

**STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT**

STATE OF NEW MEXICO, EX REL., RAÚL
TORREZ, ATTORNEY GENERAL

Plaintiff,

v.

CIRCLE K STORES, INC.; TMC FRANCHISE
CORPORATION;
SOUTHWEST CONVENIENCE STORES,
LLC;
EMPREX PROXIMITY LLC d/b/a OXXO
USA;
DELEK US HOLDINGS, INC. d/b/a DK;
ALON BRANDS, INC.;
ALEXANDER STEARNS, LLC d/b/a MAX
DISTRIBUTING; AND
J&M DISTRIBUTORS, INC.,

Defendants.

Case assigned to Biedscheid, Bryan

Case No. D-101-CV-2026-00900

COMPLAINT

I. INTRODUCTION

1. Children should not use tobacco products. According to a comprehensive report on youth tobacco use by the United States Surgeon General, 90% of smokers start smoking before the age of 18,¹ and extensive medical research has documented the harm that nicotine can cause on the

¹ FDA, *Youth and Tobacco* (Aug. 29, 2024), <https://www.fda.gov/tobacco-products/public-health-education/youth-and-tobacco>.

developing teenage brain.² For this reason, state governments, including New Mexico, have spent billions of dollars over the past decades trying to stop children from using tobacco products.³

2. These efforts have achieved real results – rates of teenage smoking of combustible cigarettes have fallen dramatically since the 1990s.⁴ But the fight against teenage nicotine use and nicotine addiction continues in the face of more dangerous and more addictive tobacco products. Combustible cigarettes have now been replaced by e-cigarettes – electronic devices whose sole purpose is to deliver nicotine – that are capable of providing more nicotine, more quickly, with far more addictive potential, than any tobacco product before them.⁵

3. Disposable flavored e-cigarettes are now the tobacco product of choice by teens.⁶ This is not an accident: marketed with fruit and candy flavors, bright colors and a high-tech appearance,⁷ and popularized through social media and the internet, these products have become

² Menglu Yuan et al., *Nicotine and the Adolescent Brain*, 593 *J. Physiology* 3397 (2015), <https://doi.org/10.1113/JP270492>.

³ Campaign for Tobacco-Free Kids, *Total State Tobacco Prevention Spending FY1999–FY2021*, https://assets.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2021/2_Graph_Annual_State_Tob_Prev_Spending_1999-2021.pdf (last accessed Mar. 13, 2026).

⁴ Kenneth E. Warner, *Kids No Longer Smoke Cigarettes. Why Aren't We Celebrating?*, 114 *Am. J. Pub. Health* 1191 (2024), <https://doi.org/10.2105/AJPH.2024.307841>.

⁵ Michael Joseph Blaha, *5 Vaping Facts You Need to Know*, Johns Hopkins Med., <https://www.hopkinsmedicine.org/health/wellness-and-prevention/5-truths-you-need-to-know-about-vaping> (last visited Feb. 26, 2026).

⁶ CDC, *E-Cigarette Use Among Youth* (Oct. 17, 2024), <https://www.cdc.gov/tobacco/e-cigarettes/youth.html>; Ahmed Jamal et al., *Tobacco Product Use Among Middle and High School Students — Nat'l Youth Tobacco Survey, United States, 2024*, 73 *Morbidity & Mortality Wkly. Rep.* 917 (2024), <https://www.cdc.gov/mmwr/volumes/73/wr/pdfs/mm7341a2-H.pdf>.

⁷ FDA, *FDA's Enforcement Priorities for E-Cigarettes and Other Electronic Nicotine Delivery Systems (ENDS)* (last updated Jan. 2020), <https://digitalmedia.hhs.gov/tobacco/hosted/CTP-138-Enforcement-ENDS.pdf>; Notice of Availability of *Enforcement Priorities for Electronic Nicotine Delivery System (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)*, *Guidance for Industry*, 85 *Fed. Reg.* 23973 (Apr. 30, 2020), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/enforcement-priorities-electronic-nicotine-delivery-system-ends-and-other-deemed-products-market>.

the new vehicle for childhood nicotine addiction.⁸ The marketing, sale and distribution of these products is unfair, deceptive, and unconscionable in violation of New Mexico state law. In addition, the Food and Drug Administration (“FDA”) has prohibited the marketing and sale of these flavored products in the United States,⁹ but most of these products are manufactured in China, shipped into the United States surreptitiously, and then distributed through a web of distributors and retailers before they ultimately end up in the hands of children, including children in New Mexico.¹⁰

4. In 2019, 34% of New Mexico high school youth used e-cigarettes; the third highest in the nation behind West Virginia and North Carolina.¹¹ The rate decreased to 19% in 2023, but this still means nearly one-fifth of all high school students in New Mexico are using e-cigarettes and are on the path towards lifelong nicotine addiction and health problems.¹²

⁸ Julia Chen-Sankey et al., *Young Adults’ Visual Attention to Features of Social Media E-Cigarette Marketing* (June 23, 2024), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/add.16586>.

⁹ FDA, *E-Cigarettes, “Vapes” and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA* (Mar. 13, 2026), <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends-authorized-fda>; *Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised), Guidance for Industry* (Apr. 29, 2020), at p. 10–11, <https://www.fda.gov/media/133880/download>.

¹⁰ Emily Rumney et al., *How Middlemen Funnel Illegal Chinese Vapes into the United States*, Reuters (June 23, 2025 06:50 PT), <https://www.reuters.com/business/healthcare-pharmaceuticals/how-middlemen-funnel-illegal-chinese-vapes-into-united-states-2025-06-23/>.

¹¹ N.M. Dep’t of Health, NM-IBIS, *Tobacco Use, Youth E-Cigarette Prevalence by Year, Grades 9–12, New Mexico, 2015 to 2019*, (May 4, 2021 06:50 PT), <https://ibis.doh.nm.gov/indicator/summary/TobaccoSmokeECigYouth.html>.

¹² Esteban Candelaria, *Amid Decline in Teen Vaping, State Officials Warn a New Product Is Taking Its Place*, Santa Fe New Mexican (Sep. 28, 2025), https://www.santafenewmexican.com/news/legislature/amid-decline-in-teen-vaping-state-officials-warn-a-new-product-is-taking-its-place/article_74275c4e-609f-11ef-a6e4-e35f33af7cf6.htm.

5. This is not acceptable. Plaintiff, the State of New Mexico, ex rel. Raúl Torrez, Attorney General, brings this action to stop the widespread sale and distribution of flavored disposable e-cigarettes –products that are intentionally designed, packaged, and presented in ways that make them highly attractive to minors, conceal material information from consumers, and inflict significant harm on New Mexico’s youth, schools, public health systems, and environment.

6. From the Navajo Nation borderlands to the Mesilla Valley, flavored disposable e-cigarettes have become entrenched in gas stations, convenience stores and retail counters in locations regularly visited by youth. These products are sold in flavors such as Lush Ice, Watermelon Mint, Blueberry Mint, Cherry Lemon, Banana Mint, Blue Raspberry, Orange Mango Watermelon, Strawberry Cream, and dozens more, many packaged in bright color palettes and candy-like imagery. National public health surveys consistently identify flavored disposable e-cigarettes as the most widely used nicotine product among youth, and that the products’ flavor profiles are one of the primary reasons for youth initiation.¹³ New Mexico’s own state surveillance confirms that adolescents overwhelmingly use flavored vapor products and that use often begins at around the age of thirteen.¹⁴

7. This lawsuit seeks to disrupt the illicit e-cigarette supply chain that connects overseas companies to children in New Mexico. Defendants Circle K Stores, Inc.; Alon Brands, Inc.; Delek US Holdings, Inc.; Alexander Stearns, LLC d/b/a MAX Distributing; and J&M

¹³ Jamal, *supra* note 6, at 919–22 (e-cigarettes are the most common youth tobacco product); Robyn L. Landry et al., *The Role of Flavors in Vaping Initiation and Satisfaction Among U.S. Adults*, 99 *Addictive Behaviors* 106077 (2019), <https://pubmed.ncbi.nlm.nih.gov/articles/PMC6903386> (e-cigarette available flavors are one of the driving forces behind e-cigarette initiation).

¹⁴ N.M. Dep’t of Health et al., *2017 NM-YRRS Results: E-Cigarette Use* (2019), <https://www.youthrisk.org/pdf/connections/YRRS-Connections-Vaping-2019.pdf>.

Distributors operate a retail and distribution network that has distributed tens of thousands of dangerous and youth-appealing flavored disposable e-cigarettes into New Mexico. As described below, these products are dangerous, facilitate tobacco product use and nicotine addiction by adolescents, are being sold, distributed and marketed in a deceptive, unfair, and unconscionable way, and are not even authorized for sale by the FDA in the United States.¹⁵

8. The defendants are key figures in the supply chain for these flavored disposable products. Circle K and Alon maintain an extensive retail presence in the state: they have dozens of stores through New Mexico (Circle K has more than 50 locations in Albuquerque alone) and are selling these dangerous e-cigarettes. Max Distributing and J&M Distributors distribute flavored disposable e-cigarettes to Circle K and Alon (and other retailers in New Mexico). While both are headquartered in Arkansas, they serve as a crucial link between these dangerous e-cigarettes manufactured abroad and American children.

II. PARTIES, JURISDICTION, AND VENUE

A. Plaintiff

9. Plaintiff is the State of New Mexico, proceeding by and through its Attorney General, Raúl Torrez. The Attorney General is the State's chief legal officer and is vested with broad statutory and common-law authority to protect the health, safety, and economic interests of the State and its residents.

10. Under NMSA 1978, § 8-5-2(B), the Attorney General is authorized to prosecute and defend, in any court or tribunal, all actions in which the State may be a party or in which the

¹⁵ FDA, *E-Cigarettes, "Vapes" & Other ENDS Authorized by the FDA*, *supra* note 9.

public interest of the State requires participation. This includes actions to prevent or remedy deceptive or unconscionable trade practices affecting New Mexico residents.

11. The Attorney General is further empowered by NMSA 1978, § 57-12-8(A), to bring actions in the name of the State alleging violations of the New Mexico Unfair Practices Act (“UPA”), upon reasonable belief that a person has used, is using, or is about to use a method, act, or practice declared unlawful by the UPA, and that proceedings are in the public interest.

12. In addition to express statutory authority, the Attorney General brings this action pursuant to the State’s *parens patriae* authority to protect quasi sovereign interests. These interests include safeguarding the physical and psychological health of minors, ensuring the economic integrity of markets, preventing widespread consumer deception, securing tax revenues, and protecting public institutions such as schools, health systems, and municipal services from the burdens caused by harmful commercial practices.

13. The State has a sovereign interest in ensuring that consumer markets operate fairly and transparently. It also has a substantial interest in preventing widespread harm to a vulnerable population: New Mexico’s children and adolescents. The harms alleged in this Complaint fall squarely within these interests.

B. Defendants

14. Defendants operate a coordinated commercial system that supplies, distributes, and sells flavored disposable e-cigarettes in large volumes across New Mexico. This network consists of national retail chains, regional operators, and out of state distributors who worked jointly and knowingly to place flavored disposable devices into the hands of New Mexico consumers, including minors.

1. Circle K

15. Defendant Circle K Stores, Inc. (“Circle K”) is a Foreign Profit corporation organized under the laws of Delaware, with its principal place of business in Arizona. Circle K operates approximately 97 convenience stores throughout New Mexico and conducts extensive retail sales, including but not limited to the sale of tobacco and nicotine products.¹⁶ Circle K transacts business in New Mexico continuously and systematically.

