartridges or “pods” (like a ball-point pen) or may be non-refillable “disposables,” that are discarded after the e-liquid has been consumed. The devices vary in the volume of the e-liquid they contain and are advertised and priced according to the approximate number of “puffs” the device provides.

³ Maria Cooper et al., *Notes from the Field: E-cigarette Use Among Middle and High School Students — United States, 2022*, 71 *Morbidity & Mortality Wkly. Rep.* 1283, (2022) , <http://dx.doi.org/10.15585/mmwr.mm7140a3>

⁴ See e.g., U.S. DEP’T OF HEALTH & HUM. SERVS., *The Health Consequences of Nicotine Addiction: A Report of the Surgeon General*, (William R. Lynn et al. eds, 1988) , <https://profiles.nlm.nih.gov/101584932X423>.

exceeding that in traditional cigarettes. More than 90% of the disposable flavored e-cigarettes recently sold in the United States have nicotine concentrations of 5% or higher, at least 2.5 times the maximum concentration allowed in Canada, the United Kingdom and the European Union.⁵

5. The United States Surgeon General (“Surgeon General”) has branded “[t]obacco use [a]s a pediatric epidemic.” Youth, *i.e.*, those up to approximately 25 years of age, are particularly vulnerable to nicotine addiction, which can harm the developing adolescent brain. Nine out of ten smokers begin by age 18, and 80% who begin as teens will smoke into adulthood,⁶ compelling the Surgeon General to warn that the “epidemic of youth e-cigarette use” may condemn a generation to “a lifetime of nicotine addiction and associated health risks.”⁷

6. By distributing devices that provide an aerosol of high-concentration nicotine intentionally formulated to reduce or eliminate the harshness of burning tobacco while tasting pleasantly of fruit, candy or desserts, flavored e-cigarette manufacturers and distributors have triggered the largest increases in youth nicotine use ever seen.⁸

7. The major manufacturers of flavored e-cigarettes and e-liquids are principally located in Shenzhen, China: Those manufacturers sell and ship their products directly or through freight-forwarding agencies to “master distributors” in the United States. E-cigarette manufacturers evade the import restrictions imposed on flavored nicotine devices by the federal

⁵ Fatma Romeh M Ali et al., *Trends in US E-cigarette Sales and Prices by Nicotine Strength, Overall and by Product and Flavor Type, 2017–2022*, 25 *Nicotine & Tobacco Research* 1052 (May 2023), <https://doi.org/10.1093/ntr/ntac284>.

⁶ U.S. Dep’t of Health & Hum. Servs., *Preventing Tobacco Use Among Youth and Adults, A Report of the Surgeon General* 1 (2012), <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/index.html>.

⁷ *Surgeon General’s Advisory on E-cigarette Use Among Youth*, Center for Disease Control & Prevention (Dec. 2018), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/surgeon-general-advisory.

⁸ *Id.*

government through false import documentation that misidentifies the product or understates the amount or value of the goods, thereby reducing the taxes, duties and fees owed. Comparing years of shipment volumes collected by CBP with the actual volume of flavored e-cigarettes available nationwide shows that the Chinese manufacturers of flavored e-cigarettes have vastly underreported their United States shipments, which are hidden from customs officials by various strategies.

8. Master distributors who receive imported e-cigarettes and flavored e-liquids commonly distribute the devices among themselves in order to acquire the wide variety of brands and flavors sought by their customer base. The customer base of master distributors consists of sub-distributors, many of whom also trade in e-cigarettes among themselves to assure a varied inventory. Master distributors and sub-distributors ultimately sell to retailers, both brick-and-mortar and internet-based, that in turn sell e-cigarettes and e-liquids directly to the public either over the internet or from brick and mortar locations.

9. The foregoing takes place despite the fact that the FDA has not approved the marketing of a single flavored e-cigarette or e-liquid. Marketing any flavored e-cigarette in the United State is illegal both under federal law and under a host of state and local laws.

Venue

10. Venue is proper in this district pursuant to CPLR §503 because a substantial part of the events and omissions giving rise to the claims occurred in this district.

Parties

11. The City is a municipal corporation organized under the laws of the State of New York.

12. Defendant EnvironMD Group LLC (“Environ”) is a limited liability company formed under the laws of the State of New York with a principal place of business at 2918 Avenue

J, Brooklyn, New York 11210 and/or 1222 Avenue M, Suite 501, Brooklyn, New York 11230.

13. Defendant GT Imports (“GT Imports”) is a corporation formed under the laws of the State of New York with a principal place of business at 3 West Mall, Plainview, New York 11803.

14. Kayla Wholesale, Inc., d/b/a The Vapery (“Kayla”) is a corporation formed under the laws of the State of New York with a principal place of business at 132 32nd Street, Brooklyn, New York, 11232. Kayla also maintains website at www.newyorkvapeking.com from which it sells flavored e-cigarettes.

15. Defendant KLCC Wholesale Inc. (“KLCC”) is a corporation formed under the laws of the State of New York with a principal place of business at 452 E 99th Street, Brooklyn, New York 11236. KLCC operates an internet website for the sale of flavored e-cigarettes with a web address of <https://klcc-wholesale.com>.

16. Defendant MV Trading, LLC (“MV Trading”) is a limited liability corporation formed under the laws of the State of New York with a principal place of business at 32-30 62nd Street, Woodside, New York 11377. MV Trading operates an internet website for the sale of flavored e-cigarettes with a web address of <https://myvaporstore.com>.

17. Defendant Pioneer Distribution Inc. a/k/a Wevapeusa.com., a/k/a Seller Supreme LLC is a corporation formed under the laws of the State of New York with a principal place of business at 1100 Coney Island Avenue, Suite 402, Brooklyn, New York 11230. Pioneer operates an internet website for the sale of flavored e-cigarettes with a web address of <https://wevapeusa.com>.

18. Defendant RZ Smoke Inc. (“RZ Smoke”) is a corporation formed under the laws of the state of New York with a principal place of business at 412 Hillside Avenue, New Hyde Park, New York 11040.

19. Defendant Star Zone Inc. (“Star Zone”) is a corporation formed under the laws of the State of New York with a principal place of business at 3085B New Street, Oceanside, New York 11572. Star Zone operates an internet website for the sale of flavored e-cigarettes with a web address of <https://starzoney.com>.

20. Defendant Urban Smoke Distributors is a corporation formed under the laws of the State of New York with a business address of 34-10 58th Street, Woodside, New York 11377.

21. Defendants Vape More Inc. a/k/a More LLC (hereafter referred to collectively as “Vape More”) are respectively a corporation formed under the laws of the State of New York, and a limited liability corporation formed under the laws of the State of New York sharing a principal place of business at 638 Columbia St Ext., Latham, New York 12110. Vape More operates an internet website for the sale of flavored e-cigarettes with a web address of <https://vapemoreinc.com>.

22. Defendant Vape Plus Distribution Corp. a/k/a G&A Distribution (“Vape Plus”) is a corporation formed under the laws of the State of New York with a principal place of business at 2578 Atlantic Avenue, Brooklyn, New York 11207. Vape Plus operates an internet website for the sale of flavored e-cigarettes with a web address of <https://nyvapeplus.com>.