16. Circle K maintains a substantial retail footprint in New Mexico. Circle K owns or operates dozens of convenience stores located in cities, suburbs, rural communities, and highway corridors. Each store serves a high-volume stream of customers, including minors who patronize these locations for beverages, snacks, and other small goods. Circle K is responsible for retail placement, marketing materials, product selection, and the communication of product characteristics to consumers at the point of sale.

17. Circle K stores in New Mexico sold flavored disposable e-cigarettes throughout the state during the relevant period, including offering flavored products with youth appeal, such as Breeze. United States Senators with oversight responsibility have warned Circle K that e-cigarette brands like Breeze are dangerous, pose risks to children, are unauthorized by the FDA, and should not be sold.¹⁷ The Senators emphasized that the sale of these products “pose[s] a tremendous public

¹⁶ CIRCLE K, *List of United States Stores*, <https://www.circlek.com/list-united-states-stores> (last visited Mar. 13, 2026).

¹⁷ Press Release, U.S. Senate, Durbin, Wyden, Sanders, Brown, Blumenthal Urge Convenience Stores, Wholesalers to Follow the Law and Remove Unauthorized E-Cigarettes from their Shelves (Mar. 7, 2024), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-wyden-sanders-brown-blumenthal-urge-convenience-stores-wholesalers-to-follow-the-law-and-remove-unauthorized-e-cigarettes-from-their-shelves>.

health threat. Today, millions of children use unauthorized e-cigarettes, risking nicotine addiction, respiratory illness, exacerbation of depression and anxiety, and many other harms.”¹⁸

18. Circle K employs a franchisor-franchisee business model. While franchisors operate the individual stores, they do so in accordance with detailed directions and requirements from the Defendant. Circle K Stores, Inc. operates its New Mexico retail locations through its subsidiary, Defendant TMC Franchise Corporation, which serves as Circle K’s dedicated franchising entity for the United States and Canada. Circle K Stores, Inc. itself defines “TMC Franchise Corporation and their subsidiaries and affiliates in Canada and the United States” as collectively “Circle K.” The rights, obligations, and authority exercised by TMC Franchise Corporation as Franchisor under the franchise agreement governing Circle K’s New Mexico locations (the “Franchise Agreement”) are accordingly the rights, obligations, and authority of Circle K Stores, Inc. Defendant Circle K Stores, Inc. and Defendant TMC Franchise Corporation are referred to herein collectively as “Circle K.”

19. The Franchise Agreement requires Circle K franchisees to operate their businesses in strict conformity with operational standards prescribed by the franchisor. § 8.4 of the agreement provides that franchisees must operate the Circle K Business “in strict conformity with such uniform methods, standards, and specifications as Franchisor may from time to time prescribe,” and must comply with procedures and systems instituted by the franchisor relating to sales, business practices, advertising, and other operational obligations. The agreement also requires franchisees to keep the business open twenty-four hours a day, seven days a week, including all

¹⁸ *Id.*

holidays, unless the franchisor provides written authorization otherwise, or local law prohibits such operation.

20. Circle K controls the sources from which its franchisees obtain many of the goods used in operating the business. Franchisees must “purchase all merchandise, supplies, equipment, and materials required for the operation of the Circle K Business from suppliers approved by Franchisor,” and the franchisor “has the right to appoint a single approved primary source of supply for many merchandise items” from which franchisees “may be required to purchase.” Franchise Agreement § 8.5. The agreement further authorizes Circle K to require franchisees to purchase certain proprietary items from Circle K, its affiliates, or a sole-source vendor designated by the franchisor. *Id.* § 8.2.

21. All franchisee advertising is subject to Circle K’s prior written approval. Regardless of the medium used, including electronic media, social media, press releases, and the internet, franchisees must submit proposed advertising to Circle K at least thirty days before the anticipated publication date, and Circle K has thirty days to approve or disapprove it. Franchise Agreement § 6.4. The use of unauthorized advertising constitutes a breach of the agreement giving Circle K grounds for termination, and Circle K may enter the franchised location and “unilaterally seize or remove any unauthorized advertising materials.” *Id.*

22. Circle K maintains substantial financial and operational oversight of each franchise location. The Franchise Agreement grants Circle K “ownership of, and direct and full access to, all Circle K Business sales-related data,” and requires franchisees to transmit sales reports by product category, including merchandise sales, in formats prescribed by Circle K, together with monthly profit and loss statements. Franchise Agreement § 11.3. Circle K’s inspection authority

is correspondingly broad: the franchisor may access franchise premises “electronically or in person ... at all reasonable times” to observe operations, *id.* § 9.4, may conduct on-site inspections during hours the business is required to be open, may engage independent professional shoppers to evaluate operations, and may require franchisees to “immediately take such steps as may be necessary to correct deficiencies detected during any such inspections.” *Id.* § 12.1.

23. Circle K also exercises control over franchise personnel. Prior to commencing operations, the franchisee or the franchisee’s operations manager, together with the franchisee’s Business Manager, must successfully complete Circle K’s initial training program, which includes classroom instruction at Circle K’s training facilities in Tempe, Arizona and in-store training at designated Circle K locations. Franchise Agreement § 8.14. If a franchisee fails to meet operational standards, Circle K may require the franchisee or its managers to attend additional training as a condition of curing a default. *Id.* § 8.18. The agreement further restricts who may serve as Business Manager, prohibiting individuals with felony convictions or conduct detrimental to the brand, and requires that all franchise employees wear uniforms approved by Circle K. *Id.* §§ 8.7, 8.8.

24. Circle K also controls franchise personnel. Before a franchise location may open, the franchisee or the franchisee’s operations manager together with the franchisee’s Business Manager must complete Circle K’s initial training program, which includes classroom instruction at Circle K’s training facilities in Tempe, Arizona and in-store training at designated Circle K locations. Franchise Agreement § 8.14. Circle K may require franchisees or their managers to attend additional training when a franchisee fails to meet operational standards. *Id.* § 8.18. The agreement further restricts who may serve as Business Manager and requires that franchise employees wear uniforms approved by Circle K. *Id.* §§ 8.7, 8.8.

25. Through these provisions, Circle K exercises extensive contractual control over the day-to-day operations of its franchise locations, including control over the suppliers from whom merchandise is sourced, the advertising displayed at franchise locations, and the operational standards governing store operations. Circle K also retains ownership of and direct electronic access to sales-related data generated by franchise locations, which franchisees must transmit in the format required by Circle K. In addition, Circle K possesses the contractual authority to inspect franchise locations at reasonable times to ensure compliance with the franchise agreement and to require the prompt correction of operational deficiencies identified during those inspections.

26. In short, Circle K tells its franchisees what products they can purchase, who they can purchase from, and carefully monitors what products are being sold and in what volume. This applies to tobacco products, including e-cigarettes. On information and belief and based on the franchise agreements, Circle K is aware that its franchisees are selling flavored disposable e-cigarettes in New Mexico, and not only has failed to stop these sales, but has approved the brands being sold.

2. Alon and Related Entities

27. Defendant Alon Brands, Inc. (“Alon Brands”) is a corporation organized under the laws of Delaware in 2008 that operates convenience stores under the brand Alon in the United States. Alon is headquartered in Texas and is also registered to conduct business in New Mexico.

In 2017, Delek US Holdings, Inc. acquired Alon and all its store locations and refineries.¹⁹ Prior to incorporation, Alon was known as Alon USA.²⁰

28. Defendant Delek US Holdings, Inc. (“Delek US”), a corporation organized under the laws of Delaware, is a chain consisting of 249 convenience stores and 244 fuel stations.²¹

29. In October 2024, Defendant Emprex Proximity LLC (“Emprex”) acquired 100% of the retail operation of Delek US.²² Shortly thereafter, Emprex began operating those 249 DK stores under the trade name of OXXO USA (“OXXO”).²³

30. Defendant Southwest Convenience Stores, LLC (“SCS”) is a limited liability company that Alon USA acquired in 2001. SCS was organized under the laws of Texas in 2003 and operated its convenience stores under the 7-Eleven brand name until 2019—after Delek acquired all of Alon (and thus, all of SCS), it rebranded SCS’s convenience stores to the Delek brand.²⁴ SCS is now a wholly owned subsidiary of Emprex. On information and belief and as detailed below, Emprex controls the actions of its subsidiaries, including Defendant SCS, Delek US, and Alon.

31. Upon information and belief, SCS is the legal entity that Emprex has used over time to acquire or operate the Alon, DK and OXXO chains of retail convenience stores in the

¹⁹ Alon, *About Alon, Our Brands, History & Company*, <https://alonfuel.com/about/> (last visited Mar. 13, 2026).

²⁰ CSP Daily News, *Alon Brands*, <https://www.cspdailynews.com/top-202-convenience-stores-2015/alon-brands> (last visited Mar. 6, 2026).

²¹ Fomento Económico Mexicano, S.A.B de C.V., Annual Report (Form 20-F) (Apr. 24, 2025) at 34.

²² Delek US Holdings, Inc., Current Report (Form 8-K) (July 31, 2024), Ex. 2.1 at 79, Ex. 99.1.

²³ Fomento Económico Mexicano Annual Report, *supra* note 21 at 47.

²⁴ CSP Daily News, *Alon Brands*, *supra* note 20.

United States.²⁵ For this reason, and unless otherwise specified, the term “Alon” refers to these Defendants collectively and to Emprex as the ultimate responsible entity, by virtue of its control over its various operating subsidiaries. To the extent such an assumption is incorrect, the knowledge of which subsidiary is responsible for specific conduct is knowledge solely within the possession of the Alon Defendants. The Alon Defendants conduct substantial commercial activity in New Mexico through their branded convenience stores. These stores are common stops for families, travelers, and students. Like Circle K, Alon, DK and OXXO sold fruit and candy flavored disposable e-cigarettes in locations frequented by youth.

32. Alon, DK and OXXO stores in New Mexico sold flavored disposable e-cigarettes in numerous locations, including stores located within walking distance of high schools, middle schools, and youth sports complexes. Investigations documented that flavored disposable vape products were available for sale at various locations. Like Circle K, Alon, DK and OXXO exercise control over inventory selection and the sale of products offered in-store.

33. Collectively, Alon, DK and OXXO and Circle K are the “Retailer Defendants.”

3. Max Distributing

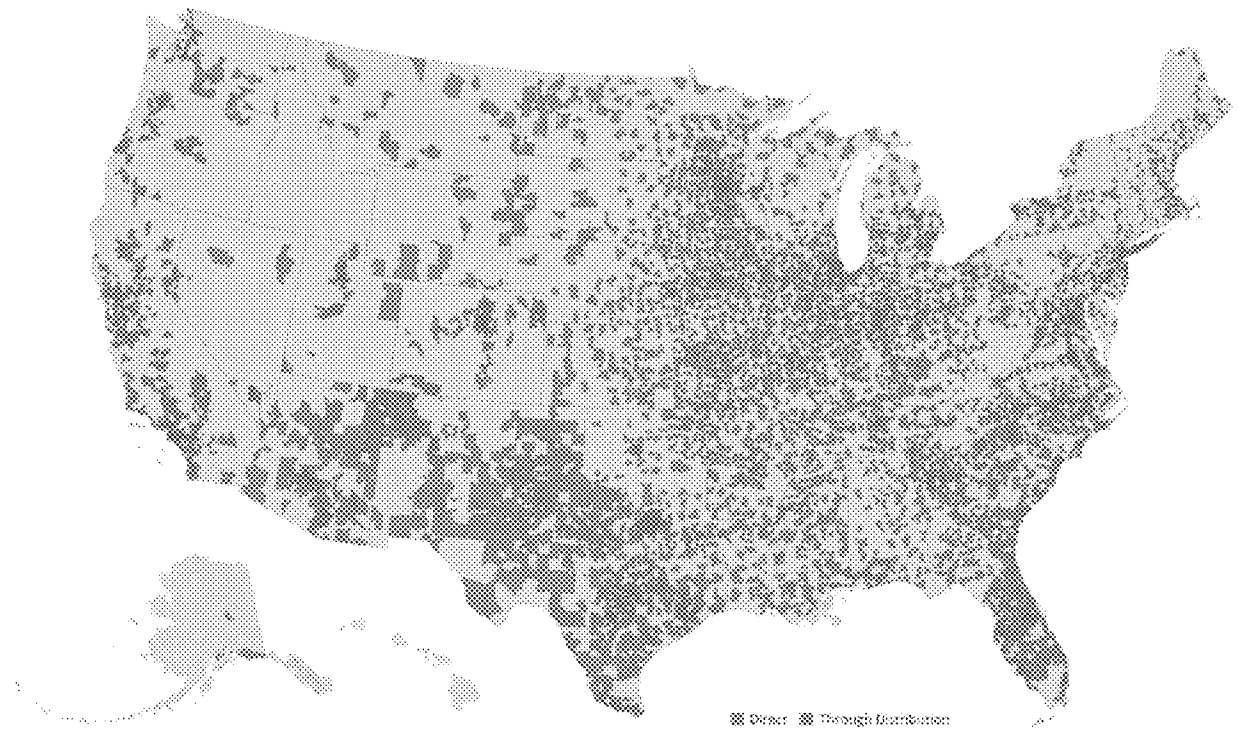
34. Defendant Alexander Stearns, LLC, which also does business as MAX Distributing²⁶ (together, “Max Distributing”), is a limited liability company organized under the

²⁵ ADP, *Welcome to Southwest Convenience Stores LLC OXXO USA Careers*, https://workforcenow.adp.com/mascsr/default/mdf/recruitment/recruitment.html?cid=68b5ff7b-5642-41b3-b889-567091a75baa&ccId=19000101_000001&lang=en_US (last visited Mar. 6, 2026); Southwest Convenience Stores, LLC, LinkedIn, <https://www.linkedin.com/company/southwest-convenience-stores-llc-oxxo-usa> (on file with author).

²⁶ Alexander Stearns, LLC d/b/a Max Distributing, *Product Purchase Agreement*, https://maxdelivers.com/customer_terms/, (last visited Feb. 26, 2026).

laws of Arkansas that is also registered to conduct business in Texas and New Mexico. Max Distributing is a distributor that ships flavored disposable e-cigarettes and related ENDS products to convenience stores throughout the United States, including into New Mexico, made by brands such as Ignite, KadoBar, Vyve, JuiceHead, and others.²⁷ Max Distributing has supplied Circle K, Alon, and other retailers with large quantities of flavored disposable e-cigarettes, including products that are widely recognized as highly appealing to minors.

35. Max Distributing’s online map shows both direct sales to New Mexico and sales through distribution going to New Mexico:²⁸



²⁷ Alexander Stearns, LLC d/b/a Max Distributing, *About Max Distributing*, <https://maxdelivers.com/about-max-distributing/> (last visited Feb. 26, 2026); see also *Vapes & Pouches | Max Delivers*, <https://maxdelivers.com/vapes-pouches/> (last visited Feb. 26, 2026).

²⁸ Alexander Stearns, LLC d/b/a Max Distributing, *Max Distributing: Nationwide Reach, Local Impact*, <https://maxdelivers.com/our-service-area/> (last visited March 16, 2026)

36. Max Distributing conducts regular business that reaches into New Mexico, including the shipment, invoicing, marketing, and distribution of products placed into retail commerce in this State. Max Distributing has engaged in interstate transactions intended to supply New Mexico retailers, including brands known for youth appeal such as Elf Bar, Lost Mary, Kangvape, Breeze, and others.

37. Max Distributing highlights its role as “not just a distributor, but a problem solver,” offering “unique racking solutions [to] ensure that products are displayed effectively to maximize sales” and its ability to provide “deep industry knowledge” and to “educate, offering insights into the latest trends and products.”²⁹

4. J&M

38. Defendant J&M Distributors, Inc. (“J&M”) is a corporation formed under the laws of Arkansas that supplies convenience stores across the United States with high-volume items for sale by cash registers, including disposable e-cigarettes³⁰. J&M distributes flavored disposable e-cigarettes made by brands such as Geek Bar, Lost Mary, Kumi, Crossbar, and Verse Bar.³¹ J&M has supplied New Mexico retailers with flavored disposable e-cigarettes. J&M’s distribution

²⁹ *Id.*; see also Alexander Stearns, LLC d/b/a Max Distributing, *About Max Distributing*, <https://maxdelivers.com/about-max-distributing/> (last visited March 16, 2026)

³⁰ J&M Distributors, *Our Story*, <https://www.jmdistributorsinc.com/> (last visited Mar. 17, 2026).

³¹ J&M Distributors, *Disposable Vaporizers*, <https://www.jmdistributorsinc.com/disposable-vaporizers> (last visited Mar. 17, 2026); see also *J&M Distributors Product Catalog 2024*, https://www.jmdistributorsinc.com/files/ugd/ea2455_841c1f2f468f4f20a2bea851cf0d1276.pdf (last visited Mar. 17, 2026); *Wholesale Disposable Vape Bar*, <https://jm-distro.com/collections/wholesale-disposable-vape-bar> (last visited Mar. 16, 2026) (“JM Distro proudly offers an extensive range of high-quality wholesale disposable vapes, featuring popular brands like Elf Bar, Geek Bar, and more.”).

network includes interstate shipments of flavored disposable vapes destined for New Mexico commercial locations.

39. J&M advertises that it “proudly” offers disposable vapes and impliedly markets the addictive nature of the products, telling retailers that “[d]isposables are growing in popularity so it is crucial that you stock them in your vape store. There is no minimum order, and a large number of brands to choose from that are guaranteed to keep your customers coming back for more.”³² It also highlights that disposable vapes are “especially popular among new vapers” and notes that “often come in unique and exotic flavors, ranging from mango ice to cotton candy and cola fizz,” with “eye-catching packaging,” and a “compact design [that] also appeals to users who value discretion.”³³

40. At the same time, the company acknowledges that “teenagers have [] taken up the practice” of using e-cigarettes and noted that “[e]-cigarette experts have demonstrated worries about long-term risks from vape use, considering that flavoring in products specifically targets younger consumers.”³⁴ Similarly, information from J&M’s website admits that “authorities maintain that fruit-flavored flavors attract teenage users because they dull nicotine’s unpleasant taste and lead new people toward addiction” and that “the U.S. allows the sale of both menthol products and tobacco-flavored solutions” and notes that the federal government has dismissed

³² *Id.* at *Wholesale Disposable Vape Bar*, <https://jm-distro.com/collections/wholesale-disposable-vape-bar> (last visited Mar. 16, 2026).

³³ *Id.* at *Disposable Vapes vs. Pod Systems: Which Is Dominating the Market This Year?* (May 26, 2026), <https://jm-distro.com/blogs/news/disposable-vapes-vs-pod-systems-which-is-dominating-the-market-this-year>.

³⁴ *Id.* at *Vaping Laws 2025: What You Need to Know Before You Puff* (May 2, 2025), <https://jm-distro.com/blogs/news/vaping-laws-2025-what-you-need-to-know-before-you-puff>.

“nearly all flavored disposable vape products.”³⁵ The website also acknowledges that lawmakers see disposable vapes “as environmental hazards to both people and nature, and a teen attraction element” and that the “United States has compelled brands that lack FDA clearance for their throw-away vapor products to eliminate them from their market availability.”³⁶

41. Despite these admissions, both Max Distributing and J&M participated in a supply chain that brought numerous dangerous flavored disposable e-cigarettes into New Mexico retail channels. Their conduct forms an important part of the unfair and deceptive practices alleged herein. Collectively, Max Distributing and J&M are the “Distributor Defendants.”

42. At all relevant times, each Defendant acted directly or indirectly through agents, employees, officers, partners, contractors, alter egos, or others acting under their direction or control. Each Defendant participated in, approved, or ratified the acts and practices described in this Complaint.

43. Each Defendant benefited financially from the sale or distribution of flavored disposable e-cigarettes in New Mexico and acted jointly or in concert with the others for the purposes of marketing, distributing, and selling such products within this State.

C. Subject Matter Jurisdiction

44. This Court has subject matter jurisdiction over this matter pursuant to Article VI, § 13 of the New Mexico Constitution, which vests district courts with general jurisdiction.

³⁵ *Id.*

³⁶ *Id.*

45. This Court also has jurisdiction because the State brings claims under the New Mexico Unfair Practices Act, which authorizes actions by the Attorney General in district courts of this State.

46. The wrongful acts alleged herein occurred, in whole or in part, within New Mexico and directly or indirectly affect its people. Defendants advertised, marketed, distributed, and sold flavored disposable e-cigarettes to consumers in New Mexico.. Defendants maintained contacts with the State sufficient to satisfy due process. This action does not seek to enforce federal statutes or regulations, and in fact, does not rely on federal law or authority for any purpose other than to provide further factual support of the hazardous and unregulated nature of the products Defendants helped make available to New Mexico youth and the youth appeal of these products. As explained below, flavored disposable e-cigarettes are dangerous products that pose a serious health and safety risk to New Mexico residents, particularly New Mexico children, and their marketing and sale constitutes a deceptive and unfair trade practice in violation of New Mexico law. The fact that the FDA has also banned these products from sale in the United States – on the grounds that they facilitate youth tobacco product use and nicotine addiction – only underscores the danger these products pose to Americans, including New Mexicans, and does not divest New Mexico from its authority to protect its children.

D. Personal Jurisdiction

47. The Retailer Defendants have extensive and continuous contacts with New Mexico, operating large networks of retail stores and engaging in commercial activity within the State. On information and belief they have sold tens of thousands of disposable flavored e-cigarettes from

retail locations throughout the State, profiting from every such sale while facilitating nicotine addiction by New Mexico's youth. They are therefore subject to jurisdiction in New Mexico.

48. On information and belief, the Distributor Defendants deliberately sold and shipped tens of thousands of disposable flavored e-cigarettes to retail locations throughout New Mexico and derived revenue from the sale of flavored disposable e-cigarettes within New Mexico. As with the Retailer Defendants, the Distributor Defendants have profited from the sale of disposable flavored e-cigarettes in New Mexico, while facilitating nicotine addiction by New Mexico's youth.

49. Defendants' conduct constitutes purposeful availment of the privilege of conducting activities within the State, and the claims asserted here arise from those activities.

50. Exercising jurisdiction over each Defendant accords with traditional notions of fair play and substantial justice.

E. Venue

51. Venue is proper in this Court under NMSA 1978, § 38-3-1 (1988), because Defendants are foreign corporations or out of state entities, the Plaintiff resides in Santa Fe County, and the Office of the Attorney General and the seat of the State Government are situated and reside in the City and County of Santa Fe, New Mexico.