Background

The Family Smoking Prevention and Tobacco Control Act

23. Pursuant to the Family Smoking Prevention and Tobacco Control Act, 21 U.S.C. 387, *et seq.* (the “Tobacco Control Act”), the FDA in 2016 adopted what is known as the “Deeming Rule,” 21 C.F.R. § 1143.1, which brought electronic cigarettes under the jurisdiction of the Tobacco Control Act and subject to the FDA’s regulatory authority. Electronic cigarettes are accordingly regulated under the Tobacco Control Act by the FDA as “tobacco products” because

they “contain[] nicotine from any source” and are “intended for human consumption.”⁹

24. The Tobacco Control Act requires manufacturers of tobacco products to obtain FDA authorization before marketing any “new” tobacco product – one not on the market as of February 15, 2007 – in the United States. No flavored e-cigarette is known to have been commercially marketed in the United States as of February 15, 2007. Therefore, all flavored e-cigarettes are “new” tobacco products and must pass through “premarket review” by the FDA to obtain the “premarket authorization” legalizing the device for sale in the United States.¹⁰

25. The Tobacco Control Act requires premarket authorization to be denied to a new tobacco product unless the FDA finds that marketing the product is “appropriate for the protection of the public health.”¹¹ Consistent with congressional findings that tobacco use by youth “is a pediatric disease of considerable proportions,”¹² an applicant for premarket authorization of an e-cigarette must show a net benefit to the public health by establishing that the risk of youth initiation is less than the product’s ability to reduce or end adult use of combustible tobacco, a standard not met by any flavored e-cigarette to date.

26. The FDA has authorized only tobacco-flavored and unflavored e-cigarettes under the “net benefit” standard described above,¹³ and has denied pre-market authorization for dozens of proposed e-cigarette and e-liquid brands. Flavored e-cigarettes are deemed to present a sufficiently substantial a risk of youth initiation that the FDA requires strong proof of a marked

⁹ 21 U.S.C. § 321(rr)(1).

¹⁰ *See* 21 U.S.C. § 387j(a)(1)-(2).

¹¹ 21 U.S.C. § 387j(c)(2), (4).

¹² Tobacco Control Act § 2(1), 123 Stat. at 1777.

¹³ *See Premarket Tobacco Product Marketing Granted Orders*, U.S. Food & Drug Admin., <https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders> (“To date, the FDA has authorized marketing of 45 products, including 23 tobacco-flavored e-cigarette products and devices.”) (last visited Mar. 21, 2024).

reduction in adult combustible tobacco use to meet the net benefit standard.

27. To date, no flavored e-cigarette or e-liquid has met the net benefit standard. The FDA has not authorized the marketing of any flavored e-cigarette or e-liquid (other than tobacco-flavored). All flavored e-cigarettes and e-liquids – including the many dozens of brands at issue in this case – are marketed unlawfully.

28. A new tobacco product without premarket authorization is an “adulterated product,” 21 U.S.C. § 387(b) prohibited by the Tobacco Control Act from “introduction or delivery for introduction into interstate commerce. . .” 21 U.S.C. 331(a). The marketing and sale of any e-cigarettes without premarket authorization is a *per se* violation of 21 U.S.C. § 331(a).

29. Not only are all flavored e-cigarettes nationwide sold without premarket authorization from the FDA, but dozens of e-cigarette brands have been the subject of FDA Marketing Denial Orders that expressly deny pre-market authorization. The FDA’s website states: “Tobacco products covered under an [marketing denial order] cannot be legally introduced into interstate commerce in the U.S. without risking FDA enforcement.”¹⁴

Use of Flavored E-Cigarettes By Young Persons

30. The primary driver of the vaping epidemic among young people is “youth appeal and youth access to flavored tobacco products.”¹⁵ The long-standing yearly decline in youth smoking underwent a dramatic reversal in 2018, when it was found that more than one in four U.S. high school students reported use of a tobacco product in the past thirty days.

31. On December 28, 2018, the National Adolescent Drug Trends Report issued by the

¹⁴ See *Tobacco Products Marketing Orders*, U.S. Food & Drug Admin., <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-products-marketing-orders#:~:text=Tobacco%20products%20covered%20under%20an,compliance%20by%20distributors%20and%20retailers> (last visited Mar. 21, 2024).

¹⁵ *Id.*; “[E-cigarettes] have rapidly become popular—especially among young people, who have overwhelmingly adopted flavored products as their tobacco products of choice.” *Magellan Tech., Inc. v. United States FDA*, No. 21-2426, 2023 U.S. App. LEXIS 15016, at *3 (2d Cir. June 16, 2023).

University of Michigan reported that the increases in adolescent e-cigarette use from 2017 to 2018 were the “largest ever recorded in the past 43 years for any adolescent substance use outcome in the U.S.”¹⁶ The percentage of 12th grade students reporting nicotine use nearly doubled between 2017 and 2018, with a 78% surge in the number of youth using electronic nicotine delivery devices, an increase “twice as large as the previous record for the largest-ever increase among 12th graders.”¹⁷ E-cigarette use by middle school students surged by 48%.

32. By 2018, approximately 3.6 million middle and high school students used e-cigarettes regularly, with approximately 20% of 12th graders reporting e-cigarette use in the 30-day sample period.¹⁸ By late 2019, 5 million students reported active use of electronic nicotine delivery devices, with 27.5% of high school students and 10.5% of middle school students having used the devices within the thirty-day sample period.¹⁹

33. By 2020, two of the largest surveys of youth tobacco use conducted in 2019 found that e-cigarette use had reached the highest levels ever recorded,²⁰ and that consumption of e-cigarettes had doubled among middle and high school students.²¹ In 2019, the total number of middle and high school students reporting current use of e-cigarettes surpassed five million for the

¹⁶ *National Adolescent Drug Trends in 2018*, Univ. of Mich. Inst. for Social Research (Dec. 17, 2018), <https://monitoringthefuture.org/wp-content/uploads/2021/02/18drugpr.pdf>.

¹⁷ *News Release, Teens Using Vaping Devices in Record Numbers*, Nat’l Insts. of Health (Dec. 17, 2018), <https://www.nih.gov/news-events/news-releases/teens-using-vaping-devices-record-numbers>.

¹⁸ See Jan Hoffman, *Addicted to Vaped Nicotine, Teenagers Have No Clear Path to Quitting*, N.Y. Times (Dec. 18, 2018), <https://www.nytimes.com/2018/12/18/health/vaping-nicotine-teenagers.html>.

¹⁹ *National Youth Tobacco Survey*, U.S. Food & Drug Admin. (2019), <https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey>; Karen A. Cullen et al., *e-Cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

²⁰ *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization*, U.S. Food & Drug Admin. (Jan. 2020), <https://www.fda.gov/media/133880/download>.

²¹ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

first time in history.²²

34. Consistent with the national trend, youth e-cigarette consumption rates in New York City school are higher than rates of combustible tobacco use. In 2021, 11% of NYC public high school students reported using an e-cigarette in the past month, while only 3% reported smoking cigarettes. In 2018, 6.7% of public middle school students surveyed reported they were current users of electronic vapor products, while only 0.9% reported currently smoking cigarettes.

35. The substantial increase in youth smoking in the space of only one year²³ is remarkable because it occurred without an increase in the consumption of combustible tobacco products such as cigarettes or cigars. That is, the increase in youth smoking was reflected solely as an increase in e-cigarette use, which increased by 78% in one year,²¹ but the use of all other tobacco products continued its decades-long decline.²⁴

36. While the numbers of users remains unacceptable, by October 2022, there was some reduction in e-cigarette use by school-age youth. The FDA and CDC released federal data from the 2022 National Youth Tobacco Survey showing that about one in ten – or more than 2.5 million – U.S. middle and high school students had used e-cigarettes in the past 30-day sample period, specifically 14.1% (2.14 million) of high school students and 3.3% (380,000) of middle school students reported current e-cigarette use, a decline from earlier surveys.

37. More than a quarter (27.6%) of the youth e-cigarette users in the 2022 Survey used an e-cigarette product every day, and more than 40% reported use in at least 20 of the last 30 days.

²² *Id.*

²³ *Progress Erased: Youth Tobacco Use Increased During 2017-2018*, Ctrs. for Disease Control & Prevention (Feb. 11, 2019), <https://www.cdc.gov/media/releases/2019/p0211-youth-tobacco-use-increased.html>.

²⁴ Scott Gottlieb, *Statement from FDA Commissioner Scott Gottlieb, M.D., on proposed new steps to protect youth by preventing access to flavored tobacco products and banning menthol in cigarettes*, U.S. Food & Drug Admin. (Nov. 15, 2018), <https://www.fda.gov/news-events/press-announcements/statement-fda-commissioner-scott-gottlieb-md-proposed-new-steps-protect-youth-preventing-access>.

Flavored e-cigarette were the most commonly used product – 55.3% reported smoking flavored devices. In 2018, 6.7% of public middle school students surveyed reported they were current users of e-cigarettes, while only 0.9% reported currently smoking cigarettes.²⁵

38. The Surgeon General has explained that nicotine in e-cigarettes affects the developing brain and produces addiction in youth more easily than in adults as a result of the enhanced learning abilities of the developing brain.²⁶ The effects of nicotine exposure on the brain of youth and young adults include nicotine addiction itself, as well as “priming” for use of other addictive substances, impaired impulse control, deficits in attention and cognition and mood disorders.²⁷ As a highly addictive, psychoactive substance targeting brain areas involved in emotional and cognitive processing, nicotine poses a particularly potent threat to the adolescent brain, as it can “derange the normal course of brain maturation and have lasting consequences for cognitive ability, mental health, and even personality.”²⁸

39. In the summer of 2019, hundreds of otherwise healthy young adults began to appear in emergency rooms nationwide with dangerous respiratory damage. As of October 1, 2019, 1,080 lung injury cases associated with cannabis and nicotine e-cigarette products had been reported to the CDC. Eighteen deaths from 15 states were confirmed. By December 2019, more than 2,500 reported cases of e-cigarette-related hospitalizations for lung injury were reported,

²⁵ 2021 Youth Risk Behavior Survey, Ctrs. For Disease Control & Prevention (2021), <https://www.cdc.gov/healthyyouth/data/yrbs/results.-htm>.

²⁶ U.S. Surgeon General and Ctrs. For Disease Control & Prevention, Office on Smoking and Health, *Know the Risks: E-Cigarettes and Young People* (2019), <https://ecigarettes.Surgeongeneral.gov/>.

²⁷ Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 J. Physiology 3397 (2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/.

²⁸ Natalia A. Goriounova & Huibert D. Mansvelder, *Short- and Long-Term Consequences of Nicotine Exposure During Adolescence for Prefrontal Cortex Neuronal Network Function*, 2 Cold Spring Harbor Persp. Med. 12 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3543069/>.

including more than fifty confirmed deaths.²⁹ New York City alone experienced 50 cases of e-cigarette lung injury and four confirmed deaths. Cases continue nationwide and in New York City.

40. E-cigarettes present hazards even to presumed non-vapers. According to the CDC, between April 1, 2022 and March 31, 2023, 7,043 e-cigarette exposure cases were reported to the National Poison Data System, which compiles cases that have been reported to U.S. poison centers. The data showed a 32% increase in reported poisoning from e-liquid ingestion during this period, with nearly 90% of the cases in children less than five years old. The most reported brand involved was Elf Bar, a disposable e-cigarette available in a variety of flavors and sold by all or most of the present Defendants.³⁰

41. The explosive increase in the use of electronic nicotine delivery devices among youth is believed attributable to the devices' high nicotine content, youth-friendly candy, fruit and dessert flavors, and amenability for surreptitious use, *i.e.*, the ability to use the devices "discreetly." Nearly 85% of current e-cigarette users used flavored e-cigarettes, with fruit flavors being the most popular, followed by candy, desserts, or other sweets. Flavored e-liquids multiply the risk of nicotine addiction by making it easier and more pleasant to ingest nicotine, with e-liquids expressly formulated to be more palatable to novice smokers by chemically reducing the harshness of the nicotine they contain.³¹

42. E-cigarettes are adopted at a higher rate by youth when the devices contain

²⁹ Karen A. Cullen et al., *E-cigarette Use Among Youth in the United States, 2019*, 322 JAMA 2095 (2019), <https://jamanetwork.com/journals/jama/fullarticle/2755265>.

³⁰ Nicole A. Tashakkori et al., *Notes from the Field: E-Cigarette-Associated Cases Reported to Poison Centers — United States, April 1, 2022–March 31, 2023*. 72 Morbidity & Mortality Wkly. Rep. 694 (2023), <http://dx.doi.org/10.15585/mmwr.mm7225a5>.

²⁹ See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6467270/>.

³¹ See U.S. Dep't of Health & Human Servs., *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General* Ch. 4 (Ctrs. for Disease Control & Prevention ed. 2010), <https://www.ncbi.nlm.nih.gov/books/NBK53018/#ch4.s92>.

flavored e-liquids. Adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was not flavored. Flavored e-liquids were used by 81% of first-time users aged twelve to seventeen who had ever used electronic nicotine delivery devices; 85.3% of current youth users had used a flavored e-liquid in the past month; 81.5% of current youth users said they used electronic nicotine delivery devices “because they come in flavors I like.”^{32, 33} Adolescents whose first tobacco product was flavored are more likely to continue using tobacco products than those whose first product was not flavored; thus, young adults who use electronic cigarettes are more than four times as likely to begin using regular cigarettes when compared with peers who have not used flavored e-cigarettes.³⁴

43. Marketing e-cigarettes to youth is propelled not only by flavoring nicotine solutions, but also by packaging the devices with images of popular cartoon characters to enhance the appeal to youth. Some devices look so much like childrens’ toys as to require the cautionary package warning that in fact the device is “Not a Toy.”

Flavor Bans

44. The foregoing effects on youth compelled the FDA to effectively ban flavored cigarettes (other than menthol) in 2009 pursuant to its authority under the Tobacco Control Act. “Flavored cigarettes attract and allure kids into addiction,” Health and Human Services Assistant Secretary Howard Koh, MD, MPH, said at a news conference announcing the ban.³⁵ In January

³² See Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014*, 314 JAMA 1871 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6467270/>.

³³ Karma McKelvey et al., *Adolescents and Young Adults Use in Perceptions of Pod-based Electronic Cigarettes*. 1 JAMA Network Open e183535 (2018), <https://doi:10.1001/jamanetworkopen.2018.3535>.

³⁴ See Brian A. Primack, et al., *Initiation of Traditional Cigarette Smoking after Electronic Cigarette Use Among Tobacco-Naïve US Young Adults*, 131 Am. J. Med.. 443.e1 (2018), <https://pubmed.ncbi.nlm.nih.gov/29242110/>.

³⁵ Daniel J. DeNoon, *FDA Bans Flavored Cigarettes: Ban Includes Cigarettes With Clove, Candy, and Fruit Flavors*, WebMD (Sept. 22, 2009), <https://www.webmd.com/smoking-cessation/news/20090922/fda-bansflavored-cigarettes#2>.