52. Defendants sold, marketed, and distributed flavored disposable e-cigarettes in retail locations across this country and throughout the state, making venue proper.

III. FACTUAL ALLEGATIONS

A. The Dangers of E-cigarettes

1. Potent Devices for Nicotine Addiction

53. E-cigarettes are battery powered devices that apply extreme heat to nicotine solutions, or “e-liquids,” to convert them into an aerosol that the user inhales.³⁷ E-cigarettes are often referred to as vapes or electronic nicotine delivery systems (“ENDS”), and e-liquids are referred to as “e-juice,” or vape juice or vape liquid.³⁸ Nicotine is one of the most addictive substances known to science, with addictive properties similar to heroin and cocaine.³⁹ As the name implies, the purpose of ENDS are to efficiently and rapidly deliver nicotine to the brain through the lungs. Users operate the device by puffing on the e-cigarette, which activates a battery and heats a metal coil, which in turn vaporizes the e-liquid for the user for inhalation.⁴⁰

54. There are three main categories of e-cigarettes: (1) disposable e-cigarettes, which are devices that are pre-filled with e-liquid and designed to be discarded after use; (2) pod based e-cigarettes that use disposable pods or cartridges pre-filled with e-liquid and are rechargeable and intended for re-use; and (3) re-fillable e-cigarettes that have an empty tank that the user manually fills with e-liquid.⁴¹ This action concerns the sale, marketing and distribution of flavored e-

³⁷ CDC, *About E-Cigarettes (Vapes)* (Oct. 24, 2024), <https://www.cdc.gov/tobacco/e-cigarettes/about.html>.

³⁸ FDA, *E-Cigarettes, “Vapes” and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA*, *supra* note 9.

³⁹ See e.g., U.S. Dep’t of Health and Human Servs., *Nicotine Addiction: A Report of the Surgeon General*, DHHS Publication Number (CDC) 88-8406 (1988).

⁴⁰ CDC, *E-Cigarette, or Vaping, Products Visual Dictionary*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/pdfs/ecigarette-or-vaping-products-visual-dictionary-508.pdf (last visited Mar. 17, 2026).

⁴¹ CDC, *About E-Cigarettes (Vapes)*, *supra* note 37; U.S. Food & Drug Admin., *Results from the Annual National Youth Tobacco Survey (NYTS)* (Jan. 22, 2025), <https://www.fda.gov/tobacco->

cigarettes (i.e. products that are not tobacco or menthol flavored), the vast majority of which are disposable e-cigarettes.⁴²

55. E-liquids contain either natural or synthetic nicotine,⁴³ combined with water and chemicals and flavorants, including propylene glycol and vegetable glycerin.⁴⁴ E-liquids can be formulated to produce whatever flavor a manufacturer/retailer believes it can sell.⁴⁵ While they can be designed to taste like tobacco, or menthol—the flavors that should be the most familiar to smokers already addicted to nicotine—the vast majority of e-liquids, and the ones at issue in this litigation, are artificially flavored to impart sweet fruit, candy, or dessert flavors.

56. Though e-cigarettes have been available in the US since around 2007, advances in technology, chemistry, and design have resulted in products that are much more potent, and addictive, than their predecessors. The introduction of nicotine salts eliminates much of the physical discomfort that accompanies smoking combustible cigarettes, facilitating prolonged and frequent use, and thereby making it easier to become addicted more quickly. The sleek, compact design of many e-cigarettes makes them both stylish and easy to conceal, making them easier to use in areas where vaping is prohibited (e.g., classrooms and school grounds).

[products/youth-and-tobacco/results-annual-national-youth-tobacco-survey-nyts](#) [hereinafter *2024 NYTS Findings*].

⁴² *2024 NYTS Findings*, *supra* note 41.

⁴³ FDA, *Regulation and Enforcement of Non-Tobacco Nicotine (NTN) Products* (Nov. 6, 2023), <https://www.fda.gov/tobacco-products/products-ingredients-components/regulation-and-enforcement-non-tobacco-nicotine-ntn-products>.

⁴⁴ FDA, *E-Cigarettes, Vapes, and other Electronic Nicotine Delivery Systems (ENDS)* (July 17, 2025), <https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends>.

⁴⁵ Ping Du et al., *Changes in Flavor Preference in a Cohort of Long-Term Electronic Cigarette Users*, 17 *Annals of the Am. Thoracic Soc'y* 573, 574 (May 2020) (noting the rapid growth in available flavors and that more than 7,500 e-cigarette flavors have become available since 2012), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7193816/>.

57. Dramatic increases in nicotine strength and e-liquid volume have led to significant increases in nicotine content in e-cigarettes. The typical combustible cigarette contains approximately 11.9–14.5 mg of nicotine, 1–1.5 mg of which is absorbed when smoked.⁴⁶ The average nicotine concentration in e-cigarette products in the US increased from over 20 mg of nicotine, or 2.10% nicotine strength, in 2013, to over 40 mg of nicotine, or 4.34% nicotine strength, by 2018.⁴⁷ By March 2022, 90.6% of all e-cigarettes sold in the US contained greater than or equal to 50 mg, or 5% nicotine strength.⁴⁸ The nicotine strength found in e-cigarettes being sold and used today is more than double (50 mg) than is found in an average combustible cigarette.

58. The increase in nicotine strength and concentration has occurred in tandem with an increase in the volume of e-liquid in the device. In 2018, a JUUL pod, the most popular e-cigarette product at the time, contained 0.7 ml of e-liquid.⁴⁹ Today's disposable e-cigarettes contain 10 ml of e-liquid or more.⁵⁰ Moreover, cigarettes have a natural stopping point when the cigarette rod burns out, and the combustion process results in nicotine being lost to the air. In contrast, a single

⁴⁶ Rachel Ann Tee-Melegrito & Adithya Cattamanchi, *How much nicotine is in one cigarette?*, Medical News Today (July 5, 2023), <https://www.medicalnewstoday.com/articles/how-much-nicotine-is-in-one-cigarette>.

⁴⁷ Truth Initiative, *Nicotine content in e-cigarettes more than doubled in 5 years* (Aug. 8, 2019), <https://truthinitiative.org/research-resources/emerging-tobacco-products/nicotine-content-e-cigarettes-more-doubled-5-years>.

⁴⁸ 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 Rsch.* 1052 (2023), <https://doi.org/10.1093/ntr/ntac284>.

⁴⁹ Pub. Health. Law Ctr. At Mitchell Hamline Sch. of Law, *JUUL & the Guinea Pig Generation* (May 2018) at 2, <https://www.publichealthlawcenter.org/sites/default/files/resources/JUUL-and-the-Guinea-Pig-Generation-2018.pdf>; Judith J. Prochaska et al., *Nicotine Delivery and Cigarette Equivalents from Vaping a JUULpod*, 31 *Tobacco Control* e88, 4 (2021), <https://escholarship.org/content/qt8t45p5tb/qt8t45p5tb.pdf>.

⁵⁰ Megan C. Diaz et al., *Bigger, Stronger and Cheaper: Growth in E-cigarette Market Driven by Disposable Devices with More E-liquid, Higher Nicotine Concentration and Declining Prices*, 34 *Tobacco Control* 65, 66 (2025), <https://doi.org/10.1136/tc-2023-058033>.

disposable e-cigarette device can expose its user to a non-stop stream of nicotine for a prolonged and continuous time period. Nicotine addicts, including children, can start vaping when they wake-up, vape constantly throughout the day, and then go to sleep only to re-start the cycle in the morning.

2. E-cigarette Toxicity

59. In addition to being highly addictive, e-cigarettes also have the potential to be dangerous to one's health. To start with, to this day, no one knows exactly what they are inhaling into their lungs when they use an e-cigarette. Many users, particularly young ones, do not realize that e-cigarettes do not simply generate harmless water vapor. In fact, e-cigarettes superheat a liquid to create an aerosol of different chemical compounds that are directly inhaled into the lungs. Many components of this aerosol are not well understood, and some are likely toxic. In 2016, an FDA analysis discovered unapproved pharmacologically active substances in some e-liquids, suggesting that e-liquids may expose e-cigarette users to unknown drugs with undocumented health effects.⁵¹ And a 2021 study by researchers at Johns Hopkins detected nearly 2000 chemicals, the vast majority of which were un-identified, in aerosols of several popular e-cigarette brands. Of those chemicals that were identified, six of them were potentially harmful, three were industrial chemicals, and one was a pesticide.⁵² According to one of the researchers: "People just need to

⁵¹ U.S. Dep't of Health & Hum. Servs., *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* (2016), <https://www.ncbi.nlm.nih.gov/books/NBK538688/>.

⁵² Jill Rosen, *Johns Hopkins Researchers Find Thousands of Unknown Chemicals in Electronic Cigarettes*, Johns Hopkins Univ. (Oct. 7, 2021), <https://hub.jhu.edu/2021/10/07/vaping-unknown-chemicals/>.

know that they're inhaling a very complex mixture of chemicals when they vape. And for a lot of these compounds we have no idea what they actually are."⁵³

60. Subsequent research underscores the potential dangers of e-cigarette aerosols. A 2021 study found that disposable e-cigarettes can emit more toxic metals than traditional cigarettes – for example certain devices released more lead in a day than 20 packs of conventional cigarettes.⁵⁴ In addition to heavy metals, heating e-liquids has also been found to produce volatile organic compounds (VOCs) and carbonyls, which are known irritants and carcinogens.⁵⁵

61. A 2022 study of the chemical composition and toxicity of Puff Bar, a popular e-cigarette used by teens, revealed that the chemicals inhaled through these e-cigarettes are toxic to a degree that is not yet fully understood.⁵⁶ Specifically, researchers found that certain total chemical concentrations within the tested e-liquid exceed levels that have been shown to “adversely affect[] cell growth and morphology,” resulting in negative health outcomes over time. While some of the flavor chemicals in the e-cigarette vapor fluid also exist in other consumer products, these chemicals are present in e-cigarette products like Puff Bar at levels that exceed concentrations in those other consumer products.⁵⁷ More importantly, while certain flavor chemicals may be deemed

⁵³ *Id.*

⁵⁴ Mariaelvina Sala & Cecilia Gotti, *Electronic nicotine delivery systems (ENDS): A convenient means of smoking* (2023), <https://www.sciencedirect.com/science/article/pii/S1043661823002414>.

⁵⁵ Mohamad Sleiman et al., *Emissions from electronic cigarettes: key parameters affecting the release of harmful chemicals*, 50 *Environ Sci Technol.* 9644 (2016), <https://pubmed.ncbi.nlm.nih.gov/27461870/>.

⁵⁶ Esther Omaiye et al., *Disposable Puff Bar Electronic Cigarettes: Chemical Composition and Toxicity of E-liquids and a Synthetic Coolant*, 35 *Chem. Res. Toxicol.* 1344 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9382667/pdf/tx1c00423.pdf>.

⁵⁷ *Id.*

generally safe for ingestion by the FDA, they are not endorsed for inhalation, which has a very different effect on the human body.