2020, in response to “epidemic levels of youth use of e-cigarettes” the FDA banned flavored e-cigarette “pods”³⁶ (other than “tobacco” and “menthol” flavors), announcing a policy to prioritize enforcement against unauthorized flavored vape products, because the products are “so appealing to children.”³⁷

45. The federal flavor ban was followed by a New York State ban on retail sales of devices using flavored nicotine e-liquids.³⁸ Comparable legislation in California, Massachusetts, New Jersey, Rhode Island, Maine, Oregon, South Dakota, Utah, and Vermont has banned sales of any e-cigarettes, flavored or not, over the internet.³⁹ A total of 378 jurisdictions – including Chicago, Illinois, Los Angeles, San Diego, Sacramento, Oakland, and San Jose, California, Boulder, Colorado, and Newark, New Jersey – have imposed some form of restriction on flavored e-cigarette sales.

46. New York City has enacted a complete ban on wholesale and retail sales of flavored vapes, whether over the internet or from brick-and-mortar locations.

Enforcement Efforts

47. FDA warning letters are an enforcement mechanism indicating that the FDA considers the particular product or type of product named in letter to be an FDA-regulated tobacco product, or that there is a compliance issue with a company’s conduct or product, or that the product appears to be an unauthorized new tobacco product. As of January 31, 2023, the FDA has

³⁶ “Pods” are cartridges pre-filled with an e-liquid that can be inserted to refill a non-disposable e-cigarette much like with refilling a ball-point pen.

³⁷ *FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based Ecigarettes that Appeal to Children, Including Mint*, U.S. Food & Drug Admin. (Jan. 22, 2020), <https://www.fda.gov/news-events/pressannouncements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appealchildren>.

³⁸ See PHL §1399-mm-(1).

³⁹ Fatma Romeh M. Ali et al., *E-cigarette Unit Sales by Product and Flavor Type, and Top-Selling Brands, United States, 2020–2022*, 72 *Morbidity & Mortality Wkly. Rep.* 672 (2023), DOI:<http://dx.doi.org/10.15585/mmwr.mm7225a1>.

issued over 75 warning letters to manufacturers and 585 warning letters to retailers for selling electronic nicotine delivery systems illegally, warning that persons manufacturing and distributing unauthorized vapor products risk injunctive and/or equitable relief, civil penalties, and damages.

48. On or about May 13, 2023, the FDA issued an import or “Red List” alert that authorized the U.S. Customs and Border Protection (“CBP”) to seize without inspection particular brands of e-cigarettes that did not have the required marketing authorization, and which are thus “adulterated” and illegal under the Federal Food, Drug and Cosmetic Act. The FDA’s Red List targeted e-cigarettes from more than 20 Chinese, Korean and U.S. companies and authorized CBP to “detain, without physical examination, the tobacco products identified on the Red List of this Import Alert,” including cigarettes ... or any of ... component parts [of a cigarette] that contain, as a constituent or additive, an artificial or natural flavor (other than tobacco or menthol).”⁴⁰

49. On May 31, 2023, the FDA issued warning letters to an additional 30 retailers and a distributor for illegally selling various brands of e-cigarettes, including the very popular Puff Bar, Esco Bar, and Hyde brand e-cigarettes,⁴¹ which are among the most commonly reported brands used by youth e-cigarette users in the 2022 survey. These brands have been or are currently available for sale by all of the Defendants.

⁴⁰ *Import Alert 98-01*, U.S. Food & Drug Admin. (Mar. 13, 2023), https://www.accessdata.fda.gov/cms_ia/importalert_501.html.

⁴¹ *FDA Conducts Retailer Inspection Blitz, Cracks Down on Illegal Sales of Popular Disposable E-cigarettes*, U.S. Food & Drug Admin. (May 31, 2023), www.fda.gov/news-events/press-announcements/fda-conducts-retailer-inspection-blitz-cracks-down-illegal-sales-popular-disposable-e-cigarettes..

Actions of the Defendants**EnviroMD Group LLC**

50. Environ Group LLC (“Environ”) is a New York limited liability company with a principal place of business at 2918 Avenue J, Brooklyn, New York 11210 and/or 1222 Avenue M, Suite 501, Brooklyn, New York 11230.

51. Between approximately September 2022 and August 2023, Environ sold flavored e-cigarettes to Brooklyn wholesaler Star Vape Corp., 283 67th Street, Brooklyn, New York (“Star Vape”), including Myle Meta Bar brand e-cigarettes in flavors such as Iced Apple, Strawberry Colada, Mellow Mint and Lemon Ice, and Fume brand e-cigarettes in flavors such as grape, mango, melon ice, and cotton candy.


52. On information and belief, Environ received the orders from Star Vape for the flavored cigarettes described above via the internet or by telephone or by mail order.

53. Each distinct delivery of a brand and flavor combination was described as a “Box of 10,” or less frequently as a “Box of 5,” each in a different “Quantity” ranging from 0 to 100, with 40 to 60 being the most common quantity. A “Rate” was listed next to the “Quantity.” Multiplying the “Rate” by the “Quantity” yielded a final column labeled “Amount,” expressed in dollars. A typical invoice billing Star Vape for the sum of those amounts varied from \$10,000 to \$40,000.

54. On information and belief, Environ ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

55. A typical Environ invoice to Star Vape Corp is shown in Exhibit 1.

EnviroMD Group LLC



INVOICE

INVOICE 992
DATE 06/15/2023
TERMS Due on receipt
DUE DATE 06/15/2023

BILL TO:
Star Vape Corp.
Star Vape Corp.
283 67th Street
Brooklyn, New York 11220
United States

DESCRIPTION	QTY	RATE	AMOUNT	
FUME EXTRA Lush Ice (LI)	Box of 10	0	50.00	0.00
FUME EXTRA Peach Ice (PHI)	Box of 10	80	50.00	4,000.00
FUME EXTRA Strawberry Watermelon (SW)	Box of 10	80	50.00	4,000.00
FUME ULTRA Blueberry Mint (BYM)	Box of 10	15	60.00	900.00
FUME ULTRA Double Apple (DA)	Box of 10	15	60.00	900.00
FUME ULTRA Grape (GI)	Box of 10	30	60.00	1,800.00
FUME ULTRA Purple Rain (PR)	Box of 10	15	60.00	900.00
FUME INFINITY Blueberry Mint (BYM)	Box of 5	0	40.00	0.00
BALANCE DUE				\$12,500.00

THANK YOU FOR YOUR BUSINESS!
SALES ARE FINAL. NO REFUNDS OR EXCHANGES.

Exhibit 1 – Environ Sales to Star Vape

GT Imports

56. According to its website, <https://gtimportswholesale.com>, GT Imports is “an authorized wholesale vape distributor of thousands of e-liquids and vaping devices based in New York” with a principal at place of business at 23 West Mall, Plainview, New York 11803.

57. Between September 8, 2022 and August 21, 2023, GT Imports delivered unspecified brands of flavored e-cigarettes containing 5% nicotine solution with a total apparent value of \$1,063,657 to various buyers located in the City of New York. On information and belief, GT Imports has purchased flavored e-cigarettes which have been delivered to, possessed at and on information and belief sold from GT Import’s warehouse.

58. GT Imports delivered 5% nicotine solutions of “Jungle Juice,” “Pineapple Shake,” “Kiwi Shake,” “Iced Watermelon” and “Mixed Berries” to Topoo Industries, 2847 W 21st Street, Brooklyn, New York. Topoo Industries maintains a large one-story warehouse at that location and appears to sell a variety of e-cigarettes, including flavored vapes and e-cigarette-related products from that warehouse and over the internet from its website at <https://topoodistro.com>. Topoo’s

website notes “Wholesale Only” and “Minimum order \$1000” and describes Topoo as a wholesale distributor for smoke shops, grocery stores, jewelry shops, gas stations, supermarkets, and other stores providing “a wide range of wholesale products for retailers.”⁴²

59. On information and belief, Topoo Industries is not a holder of a certificate of registration as a vapor products dealer under article twenty eight-C of the tax law (a “Vape Certificate”).

60. GT Imports also delivered what appears to be the same flavored 5% nicotine solutions of unspecified brands or brand of flavored e-cigarettes to “Jimmy,” 1370 Ralph Avenue, Brooklyn, to R and B Wholesale, 1002 Atlantic Avenue, Brooklyn, New York, to Sahara Wholesale, 182-20 Liberty Avenue, Jamaica, Queens, and to EZ Wholesale, 2787 Third Avenue, Bronx, New York.

61. “Jimmy,” R and B Wholesale, Sahara Wholesale and EZ Wholesale all appear to be warehouses of sub-distributors that engage in further distribution of the flavored vapes. R and B Wholesale expressly advertises itself as a smoke and vape distributor.

62. On information and belief, GT Imports received orders from and made sales to “Jimmy,” R and B Wholesale, Sahara Wholesale, and EZ Wholesale for the above-described flavored e-cigarettes via the internet or by telephone or by mail order.

63. On information and belief, GT Imports ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

Kayla Wholesale, Inc.

64. Kayla has a physical address of 32 Sunset Park, Brooklyn, New York 11232. Kayla also maintains website at www.newyorkvapeking.com from which it sells flavored e-cigarettes, including Bliss Bar, Myle and Fume brands, under the trade name “The Vapery, New York.”

⁴² <https://topoodistro.com/about-us/> (last visited Mar. 9, 2024).

According to the Vapery website, this company has been selling vaping products for 12 years, with the goal of creating “a thriving vaping community where enthusiasts of all levels can find the latest products,” from the company’s “diverse range of vaping solutions.”⁴³ Kayla purchases flavored e-cigarettes which have been delivered to, possessed at and sold from Kayla’s warehouse.

65. Kayla supplies flavored e-cigarettes to distributors in the City. Between August 2020 and November 2020, Kayla supplied Star Vape with flavored e-cigarettes branded as “STIG mango,” and “STIG Lush Ice,” with the latter identified as being shipped as “10 packs.” STIG is a disposable e-cigarette available in flavors such as Iced Purple Bomb, Crisp Apple and Summer Strawberry.

66. A typical invoice from Kayla to Star Vape Corp is shown in Exhibit 2 below.

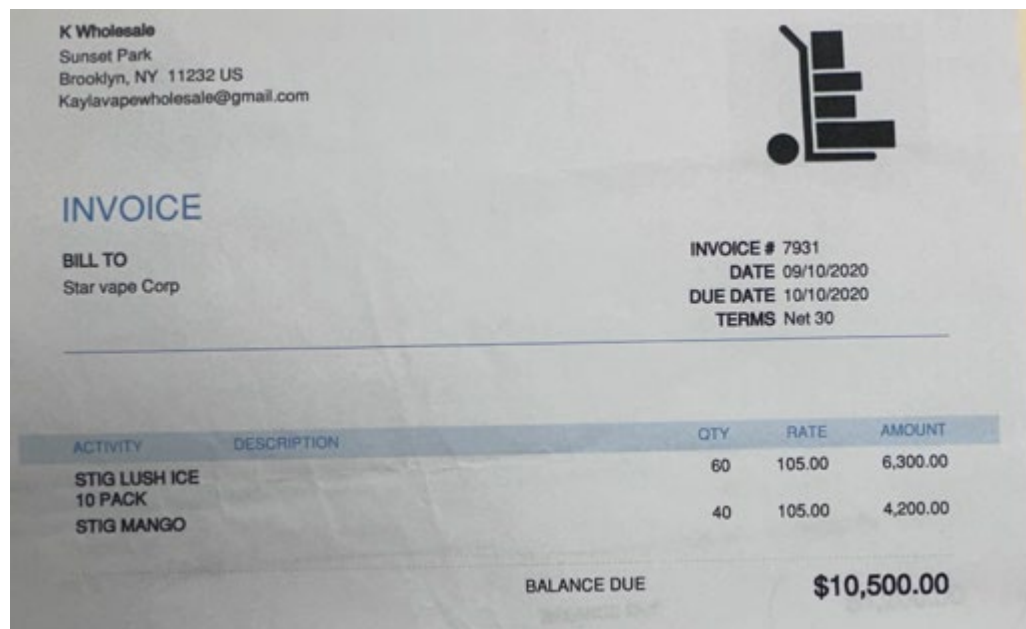


Exhibit 2 – Kayla Sales to Star Vape

67. Through its website, Kayla also sells retail quantities of flavored e-cigarettes to customers in New York City. On March 11, 2024, a City agent placed an order for a Watermelon

⁴³ <https://www.newyorkvapeking.com/pages/about-us> (last visited Mar. 21, 2024).

Candy flavored Puff Bar XXL 1600 to be shipped to an address in Brooklyn, New York, for a total purchase price of \$17.63: \$10.99 for the device, \$6.64 for shipping, and \$1.42 in taxes.

68. Shortly after placing the order, the agent received an email from “NYVK Wholesale” “confirming the purchase of a watermelon candy Puff XXL 1600 e-cigarette.”

69. On or about March 15, 2024, the watermelon candy Puff XXL 1600 e-cigarette order was delivered by the United States Postal Service (“USPS”) to a residential address in Brooklyn, New York. The package contained two Puff XXL devices, although only one had been ordered. The return address on the package was NYVK Wholesale, 132 32nd Street, Brooklyn, New York, 11232.

70. The package was not affixed with a statement that it contained vapor products.

71. The package was left in the mailbox – no adult signature was required.

72. On or about March 15, 2023, a City agent placed an order for a Crisp Apple STIG disposable e-cigarette in a 3-pack to be shipped to an address in Brooklyn, New York, for a total purchase price of \$26.63: \$19.99 for the device and \$6.64 for shipping. Tax was not charged.

73. On or about March 23, 2024, the Crisp Apple Stig e-cigarette ordered was delivered by USPS to a residential address in Brooklyn, New York. The return address on the package was NYVK Wholesale, 132 32nd Street, Brooklyn, New York 11232.

74. The package was not affixed with a statement that it contained vapor products.

75. The package was left in the mailbox – no adult signature was required.

76. Kayla a/k/a the Vapery a/k/a newyorkvapeking.com ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

KLCC Wholesale

77. KLCC Wholesale has a principal place of business at 452 E 99th Street, Brooklyn, New York 11236. KLCC has purchased hundreds of flavored disposable e-cigarettes from out-of-

state distributors, including such brands as Breeze Bars, Hyde, Smok, Voofoo and Stiizy presumptively for sale to wholesalers and retailers in the City.

MV Trading LLC a/k/a Myvaporstore

78. MV Trading LLC a/k/a Myvaporstore (“MV Trading”) is a limited liability corporation formed under the laws of the State of New York with a principal place of business at 32-30 62nd Street, Woodside, New York. MV Trading operates a website at <https://www.myvaporstore.com>, where it advertises itself as the electronic cigarette super store.