62. While the particular study focused on Puff Bar products, the flavors analyzed—“ice,” fruit, candy, and similarly sweet flavors—are commonly found in other products, including brands sold by the Defendants like Breeze, Geekbar, Juicehead and Kangvape, such that there is likely overlap in formulas. This led the Puff Bar researchers to warn that: “Product manufacturers are increasing the youth-attracting synthetic coolant content of [e-cigarettes], while the inhalation risks remain unknown. This practice, in effect, represents a large, uncontrolled experiment in the lungs of youth and other consumers and highlights the need for regulation to protect public health.”⁵⁸

63. Multiple recent studies from 2025, based on brands in addition to Puff Bar, confirm the potential toxicity of e-cigarettes.

64. One study analyzed metal emissions from popular disposable e-cigarette products including Esco Bar, Elf Bar, and Flum Pebble. The study documented that leaded bronze alloy components in some devices likely contributed to lead contamination of e-liquid and aerosols, and that heating coil degradation released metals such as nickel during use. Elevated antimony was also found in some device samples. Measured concentrations of several metals including chromium, nickel, and antimony tended to increase with the number of puffs generated in laboratory testing. The researchers noted that, in some cases, cumulative metal emissions from a disposable device over hundreds of puffs could exceed metal exposures typical of many packs of

⁵⁸ *Id.*

traditional cigarettes, and that risk assessments based on these metal levels suggested potential cancer and non-cancer health risks.⁵⁹

65. Another study conducting a survey of 74 commercially available illicit disposable ENDS devices across ten brands (including brands sold by Defendants): Esco Bar, Funky Republic, Packspod, Breeze Smoke, iJoy, Kang Vape, Lost Mary, Meloso, Digiflavor, and Geek Bar. The study measured metal concentrations in e-liquids and, for a subset of products, generated aerosols. Select metals were detected above the limit of quantification in 61 of the 74 e-liquid samples, approximately 82 percent of products tested. In aerosol samples, measured concentrations included lead up to 8.225 mcg/g, nickel up to 3.077 mcg/g, and copper up to 30.65 mcg/g. In e-liquid specifically, certain products exhibited substantially elevated metal concentrations. For example, one Esco Bars Pink Lemonade product contained copper at 378.1 mcg/g and zinc at 323.0 mcg/g in the e-liquid. The authors also reported that metal transfer from e-liquid to aerosol varied across devices, indicating that aerosol metal concentrations were not directly predictable based solely on e-liquid measurements.⁶⁰

66. A third study analyzed 25 commercially available disposable e-cigarette products from four popular brands including Flum Pebble, Elf Bar, Esco Bars, and Geek Bar. The testing

⁵⁹ Mark R. Salazar et al., *Elevated Toxic Element Emissions from Popular Disposable E-Cigarettes: Sources, Life Cycle, and Health Risks*, 11 *ACS Cent. Sci.* 1345 (2025), <https://pubs.acs.org/doi/10.1021/acscentsci.5c00641>.

⁶⁰ D. Collins et al., *Survey of Metals Present in the E-Liquid and Aerosol of Commercially Available Disposable Electronic Nicotine Delivery Systems from the North American Market* Juul Labs Science (Sept. 2025), <https://www.juulabscience.com/wp-content/uploads/sites/8/2025/09/Survey-of-metals-present-in-the-e-liquid-and-aerosol-of-commercially-available-disposable-ENDS-from-the-North-American-market.pdf>.

revealed the formation of potentially harmful carbonyl compounds and chemicals which have been shown in other research to exceed published toxicological thresholds in laboratory settings.⁶¹

67. As part of its investigation into this enforcement action, the New Mexico Attorney General tested various devices purchased from the Defendants in New Mexico. A sample of a product purchased from Alon, Kamado Max “Orange Fcuking Fab,” contained copper and tin in detectable amounts and trace amounts of nickel. Another product purchased from Alon, Digiflavor Amazon Lemonade, contained zinc in detectable amounts and trace amounts of nickel. Other Alon products also contained potentially dangerous metals, including Geek Next “Orange Dragon” X5000, which contained trace amounts of zinc, and iJOY Triple berry XP 5000 and Meloso Grumpy Lime Zodiac Magic, both of which contained trace amounts of selenium. A product purchased from Circle K, Breeze Smoke “Orange Mango Watermelon” Pro Edition, also contained trace amounts of lead, copper, selenium, and zinc.

68. These results are alarming and may well understate the toxicity of e-cigarette products. Flavored, disposable, e-cigarettes are not authorized for sale in the United States, which means that these products have either failed to satisfy the regulatory review designed to ensure such products are safe or simply evaded the review altogether. The literature, testing, and lack of safety review each demonstrate that distributors and retailers of these e-cigarettes show reckless disregard or deliberate indifference to the safety of the products for anyone.

⁶¹ Nicholas E. Robertson et al., *E-Liquid and Aerosol Characterization of Popular Disposable E-Cigarette Products*, 10 *ACS Omega* 29615 (2025), <https://pmc.ncbi.nlm.nih.gov/articles/PMC12268721/> (finding that nicotine concentrations and aerosolized carbonyl yields vary among popular disposable e-cigarette brands and that several flavoring additives exceed published toxicological thresholds).

3. The Health Consequences of E-cigarette Use

69. In contrast to combustible cigarettes, the widespread use of e-cigarettes is a relatively recent phenomenon. E-cigarettes did not enter the US market until 2007 and did not become the tobacco product of choice among teens until 2014. As a result, the health consequences of e-cigarette use, particularly health consequences associated with prolonged and heavy use, are not fully understood. But research to date gives rise to serious health concerns.

70. In 2018, the National Academies of Sciences, Engineering, and Medicine (“NASEM”), issued a report identifying the following potential health risks for e-cigarettes while also noting the need for further research:⁶²

A. Asthma: there is moderate evidence for increased coughing and wheezing in adolescents who use e-cigarettes. E-cigarette use is associated with an increase in asthma exacerbations. Two meta-analyses have identified an association between current and ever e-cigarette use and asthma.

B. Cancer: some chemicals present in e-cigarette aerosols, such as formaldehyde and acrolein, can cause DNA damage and mutagenesis that can lead to cancer. Long-term exposure to e-cigarette aerosols could increase the risk of cancer and adverse reproductive outcomes.

C. Heart disease: a meta-analysis found an association between e-cigarette use and heart attack, although the risk of e-cigarettes causing a heart attack was lower than the risk of heart attack from cigarette smoking.

⁶² Nat’l Acads. of Scis., Eng’g & Meds., *Public Health Consequences of E-Cigarettes* 405, 381, 339 (2018), <https://www.nationalacademies.org/read/24952/chapter/1>.

71. A 2020 study found that exclusive e-cigarette use was associated with increased risk of chronic obstructive pulmonary disease (COPD) and high blood pressure, particularly in adults between 30-70.⁶³ E-cigarette vapor has also been shown to cause airway inflammation, reduced lung function and oxidative stress; and the sweet and fruity flavoring agents in certain varieties have been linked to cell toxicity and DNA damage.⁶⁴

72. A March 2025 article published by Johns Hopkins researchers analyzed medical information on a diverse group of almost 250,000 people over a 4-year period. This analysis found a significant association between exclusive e-cigarette use and chronic obstructive pulmonary disease.⁶⁵

73. While the full extent of the harm from e-cigarettes on the general population is still being understood, it is clear that vaping represents a serious health risk to young people. In 2018, the Surgeon General of the United States issued an urgent public statement to call attention to the risks to youth posed by e-cigarettes.⁶⁶ Characterizing the use of e-cigarettes by youth as an “epidemic,” the Surgeon General urged that action be taken to protect “our children from a lifetime

⁶³ Dharma Bhatta & Stanton Glantz, *Association of E-Cigarette Use with Respiratory Disease Among Adults: a Longitudinal Analysis*, 58 *Am. J. Prev. Med.* 182 (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6981012/pdf/nihms-1543717.pdf>.

⁶⁴ Jeffrey E Gotts et al., *What are the respiratory effects of e-cigarettes?* (2019), <https://www.bmj.com/content/366/bmj.15275>; Thivanka Muthumalage et al., *Inflammatory and oxidative responses induced by exposure to commonly used e-cigarette flavoring chemicals and flavored e-liquids without nicotine* (2017), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5768608/pdf/fphys-08-01130.pdf>.

⁶⁵ Johns Hopkins Medicine, *New Analysis Underscores Health Risks of E-cigarettes* (Apr. 15, 2025), <https://www.hopkinsmedicine.org/news/newsroom/news-releases/2025/04/new-analysis-underscores-health-risks-of-e-cigarettes>.

⁶⁶ U.S. Dep’t of Health & Human Servs., *Surgeon General’s Advisory on E-cigarette Use Among Youth* (2018), <https://californialgbtqhealth.org/wp-content/uploads/2019/09/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

of nicotine addiction and associated health risks.” The advisory warned that “nicotine exposure during adolescence can harm the developing brain,” which continues to develop until around age 25, and “can impact learning, memory, and attention.” Nicotine use during adolescence can also increase risk for future addiction to other drugs.

74. Since the 2018 advisory, additional research has continued to confirm that e-cigarettes harm youth. According to the Truth Initiative:⁶⁷

A. Youth are at greater risk of nicotine addiction than adults: exposure to nicotine as a youth is particularly harmful because nicotine effects key brain receptors, thereby making young people more susceptible to nicotine addiction. In young people, 5 mg of nicotine a day is enough to establish nicotine addiction – about the amount of nicotine in one-quarter of an e-cigarette pod.

B. E-cigarette use leads to combustible cigarette use among young people who have never smoked. One study found that nicotine naïve youth who had ever used e-cigarettes had seven times higher odds of becoming smokers one year later compared to youth that had never vaped.

C. ADHD: a 2019 study of college students found that vaping is significantly associated with higher levels of ADHD symptoms.

D. Increased risk of anxiety and depression: studies have shown that nicotine can worsen anxiety symptoms and amplify feelings of depression. According to a 2019 study, current e-cigarette users have double the odds of also having a diagnosis of

⁶⁷ Truth Initiative, *Nicotine and the Young Brain* (June 2022) https://truthinitiative.org/sites/default/files/media/files/2022/06/Nicotine_Factsheet_FINAL_061722.pdf.

depression compared to those who have never vaped, and frequent vaping is tied to even higher odds of depression compared to never users.

75. While these risks are alarming, what is perhaps even more disturbing is that the true impact and harm of e-cigarettes on young people is not yet known, because the products have simply not been around long enough. It was only in 2014 that e-cigarettes became the most commonly used tobacco products by youth, which remains true today.⁶⁸ Youth usage hit its peak in 2018-2019, when 1 in 5 high school students and 1 in 20 middle school students vaped. And while rates have declined, as of 2024, 5.9% of 1.63 million middle and high school students use e-cigarettes.⁶⁹

76. According to Dr. Panagis Galiatsatos, a pulmonary and critical care physician at Johns Hopkins School of Medicine, “[f]or most of my patients it starts with something small. A young kid who can’t shake a cough or who keeps getting bronchitis or lung infections or asthma that has suddenly become harder to manage. Nothing catastrophic—but suddenly this kid who was fine is constantly sick.”⁷⁰ According to Dr. Galiatsatos, these recurring infections are “red flags,” and research has shown that pneumonia, bronchitis, and other lung infections are more common in people who vape. “I try to make it clear to my younger patients that these things are not good for your lungs and though you may not see the consequences now, you are setting yourself up for a lifelong addiction to something that if you continue to use it, at some point [it] will give you a

⁶⁸ U.S. Dep’t of Health & Human Servs., *Surgeon General’s Advisory*, *supra* note 66.