79. MV Trading has made multiple purchases from YLSN, an Arizona company. Specifically, MV Trading purchased approximately 7200 Elf Bar, Lost Mary and Voofoo Drag Bar e-cigarettes on or about February 2023, approximately 10,400 Elf Bar and Novobar e-cigarettes on or about December 2022, approximately 8000 units of Elf Bar, Geek Bar, and Lost Mary e-cigarettes on or about October 2022, 2600 units of Elf Bar BC 5000 flavored e-cigarettes on or about November 2022, and approximately 1,950 Geek Bar, Biff Bar and Lykan Belo e-cigarettes on or about August 2022.

80. In April 2021, MV Trading purchased approximately 15,000 flavored e-cigarettes from Charlie's Chalk Dust, LLC, located in Costa Mesa, California, a manufacturer or distributor of flavored e-liquids such as Mint Meringue, Big Berry, and Mustache Milk flavored e-liquids.

81. All of the above-listed e-cigarettes were necessarily possessed, offered for sale and possessed with intent to offer for sale in the City and on information and belief many if not all of the e-cigarettes were sold by MV Trading in the City.

82. On information and belief, MV Trading ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

Pioneer Distribution a/k/a Wevapeusa.com a/k/a Seller Supreme LLC

83. Pioneer Distribution Inc. (“Pioneer”) is a New York Corporation with a principal place of business at 1100 Coney Island Avenue, Suite 402, Brooklyn, New York 11230. Pioneer operates a website at wevapeusa.com, which advertises dozens of brands of disposable flavored e-cigarettes, each offered in dozens of flavors.⁴⁴

84. In June 2023, Pioneer purchased 2,400 units of EB Design 5000 (formerly Elf Bar) flavored e-cigarettes from Arizona-based YLSN. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief actually sold in the City.

85. On or about March 11, 2024, an investigator accessed the website address www.wevapeusa.com and purchased a Pacific Cooler flavor Air Bar Mini, 2000 puff e-cigarette for delivery to a Brooklyn, New York address. The total purchase price was \$26.11, paid by credit card: \$7.99 for the device, \$15.99 for shipping and \$2.13 in tax.

86. On March 19, 2024 a package was delivered to the Brooklyn address specified in the order. The package contained the Air Bar product ordered. The package was not labelled to indicate that it contained vapor products and no adult signature was required.

87. The package was delivered by United Parcel Service, with a return address of Marcus Bernard, 3472011345, Seller Supreme LLC, 1090 Coney Island Ave., Brooklyn, NY,

⁴⁴ For example, the Elf Bar BC 5000 rechargeable disposable vape device (5000 puffs) is available in flavors such as Beach Day, Berry Mix, Black Ice, Black Winter, Blueberry Pom Ice, Blue Razz Ice, Blue Razz Lemon, Blueberry Energize, Blueberry Tobacco, Brown Tobacco, Cherry Lemon Mint, Clear, Coffee Tobacco, Cranberry Grape, Cranberry Punch, Crazi Berry, Cuba Cigar, Energy, Frozen Creamsicle, Fuji Ice, Grape Energy, Gumi, Honeydew Pineapple Orange, Kiwi Passionfruit Guava, Lemon Mint, Malibu, Mandarin Lime, Mango Peach, Mango Peach Apricot, Miami Mint, Mint Tobacco, Mixed Fruity, Nut Tobacco, Orange Pear Nector, Passionfruit Orange Guava, Peach Berry, Peach Ice, Peach Mango Watermelon, Pineapple Coconut Ice, Pineapple Orange Mint, Pineapple Strawnana, Rainbow Candy, Rainbow Clouds, Red Mojito, Sakura Grape, Snoow Grape, Snoow Ice, Sour Apple, Sour Candy, Strawberry Banana, Strawberry Cream, Strawberry Ice, Strawberry Kiwi, Strawberry Mango, Strawberry Passion Fruit Duo Ice, Strawberry Pear Orange Ice, Strawberry Pina Colada, Strawberry Raspberry Cherry ice, Strawberry Tobacco, Strawberry Watermelon, Strawlemon Ice, Strazz, Summertime, Sunset, Sweet Menthol, Triple Berry Ice, Tropical Rainbow Blast, Watermelon Brzz Ice, Watermelon Bubblegum, Watermelon Cantaloupe Honeydew, Watermelon Ice, Watermelon Jolly Candy Ice, and Watermelon Nana Ice.

11230. The location is a DHL ship center that provides mail box rentals and package handling services, suggesting that the actual shipper is attempting to conceal its actual location.

88. On or about March 24, 2024, an investigator accessed the website address www.wevapeusa.com and purchased one Kiwi Lemon Shake Suorin brand Cube Disposable 1500 puffs for delivery to a Brooklyn, New York address. The total purchase price was \$19.59, paid by credit card: \$2.00 for the device, \$15.99 for shipping and \$1.60 in tax.

89. On March 27, 2024 a package was received at the Brooklyn address specified in the order. Instead of the product ordered, the package contained five Strawberry Kiwi Guava flavored Hyde Rebel Pro e-cigarettes, as well as an Airbar e-cigarette labeled “wevapeusa free sample.”

90. The package was not labelled to indicate that it contained vapor products and no adult signature was required.

91. The package was delivered by United Parcel Service, with a return address of Marcus Bernard, 3472011345, Seller Supreme LLC, 1090 Coney Island Ave., Brooklyn, NY, 11230.

92. Pioneer ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

RZ Smoke Inc.

93. RZ Smoke Inc. (“RZ Smoke”) advertises itself as an “Authorized Vape Wholesale Distributor,” and is located at 412 Hillside Avenue, New Hyde Park, New York 11040. Between approximately December 2020 until August 2023, RZ Smoke sold flavored e-cigarettes to Brooklyn-based Star Vape, including brands such as Air Bar Nex 6500 Puffs – Peach Mango Watermelon, Air Bar Lux 5% Nicotine – Raspberry Grapefruit, and Hyde Edge Recharge 3300 Puffs 10pk – Cola.

94. The RZ Smoke invoices to Star Vape list the quantity (usually in the hundreds of items), the price (usually several thousand dollars for each brand and flavor) and the total price of the purchase (ranging from \$15,000 to \$60,000).

95. A typical invoice from RZ Smoke to Star Vape is shown in Exhibit 3 below.

Gmail - Fwd: Your latest RZ Smoke - Vape & Smoke Wholesale Distributor invoice

Pay with cash, check, credit or debit card upon delivery.

[Order #194133] (December 14, 2020)

Product	Quantity	Price
Air Bar Diamond 5% Nicotine - Cherry Cola	600	\$2,280.00
Air Bar Diamond 5% Nicotine - Mango	180	\$684.00
Air Bar Diamond 5% Nicotine - Peach	400	\$1,520.00
Air Bar Diamond 5% Nicotine - Strawberry Kiwi	200	\$760.00
Subtotal:		\$49,304.50
Shipping:		Free Local Delivery
Payment method:		Payment on delivery
Total:		\$49,304.50

Exhibit 3 – RZ Smoke Sales to Star Vape

96. On information and belief, RZ ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

97. All of the above-listed e-cigarettes were necessarily offered for sale and possessed with intent to offer for sale in the City and sold by MV Trading in the City.

Starzone

98. Starzone is a wholesaler of e-cigarette with a principal place of business at New Street, Suite B, Oceanside, New York 11572. Starzone maintains a website located at <https://starzoney.com> that advertises dozens of brands of e-cigarettes, available in dozens of flavors, all of which are apparently available for “nationwide delivery.”

99. Between December 2022 and February 2024 Starzone delivered to retailers throughout the City approximately 14,000 flavored e-cigarettes of various brands for which it was paid \$650,000.

100. All of the above-listed e-cigarettes were necessarily offered for sale and possessed with intent to offer for sale in the City and sold by Starzone in the City.

101. On information and belief, Starzone ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

Urban Smoke Distributors

102. Urban Smoke Distributor’s (“Urban”) principal place of business is located at 3410 58th Street, Woodside, New York 11377.

103. Urban has purchased flavored e-cigarettes from Defendant Vape More Inc. as detailed below, including flavored Elf Bar, Lost Mary, and E&B Brands. All of the above-listed e-cigarettes were necessarily possessed, offered for sale and possessed with intent to offer for sale in the City and information and belief many if not all of the brands of e-cigarettes were sold by Urban in the City.

104. Urban maintains a website at <https://www.urbansmokedistributors.com> that advertises “disposable vapes,” including several of the brands and flavors identified on the Vape More invoice as having been purchased from Vape More.

105. Urban has also purchased flavored e-cigarettes from Arizona-based YLSN,

including approximately 10,000 units of EB Design (formerly Elf Bar), Lost Mary, BC 5000 (formerly Elf Bar) and Geek Bar e-cigarettes in October 2023, approximately 3,000 EB Design, Lost Mary and Funky Republic flavored e-cigarettes in July 2023, approximately 9,000 units in of the same brands in June 2023, and approximately 4,000 of the same brands in May 2023. All of the flavored e-cigarettes were necessarily possessed, offered for sale, possessed with intent to offer for sale in the City and, on information and belief, many if not all of those flavored e-cigarettes were sold in the City.

106. On information and belief, Urban ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

Vape More Inc., a/k/a More Inc., a/k/a More LLC

107. Vape More Inc., a/k/a More Inc., a/k/a More LLC (“Vape More”) is a wholesale tobacco outlet that maintains a warehouse and office space at 631 Columbia Street, Ext., Latham, New York 12110. Remote orders may be placed at Vape More through the email wholesale.nicless@gmail.com.

108. On or about July 30, 2023, Vape More Wholesale, by its Invoice Number 2077, sold to Urban Smoke Distributors, located at 34-10 58th Street, Woodside, New York 11377, various brands of disposable e-cigarettes, including Elf Bar, Lost Mary, and E&B, in 5,000 and 6,000 “puff” sizes. The brands listed were all available in a variety of flavors including but not limited to Strawberry Banana, Strawberry Kiwi, Hawaii Punch, Juicy Peach, Blue Razz, Lemon Ice and Lemon Mint.

109. In or around February 2024, the City requested a list from Vape More of Vape More’s shipments of flavored e-cigarettes into the City. Vape More did not provide such a list.

110. On information and belief, Vape More ships or causes to be shipped vapor products to persons that are not holders of a Vape Certificate.

Vape Plus Distribution Corp. a/k/a G&A Distribution

111. Vape Plus Distribution Corp. a/k/a G&A Distribution (“Vape Plus”) maintains a place of business at 2578 Atlantic Avenue, Brooklyn, New York 11207.

112. According to its website, Vape Plus was “founded in Brooklyn at the very beginning of the vaping boom,” and “has earned its reputation as being one the largest and fastest growing Vape and Smoke shop distributors in the U.S.”⁴⁵

113. The Vape Plus website advertises numerous brands of disposable flavored e-cigarettes, including Elf Bar, E. B. 5000 (formerly Elf Bar), Lost Mary, Fume, all in dozens of flavors. The website promises “same day delivery.”

114. In or around October 2023, Vape Plus purchased hundreds of units of flavored Breeze e-cigarettes from Smokin’ Sales, a New Jersey company. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief many if not all of them were sold in the City.

115. In or around November 2023, Vape Plus purchased hundreds of units of flavored e-cigarettes from Smokin’ Sales, including Breeze brand e-cigarettes. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief many if not all of them were sold in the City.

116. In or around August 2023, Vape Plus purchased approximately 200 units of Salt Bae e-juice, a flavored e-liquid containing nicotine from Smokin’ Sales. All of these units of flavored e-liquid were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief many if not all of them were sold in the City.

117. In or around June 2023, Vape Plus purchased approximately 450 units of flavored e-cigarettes from Smokin’ Sales, including Lava brand, Mega Vape and Dragbar brand e-

⁴⁵ Vape Plus Wholesale, <https://nyvapeplus.com> (last visited Apr. 1, 2024)..

cigarettes. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief many if not all of them were sold in the City.

118. In or around April 2023, Vape Plus purchased approximately hundreds of units of Salt Bae e-juice, a flavored nicotine e-liquid, Smok brand, a brand of e-cigarette, and Uwell, a brand of e-cigarette from Smokin' Sales. All of these units of flavored e-liquid and e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief many if not all of them were sold in the City.

119. In October 2022, Vape Plus purchased approximately 14,000 flavored e-cigarettes from YLSN, including Elf Bar, Lost Mary, Biffbar and Geek Bar brands. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief actually sold in the City.

120. In September 2022, Vape Plus purchased approximately 8,000 flavored e-cigarettes from Arizona-based YLSN, including Elf Bar and Lykcan Belo flavored e-cigarettes. All of these e-cigarettes were necessarily possessed, offered for sale and possessed to offer for sale in the City and on information and belief actually sold in the City.

121. On information and belief, Vape Plus ships or causes to be shipped vapor products to persons in New York City that are not holders of a Vape Certificate.

Allegations Related to Violations of N.Y. PHL § 1399-II

122. New York Public Health Law (“PHL”) § 1399-II(1-a), with exceptions not relevant here, prohibits a person engaged in the business of selling vapor products from shipping or causing to be shipped to any person in this state any vapor products intended or reasonably expected to be used with or for the consumption of nicotine, except to a person holding a Vape Certificate.

123. PHL § 1399-ll (1-a)further provides that when a person engaged in the business of selling vapor products ships or causes to be shipped to any person in this state any vapor products intended or reasonably expected to be used with or for the consumption of nicotine, other than in the vapor products manufacturer’s original container or wrapping, the container or wrapping must be plainly and visibly marked with the words “vapor products.”

124. On information and belief, each Defendant ships or causes to be shipped vapor products intended or reasonably expected to be used with or for the consumption of nicotine to persons in New York City that are not holders of a Vape Certificate and/or that are not permitted by PHL 1399-ll to receive vapor products.

125. On information and belief, each Defendant shipped or caused to be shipped vapor products intended or reasonably expected to be used with or for the consumption of nicotine, other than in the vapor products manufacturer’s original container or wrapping, in containers or wrappers that are not plainly and visibly marked with the words “vapor products.”

126. By shipping or causing to be shipped vapor products to persons in New York City other than those designated as the permissible recipients of vapor products set forth in PHL § 1399-ll (1-a)and/or that hold Vape Certificates, Defendants violated PHL § 1399-ll 1-a.

Allegations Related to Violation of New York City Administrative Code § 17-715 (b) (1)

127. New York City Administrative Code § 17-715 (b) (1) provides that “It shall be unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette or flavored e-liquid.

128. On information and belief, each Defendant sells, offers for sale, possesses with intent to sell or with intent to offer for sale flavored e-cigarettes in the City.