⁶⁹ Am. Lung Ass’n, *The Truth About What Vaping is Doing to Your Body* (Dec. 3, 2025), <https://www.lung.org/blog/illnesses-vaping-causes>.

⁷⁰ *Id.*

disease.”⁷¹ The chemicals in vape aerosols “aren’t chemicals that belong in your lungs. Vaping is essentially a slow form of chemical exposure. It’s death by a thousand cuts.”⁷²

77. From the standpoint of an individual consumer the risks and likely future consequences are tragic. From the standpoint of public health, the results are catastrophic. It took five decades of public health initiatives, government intervention, impact litigation, consumer education and tobacco regulation to finally see a significant drop in cigarette smoking and nicotine addiction. By 2014, when youth vaping first began taking off, the number of adults that reported using cigarettes had dropped to 18%, and the number of adult smokers who reported quitting smoking increased from 50.8% in 2005 to 59% by 2016.⁷³ By 2014, teen smoking also hit a record low.⁷⁴ In June 2014, the Centers for Disease Control and Prevention (“CDC”) reported that “in achieving a teen smoking rate of 15.7 percent, the United States has met its national Healthy People 2020 objective of reducing adolescent cigarette use to 16 percent or less.”⁷⁵

78. The United States Surgeon General reported in 2014 that: “We are at a historic moment in our fight to end the epidemic of tobacco use that continues to kill more of our citizens than any other preventable cause. The good news is that we know which strategies work best. By

⁷¹ *Id.*

⁷² *Id.*

⁷³ CDC, *Trends in Cigarette Smoking Among High School Students—United States, 1991–2001*, 51 *Morbidity & Mortality Wkly. Rep.* 409 (May 17, 2002), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5119a1.htm>; Teresa W. Wang et al., *Tobacco Product Use Among Adults—United States, 2017*, 67 *Morbidity & Mortality Wkly. Rep.* 1225 (Nov. 9, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6744a2-H.pdf>; U.S. Dep’t of Health & Human Servs., *The Health Consequences of Smoking—50 Years of Progress* (2014), https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

⁷⁴ Press Release, CDC, *Cigarette Smoking among U.S. high school students at lowest level in 22 years* (June 12, 2014), <https://www.cdc.gov/media/releases/2014/p0612-YRBS.html>.

⁷⁵ *Id.*

applying these strategies more fully and more aggressively, we can move closer to our goal of making the next generation tobacco-free.”⁷⁶

79. Youth vaping, which is currently driven by the proliferation and sale of flavored disposable e-cigarettes, like the ones distributed and sold by Defendants, has undone all of this.

B. E-cigarette Marketing Targets Youth

80. The e-cigarette industry employs many of the marketing strategies used decades ago by cigarette manufacturers to target young people, honing them to be even more effective and destructive: (i) offering a wide variety of kid-friendly fruit and candy flavors, such as Blueberry Mint, Orange Mango Watermelon, Strawberry Ice and Bubble Gum Freeze;⁷⁷ (ii) pervasive advertising campaigns that include bright and colorful images of attractive young people, creating the false impression that their products are harmless fun;⁷⁸ and (iii) combining established marketing strategies with technological appeal by designing devices that are both slick and easy to conceal so they can be used without detection or interruption by adults, like parents or school officials.⁷⁹

⁷⁶ U.S. Dep’t of Health & Human Servs. *Let’s Make the Next Generation Tobacco-Free: Your Guide to the 50th Anniversary Surgeon General’s Report on Smoking and Health* (2014), <https://www.hhs.gov/sites/default/files/consequences-smoking-consumer-guide.pdf>

⁷⁷ Truth Initiative, *Four marketing tactics e-cigarette companies use to target young people* (Feb. 19, 2026), <https://truthinitiative.org/research-resources/tobacco-industry-marketing/4-marketing-tactics-e-cigarette-companies-use-target>.

⁷⁸ Karma McKelvey et al., *Youth Say Ads for Flavored E-liquids are for Them, Tobacco Control Addict.* (2018) at 1, <https://pmc.ncbi.nlm.nih.gov/articles/PMC6663555/> (noting that results of survey show that youth believe advertisements for flavored e-liquids/e-cigarettes target them, not adults).

⁷⁹ FDA, *FDA Warns Retailers to Stop Selling Illegal Youth-Appealing E-Cigarettes Disguised as Everyday Items* (Nov. 16, 2023), <https://www.fda.gov/tobacco-products/ctp-newsroom/fda-warns-retailers-stop-selling-illegal-youth-appealing-e-cigarettes-disguised-everyday-items>.

81. Decades of public health research and experience establishes what anyone with children intuitively knows—sweet flavors attract kids.⁸⁰ Nationally representative survey data from the CDC shows that more than four-fifths of youth e-cigarette users chose flavored products, a finding repeated year after year.⁸¹ Health experts have repeatedly warned that flavors such as fruit, candy, and dessert are one of the primary drivers of experimentation and continued use of tobacco products among adolescents.⁸² Moreover, numerous public health studies have demonstrated that flavor descriptors such as “cotton candy,” “blueberry mint,” “blue razz ice,” and “watermelon ice” are powerful marketing tools that carry a specific allure for kids and teenagers.⁸³ These studies emphasized that when used with tobacco products, such flavors signal to youth that the product is “fun,” “sweet,” and “harmless,” thereby deceiving them about the risks of nicotine.⁸⁴

⁸⁰ Jan Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023*, 72 *Morbidity & Mortality Wkly. Rep.* 123 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm>.

⁸¹ CDC, *E-Cigarette Use Among Youth* (Oct. 17, 2024) <https://www.cdc.gov/tobacco/e-cigarettes/youth.html> (showing 87.6 % flavored product use among current youth e-cigarette users).

⁸² Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among U.S. Youth Aged 12–17 Years, 2013–2014* (Nov. 3, 2015), <https://jamanetwork.com/journals/jama/fullarticle/2464690>.

⁸³ Linnea Laestadius et al., *Themes in E-Liquid Concept Names as a Marketing Tactic: Evidence from Pre-market Tobacco Product Applications in the USA*, 33 *Tobacco Control* 412 (2022), <https://pmc.ncbi.nlm.nih.gov/articles/PMC10043038/>; Truth Initiative, *Young E-Cigarette Users Report Widespread Use of Flavor Blends and Concept Flavors* (Jan. 27, 2023), <https://truthinitiative.org/research-resources/emerging-tobacco-products/young-e-cigarette-users-report-widespread-use-flavor>.

⁸⁴ Rachel Boykan, et al., *Flavored E-Cigarettes and Adolescent Health* (July 19, 2022), <https://www.massgeneral.org/assets/mgh/pdf/children/flavored-e-cigs-and-adolescent-health-white-paper.pdf>.

In fact, adolescents often believe that e-cigarettes are safer than traditional cigarettes, in part because the flavor profiles suggested familiarity with foods and candies.⁸⁵

82. Many youth users also frequently lack awareness that e-cigarettes contain nicotine. Surveys conducted by federal public health authorities show that over 50% of adolescents did not believe that e-cigarettes contained nicotine.⁸⁶

83. Upon information and belief, the Retail Defendants exercised control over, or failed to impose reasonable restrictions on, the merchandising and placement of flavored disposable e-cigarettes within their retail convenience stores around New Mexico. Placing flavored e-cigarettes in close proximity to everyday consumer items like candy, snack foods, or sweetened beverages can be suggestive of nicotine devices being as safe and commonly used as ordinary retail merchandise.

84. Where flavored disposable ENDS are placed next to or alongside non-age-restrictive impulse purchase items, its presence could become diminished as an age-restricted, harmful product from common products. This type of merchandising practice which fails to clearly separate flavored e-cigarettes from commonly encountered products risks communicating a sense of normalcy around its availability to minors. Moreover, many of the stores where the Retail Defendants sell these products are located near schools, playgrounds, youth sports facilities, residential neighborhoods, and routes commonly traveled by minors. A 30-city study by the

⁸⁵ Samir. S. Soneji et al., *Use of Flavored E-Cigarettes Among Adolescents, Young Adults, and Adults: What We Know and What We Need to Know*, 134 *Pub. Health Rep.* 1 (2019), <https://journals.sagepub.com/doi/10.1177/0033354919830967>.

⁸⁶ Truth Initiative, *JUUL e-cigarettes gain popularity among youth, but awareness of nicotine presence is low* (Nov. 21, 2024), <https://truthinitiative.org/research-resources/emerging-tobacco-products/juul-e-cigarettes-gain-popularity-among-youth-but-awareness-of-nicotine-presence-is-low>.

Campaign for Tobacco-Free Kids found that in the cities surveyed, at least 63% of public schools were within 1,000 feet of a tobacco retailer.⁸⁷ This is also true for some locations in New Mexico. For example, in Albuquerque alone, there are Circle K stores near schools including: Circle K at 300 Lomas Blvd NE, Circle K at 1425 University Blvd NE, and Alon at 2120 Broadway Blvd SE, each of which is within easy walking distance (1000 ft) from a school.

85. Marketing is also now about online presence and performance, with influencers and social media helping to popularize e-cigarette use and addiction.⁸⁸

86. Modern e-cigarettes are also small, sleek, and easily concealable, thereby contributing to their youth appeal. The design of the products supplied and sold by Defendants enables minors to hide the devices in pockets, backpacks, clothing, or school supplies. Their lack of odor compared to combustible tobacco further enhances concealability in schools and public spaces. Research widely available to the public demonstrates that the easy concealability of flavored disposables is a major reason for their adoption by youth. These devices can be hidden in pencil cases, sleeves, or waistbands, and can be used between classes or in school bathrooms with minimal detection.

87. Accordingly, flavored disposable e-cigarettes carry all the hallmarks of a nicotine-containing product that is a risk to youth. While the advertising and marketing varies between different products, all of it serves to reinforce a common image and message: that disposable,

⁸⁷ Press Release, Campaign for Tobacco Free Kids, *New 30-City Study: Over 60% of Public Schools Are Within 1,000 Feet of Tobacco Retailers* (Aug. 12, 2020), https://www.tobaccofreekids.org/press-releases/2020_08_12_tobaccoretailers.

⁸⁸ Julia Vasey et al., *E-Cigarette brands and social media influencers on Instagram: a social network analysis*, 32 *Tobacco Control* e184, <https://tobaccocontrol.bmj.com/content/32/e2/e184>.

flavored e-cigarettes are safe and fun. These advertising materials collectively establish a social norm that e-cigarettes, like treats, toys, and cartoons, are appropriate for children.

88. The e-cigarettes distributed and sold by the Defendants have high youth appeal. These flavored e-cigarette products include fruit, candy, dessert, and beverage flavors such as Blue Razz Ice, Cotton Candy, Cherry, Strawberry Mango, Watermelon Ice, Strawberry. These flavor profiles mirror popular children’s candies, sports drinks, soft drinks, and frozen treats rather than adult tobacco products.

89. As noted above, public health experts have identified flavors as one of the primary reasons minors initiate e-cigarette use.⁸⁹ The flavor names distributed and sold by Defendants align closely with flavor categories that are repeatedly documented as having the highest youth appeal.

90. The products sold and distributed by Defendants employ visual and stylistic cues that mimic candy, soda, and children’s snack packaging.⁹⁰ Many products feature bright neon colors, bubble lettering, pastel gradients, or stylized fruit graphics. These presentation strategies mirror historical cigarette and cigarillo marketing that was targeted at youth and young adults, but the newer e-cigarette designs are more explicitly candy-like and colorful:

Juicehead (Alon)

⁸⁹ Bridget K. Ambrose et al., *Flavored Tobacco Product Use Among U.S. Youth Aged 12–17 Years*, supra note 82.

⁹⁰ U.S. Food & Drug Admin., *FDA Warns Retailers to Stop Selling Illegal Youth-Appealing E-Cigarettes Disguised as Everyday Items* (Nov. 16, 2023), <https://www.fda.gov/tobacco-products/ctp-newsroom/fda-warns-retailers-stop-selling-illegal-youth-appealing-e-cigarettes-disguised-everyday-items>.





Kangvape (Alon)



360° **40K** **KangVAPE®**

HEAVEN IN A CUP

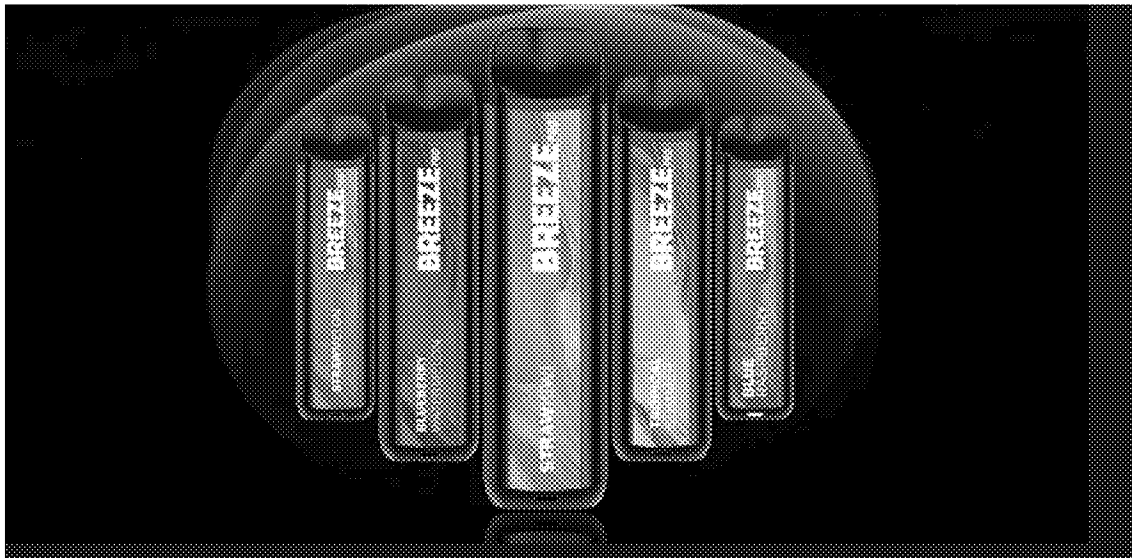
IP67
 360°
 23C
 950mAh
 50mg

KangVAPE®

TC8000

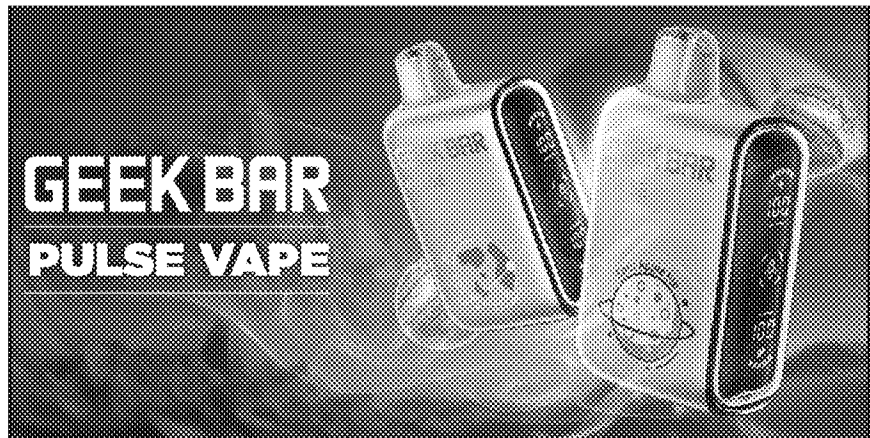
IP67
 800mAh
 23C
 800mg

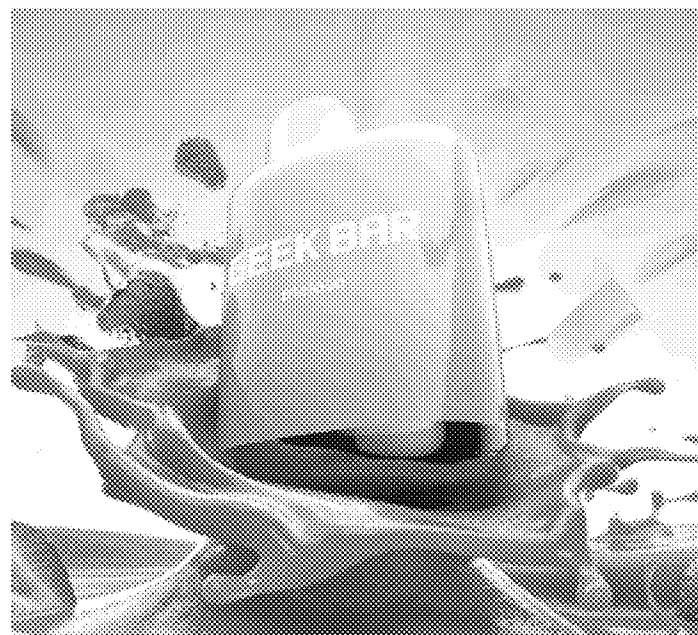
Breeze (Circle K)





Geek Bar (Alon)





91. Defendants chose to distribute and sell these products and, for the Retail Defendants, display them in their stores, intentionally capitalizing on the popularity of brands whose online presence is dominated by youth-oriented imagery, and further fueling the attractiveness of these products to minors in New Mexico.

92. When the marketing and design strategies used to sell cereals, snacks, and gadgets to children are applied to e-cigarettes, the results are predictable and problematic. According to national data, in 2024, 5.9% or 1,630,000 middle and high school students reported current

e-cigarette use, with 3.5% of middle school and 7.8% of high school students reporting use within the past 30 days.⁹¹

93. More than 1 in 4 (26.3%) of current youth e-cigarette users reported using an e-cigarette product daily. More than 1 in 3 (38.4%) youth e-cigarette users reported using e-cigarettes at least 20 of the last 30 days. More than half (55.6%) of youth who are current e-cigarette users reported using Disposable Vapes, followed by prefilled or refillable pods or cartridges (15.6%) and tanks or mod systems (7.0%).⁹²

94. Of greatest concern here, more than 8 out of 10 current e-cigarette users (87.6%) used Flavored E-Cigarettes, with fruit flavors being the most popular, followed by candy, desserts, or other sweets, mint, and menthol. Over half (54.6%) of students currently using e-cigarettes reported using flavors with “ice” or “iced” in the name (such as “lush ice” or “watermelon ice,” sold by the defendants).⁹³ The use of fruity and sweet flavors is undeniably attractive to youth: “[A]mong youth age 12 to 17 who reported using an ENDS product, 93.2 percent reported that their first ENDS use was with a flavored ENDS product.”⁹⁴

⁹¹ Eunice Park-Lee et al., *Tobacco Product Use Among Middle and High School Students—National Youth Tobacco Survey, United States, 2024*, 73 *Morbidity & Mortality Wkly. Rep.* 941 (2024), <https://www.cdc.gov/mmwr/volumes/73/wr/mm7341a2.htm>.

⁹² Marissa Cooper et al., *Notes from the Field: E-Cigarette and Nicotine Pouch Use Among Middle and High School Students—United States, 2024*, 73 *Morbidity & Mortality Wkly. Rep.* 764 (2024), <https://www.cdc.gov/mmwr/volumes/73/wr/mm7335a3.htm>.

⁹³ Cooper et al., *supra* note 92; FDA, *Results from the Annual National Youth Tobacco Survey* (Jan. 22, 2025), <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey-nyts>.

⁹⁴ Brian L. Rostron et al., *Prevalence and Reasons for Use of Flavored Cigars and ENDS Among US Youth and Adults: Estimates from Wave 4 of the PATH Study, 2016-2017*, 44 *Am. J. Health Behav.* 76 (2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6918456/>.

95. New Mexico’s own state-level survey data have documented similar trends. Reports disseminated by the New Mexico Department of Health have highlighted the predominance of flavored e-cigarettes use among minors, the early age of initiation, and the widespread presence of flavored disposables in schools.⁹⁵

96. Because flavored e-cigarettes are almost always disposable products, it is not surprising that disposable e-cigarettes are driving e-cigarette sales. The CDC Foundation monitors e-cigarette sale trends based on scanner sales data from convenience stores, gas stations, and other retail store chains, and reports that as of June 2024, nearly 6,300 different e-cigarette products were available for purchase in the United States, with disposable e-cigarettes dominating the market.⁹⁶ E-cigarettes with pre-filled cartridges or pods made up 41.8% of sales in traditional retail outlets, while disposable vapes made up the majority at 58.1%.⁹⁷ Upon information and belief, these numbers likely understate the proportion of disposable vape sales. The CDC Foundation report does not include online and vape shop sales data and further undercounts disposable products by relying on an outdated five-to-one conversion ratio of refill units to disposables, a

⁹⁵ N.M. Dep’t of Health, *Youth E-Cigarette Prevalence, NM-IBIS*, <https://ibis.doh.nm.gov/indicator/summary/TobaccoSmokeECigYouth.html> (reporting 34% of high school students used e-cigarettes in 2019); N.M. Dep’t of Health & N.M. Pub. Educ. Dep’t, *Youth Risk & Resiliency Survey (YRRS)*, <https://www.nmhealth.org/about/erd/ibeb/yrrs> (last visited Mar. 16, 2026); J. Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students — 2023*, CDC MMWR, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm> (finding 89.4% of youth users reported flavored e-cigarettes).

⁹⁶ CDC Found., *Monitoring Sales: National Trends* (June 2024), https://www.cdcfoundation.org/MonthlyECigaretteDataBrief_06.16.2024.pdf.

⁹⁷ CDC Foundation, *Monitoring E-Cigarette Trends in the United States: Urgent Action Needed to Protect Kids from Flavored E-Cigarettes* (Nov. 2024), <https://tobacomonitoring.org/wp-content/uploads/2024/11/2024MonitoringE-CigaretteTrendsUS-1.pdf>.

methodology that fails to account for the increasing size and nicotine capacity of modern disposable e-cigarettes.

C. The E-cigarette Supply Chain

97. Youth (users between the ages of 15-20), including New Mexico youth, obtain e-cigarettes from a variety of sources. The most common is “social sourcing”—obtaining e-cigarettes through friends, including older friends and adult friends, older siblings, adult relatives, and other social contacts. Social sourcing accounts for an estimated 57% of the e-cigarettes used by youth.⁹⁸ This underscores the importance of eliminating the general availability of flavored disposable e-cigarettes, as the FDA has sought to do by banning the sales of these products in the United States; because sales to adults will still result in e-cigarettes ending up in the hands of children.