Allegations Related to Public Nuisance

129. New York public policy against marketing e-cigarette products to minors is

expressed in statutes and regulations, including but not limited to:

- i) PHL § 1399-bb (4), which prohibits any “person engaged in the business of selling or otherwise distributing electronic cigarettes” from providing free samples to anyone under 21 years of age;
- ii) PHL § 1399-cc(2)-(3), which prohibits the sale of electronic cigarettes to persons less than 21 years of age;
- iii) PHL § 1399-dd, which places restrictions on the sale of electronic cigarettes from vending machines to prevent access by underage individuals; and
- iv) PHL § 1399-dd-1, which places restrictions on electronic cigarette advertising in the proximity of schools.

130. New York public policy against marketing electronic nicotine delivery devices to minors is further expressed in the New York State and City flavor bans, which are principally intended to prevent the use of electronic nicotine delivery devices by youth. Pursuant to PHL §1399-mm-(1), no vapor products dealer shall sell or offer for sale at retail in New York any flavored vapor product to be used in the consumption of nicotine. Pursuant to New York City Administrative Code § 17-715 (b) (1), it is unlawful for any person to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored electronic cigarette or flavored e-liquid.

131. Defendants’ products create a growing hazardous waste problem from improper disposal in public places of devices containing chemicals that can be toxic or fatal if ingested in concentrated forms.⁴⁶

132. E-cigarettes and other illegal vape devices contain toxic chemicals that cannot be safely disposed of in the normal waste stream but must be disposed of as hazardous waste. The lithium-ion batteries powering the devices cannot be safely disposed of in the normal trash

⁴⁶ “JUUL isn’t disposable and should be treated as a consumer electronic device. Dispose of contents/container to a hazardous or special waste collection point.” JUUL, *How do I dispose of a JUUL device?*, <https://support.juul.co.uk/s/article/How-do-I-dispose-of-a-JUUL-device-UK> (last visited Apr. 1, 2024); *see also* American Acad. of Pediatrics, *Liquid Nicotine Used in E-Cigarettes Can Kill Children*, Mar. 31, 2021, <https://www.healthychildren.org/English/safety-prevention/at-home/Pages/Liquid-Nicotine-Used-in-E-Cigarettes-Can-Kill-Children.aspx> . .

stream.⁴⁷

133. The Defendants' sale and distribution of e-cigarettes thus violates a host of federal, New York State and New York City laws representing the public policy of New York State and City. Defendants' conduct injures the health and safety of a large number of persons in New York City.

134. Defendants' conduct has injured the property, health, safety or comfort of a considerable number of New York City residents by creating a public health and safety hazard in the City through the promotion, distribution, marketing and sale of products that cause persistent youth and rising young adult addiction to nicotine, and potentially or actually contaminates City parks and public places with hazardous wastes. The sale of flavored vapor products by the Defendants endangers the health and safety of a large number of persons in New York City and thereby constitutes a public nuisance.

135. Defendants' conduct in marketing, distributing, and selling e-cigarettes has been a substantial factor in bringing about the above-described public nuisance. But for Defendants' actions, e-cigarettes use by youth in the City would not be as widespread as today and the City would not be presented with the hazardous waste disposal burdens imposed by Defendants' products.

FIRST CLAIM FOR RELIEF

(Violation of N.Y. PHL § 1399-ll)

136. The City incorporates herein paragraphs 1-135 as if fully set forth in this paragraph.

⁴⁷ See, e.g., JUUL, *What kind of battery is in the device?*, <https://support.juul.ca/s/article/What-kind-of-battery-is-in-the-device-Canada> (last visited Apr. 1, 2024) ("JUUL uses a lithium-ion polymer battery. All portable electronics containing lithium-ion batteries present rare, but potentially serious safety hazards.").

137. In violation of PHL § 1399-ll (1-a), the Defendants ship or cause to be shipped vapor intended or reasonably expected to be used with or for the consumption of nicotine products to persons other than those designated in PHL § 1399-ll (1-a) as permissible recipients of such products.

138. On information and belief, in violation of PHL § 1399-ll (3) each Defendant shipped or caused to be shipped vapor products intended or reasonably expected to be used with or for the consumption of nicotine, other than in the vapor products manufacturer's original container or wrapping, in containers or wrappers that are not plainly and visibly marked with the words "vapor products."

139. PHL § 1399-ll (5) (c) provides for a penalty of one hundred dollars for each vapor product intended or reasonably expected to be used with or for the consumption of nicotine shipped, caused to be shipped or transported in violation of PHL § 1399-ll (1-a) or PHL § 1399-ll (3).

140. Pursuant to PHL § 1399-ll 6, the City's Corporation Counsel is entitled to recover, on behalf of the City, the civil penalties provided by PHL § 1399-ll (5) and to obtain such other relief as may be deemed necessary with respect to any cigarettes or vapor products shipped or caused to be shipped in violation of PHL § 1399-ll (1-a)to any person located within New York City.

SECOND CLAIM FOR RELIEF

(Violation of NYC Administrative Code § 17-715 (b) (1))

141. The City incorporates herein paragraphs 1-135 as if fully set forth in this paragraph.

142. In violation of Ad. Code § 17-715 (b) (1), each Defendant sells, offers for sale, or possesses with intent to sell or offer for sale, flavored electronic cigarettes and/or flavored e-

liquids.

143. Pursuant to General City Law § 20 (22) and NYC Charter § 394, the Corporation Counsel has standing to enforce Ad. Code § 17-715 (b) (1) on behalf of the City.

THIRD CLAIM FOR RELIEF

(Public Nuisance)

144. The City incorporates herein paragraphs 1-135 as if fully set forth herein in this paragraph.

145. The Defendants' sale and offers to sell flavored vapor products in New York City injures the health, safety, and welfare of large numbers of City residents.

146. Defendants' conduct is ongoing, likely to produce permanent and long-lasting injury, and likely to continue indefinitely. The conduct is substantial, unreasonable, widespread, and outweighs any potential benefit of Defendants' wrongful conduct.

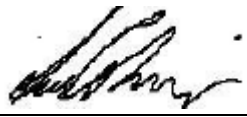
WHEREFORE, New York City respectfully prays that the Court grant judgment against each Defendant as follows:

- a. On the First Claim For Relief, (i) permanently enjoining each Defendant from shipping or causing to be shipped vapor products intended or reasonably expected to be used with or for the consumption of nicotine to persons unauthorized by Pub. Hlth. L. § 1399-ll (1-a) from receiving such products; (ii) permanently enjoining defendants from shipping or causing to be shipped vapor products intended or reasonably expected to be used with or for the consumption of nicotine packages that are not labeled to identify the contents as vapor products; (iii) ordering defendants to pay the City the penalties provided for by Pub. Hlth. L. § 1399-ll (5) in an amount to be determined at trial.
- b. On the Second Claim for Relief; (i) permanently enjoining each Defendant from violating New York City Administrative Code § 17-715 by selling, offering for sale, or possessing with intent to sell or offer for sale flavored electronic cigarettes or flavored e-liquids; (ii) ordering each Defendant to pay the City the penalties provided for by New York City Administrative Code § 17-717 in an amount to be determined at trial;

- c. On the Third Claim for Relief, declaring that Defendants have caused, maintained and contributed to a public nuisance and requiring the Defendants undertake measures to abate that nuisance, including but not limited to establishing a fund to abate the nuisance; and
- d. Awarding such other and further relief as the Court may deem appropriate.

Dated: New York, New York
April 3, 2024

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