98. While social sourcing is a popular channel through which youth obtain e-cigarettes, a significant portion, approximately 43%, also obtain e-cigarettes in retail stores.⁹⁹

99. In addition, social media is becoming an important way in which children get exposed to e-cigarettes., as well as get access to these products.¹⁰⁰ Multiple studies show that Instagram, TikTok, Snapchat, and YouTube contain thousands of posts promoting flavored e-cigarette products with bright colors, fruit images, humor, and aesthetic themes that appeal to youth. Because of the nature of social media these posts are viewed by children everywhere,

⁹⁸ Elizabeth K. Do et al., *Underage Youth Continue to Obtain E-Cigarettes from Retail Sources in 2022: Evidence from the Truth Continuous Tracking Survey*, 20 *Int'l J. Env't Rsch. & Pub. Health* 1399 (2023), <https://doi.org/10.3390/ijerph20021399>.

⁹⁹ *Id.*

¹⁰⁰ Gaiha SM, et al., *E-cigarette Access and Age Verification Among Adolescents, Young Adults and Adults*, Sept. 2025, at 1, <https://pubmed.ncbi.nlm.nih.gov/39515208/>.

including in New Mexico. Peer influencers, often in their teens or early twenties, promote e-cigarettes using music, trending dances, and stylized imagery.

100. While Defendants may not have created this social media content, they are taking advantage of it by supplying some of the flavored disposable e-cigarettes with high youth appeal featured prominently on the internet.

101. Defendants sold numerous brands, such as Lost Mary, Breeze, and Kangvape, that had dominant social-media presences featuring youth-oriented themes.¹⁰¹ For example, research into Lost Mary found that it had “high youth appeal in the United States,” was advertised with youth friendly flavors, vibrant colors, and young models, and was the subject of FDA warning letters issued to retailers for selling this illegal, unauthorized product that “was identified as popular for youth-appealing”.¹⁰²

¹⁰¹ Scott I. Donaldson et al., *Evaluating Policy Compliance Among Leading Tobacco Brands on Instagram*, Tobacco Control, Feb. 2026, at 1, <https://pubmed.ncbi.nlm.nih.gov/41592997/>.

¹⁰² Michelle Jeong et al., *Monitoring youth-appealing advertising on social media for the e-cigarette brand Lost Mary*, Tobacco Prevention and Cessation, Nov. 2024 at 1, <https://www.tobaccopreventioncessation.com/Monitoring-youth-appealing-advertising-on-social-media-for-the-e-cigarette-brand.195631.0.2.html>; FDA, *FDA Issues Warning Letters to 80 Retailers for Selling Unauthorized Elf Bar and Lost Mary E-Cigarettes* (July 25, 2024), <https://www.fda.gov/tobacco-products/ctp-newsroom/fda-issues-warning-letters-80-retailers-selling-unauthorized-elf-bar-and-lost-mary-e-cigarettes>.

LOSTMARY.Official
 Dec 17, 2023 · 🌐

New series of LOST MARY launching!

QM600 features with mesh coil and 18 flavours to enjoy! Check on our website and see which flavour will be your next must-have!

...

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#lostmary #qm600 #newlaunch 🚬



18+ Existing Smokers & Vapers ONLY
 WARNING: This product may contain nicotine. Nicotine is an addictive chemical.

LOSTMARY.Official
 Dec 30, 2023 · 🌐

Will QM600 be your party must-have? 🚬

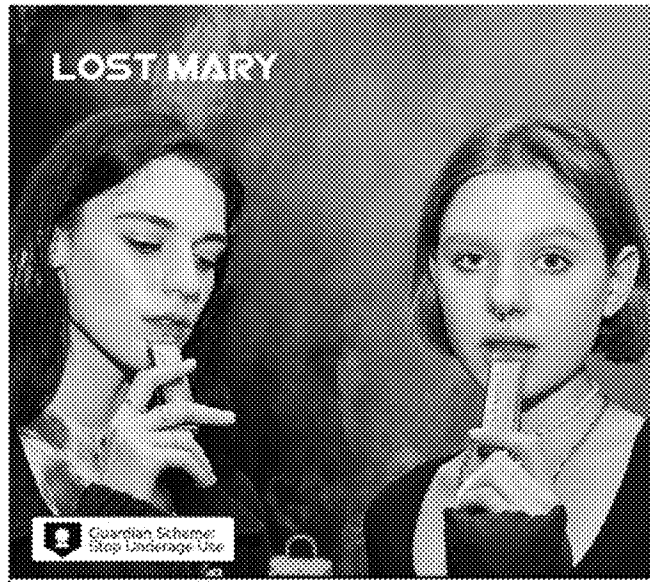
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#lostmary #qm600



18+ Existing Smokers & Vapers ONLY
 WARNING: This product may contain nicotine. Nicotine is an addictive chemical.

102. In addition, Defendants are supplying an illegal market of private sales to youth. On information and belief, private sellers selling to youth are purchasing products from retailers and then reselling it for a profit.¹⁰³ Defendants do not control the internet, but by distributing and selling flavored disposable products that are re-sold to youth, they are feeding and profiting from illicit demand.

¹⁰³ George Pearson et al., 'Discreet shipping' on TikTok Enables Selling of E-cigarettes to Youth, 34 Tobacco Control 1 (2024), <https://tobaccocontrol.bmj.com/content/34/2/274>.

103. For example, J&M Distributors acknowledged that “Social media, especially TikTok, plays a huge role in vaping’s popularity among younger audiences. Various social media content, including trendy vape trick videos, unboxing footage, and aesthetically pleasing vape showcase videos, drives younger consumers to choose compact pod systems. Through these platforms, users receive entertainment while their product choices get influenced and their desired trends become viral sensations.”¹⁰⁴ The company also discussed the impact of online conversations on retail purchases, highlighting that social media “creates a direct feedback loop: social media builds hype → demand increases → shops stock the product → more people post about it → hype grows” and that social media “has become a powerful driver of consumer behaviour in the vaping industry.”¹⁰⁵

104. The supply chain operated by Defendants mobilized flavored disposable e-cigarettes from out of state wholesalers, through transportation channels, into New Mexico retail distribution, and ultimately into the hands of New Mexico consumers, including New Mexico youth.

105. Defendants actions have made clear they intended to maintain continuous availability of flavored e-cigarettes in New Mexico stores.

¹⁰⁴ J&M Distributors, *Inside the Pod: Why Gen Z Is Obsessed with Compact Vapes* (May 11, 2025), <https://jm-distro.com/blogs/news/inside-the-pod-why-gen-z-is-obsessed-with-compact-vapes>.

¹⁰⁵ J&M Distributors, *How Social Media Trends Are Influencing Vape Buying Habits?* (Aug. 11, 2025), <https://jm-distro.com/blogs/news/how-social-media-trends-are-influencing-vape-buying-habits>.

D. Impacts on New Mexico

106. The widespread availability of flavored, disposable e-cigarettes has serious consequences for both New Mexico’s children – who are at risk of developing a life-long addiction to nicotine – and for the State as a whole. Youth e-cigarette use impacts New Mexico’s schools, its public health system, its environment, and its finances. This is not a matter of individual consumer choice; these products are illegal under state law, are marketed deceptively, and are causing real harm to the State, in addition to being unauthorized under federal law due to their high youth appeal.

1. New Mexico Schools

107. The wide availability of flavored disposable e-cigarettes, including those e-cigarettes sold by defendants, have contributed to a lasting problem in New Mexico schools. Principals, teachers, and school resource officers report widespread vaping in hallways, bathrooms, athletic facilities, and even classrooms.¹⁰⁶

108. Administrators have recovered flavored disposable e-cigarettes from lockers, backpacks, school grounds, sports practice areas, parking lots, and school trash bins.

109. Students have used flavored disposable e-cigarettes inside school bathrooms so frequently that schools have had to lock or restrict bathroom access, rotate staff to monitor restrooms, and implement new supervision systems. Some schools, like Red Mountain Middle

¹⁰⁶ Truth Initiative, “*It’s Everywhere*” *Middle and High School Educator Perspectives on Nicotine Use in Schools* (Sept. 3, 2025), <https://truthinitiative.org/sites/default/files/media/files/2025/09/Educator%20perspectives%20on%20nicotine%20use%20in%20schools%202025.pdf>; N.M. Dep’t of Health, *Emerging Nicotine Products* at 11, <https://web.ped.nm.gov/wp-content/uploads/2025/01/Emerging-Nicotine-Products-and-Vaping.pdf>.

School in Luna County, have installed vape detectors¹⁰⁷—specialized sensors designed to detect aerosolized nicotine compounds—because traditional disciplinary methods have proven insufficient to address the scale of student vaping.

110. These detectors, and the training required to use them, impose direct financial costs on school districts.¹⁰⁸ Many schools have reallocated funds from academic programs, afterschool activities, or equipment budgets to purchase vape detectors, security cameras, filtered ventilation systems, or other monitoring technologies.¹⁰⁹ These expenditures reduce resources available for education.

111. Educators and research reports describe large number of students exhibiting behavior consistent with nicotine withdrawal during school hours, presenting with headaches, irritability, restlessness, inability to concentrate, anxiety, and difficulty remaining in class.¹¹⁰

112. School counselors and behavioral health personnel have also reported increased caseloads involving nicotine dependence. Students have disclosed using flavored disposable

¹⁰⁷ Annya Loya, *Schools add vape detectors as part of safety plan*, Deming Headlight (Aug. 1, 2023), <https://www.demingheadlight.com/2023/08/01/schools-add-vape-detectors-part-safety-plan>; Grant McGee, *Vape detectors on their way to Clovis secondary schools*, The Eastern N.M. News (Aug. 27, 2022), <https://www.easternnewmexiconews.com/story/2022/08/28/news/vape-detectors-on-their-way-to-clovis-secondary-schools/172711.html>.

¹⁰⁸ Caitlynn Peetz Stephens, *Schools Are Installing Vape Detectors and Using Juul Settlement Money to Pay for It*, Educ. Week (Apr. 19, 2023), <https://www.edweek.org/leadership/juul-settlements-lead-more-schools-to-install-vape-detectors/2023/04>.

¹⁰⁹ Associated Press, *US schools invest millions in surveillance technology to combat teen vaping epidemic*, Fox News (Jan. 26, 2024), <https://www.foxnews.com/us/us-schools-invest-millions-surveillance-technology-combat-teen-vaping-epidemic>.

¹¹⁰ CDC, *7 Common Withdrawal Symptoms*, <https://www.cdc.gov/tobacco/campaign/tips/quit-smoking/7-common-withdrawal-symptoms/index.html> (last visited Mar. 17, 2026).

e-cigarettes secretly during class, leaving school property to vape, or engaging in risky behavior to obtain devices.¹¹¹

113. Some school districts have created diversion and cessation programs aimed specifically at youth vaping.¹¹² These programs require dedicated staff time, materials, parent consultations, educational sessions, and behavioral interventions. The presence of these programs demonstrates that flavored disposable e-cigarettes are placing burdens on schools beyond traditional tobacco-use issues.

114. Many school districts have documented the need for additional staff training to help teachers and administrative personnel recognize vaping behavior. Training includes identifying flavored disposable devices disguised as highlighters, USB drives, pens, or cosmetics¹¹³—designs that mirror the sleek, compact e-cigarettes sold by Defendants.

2. New Mexico Public Health System

115. Youth vaping has caused measurable strain on New Mexico’s healthcare and public-health systems. Adolescents addicted to flavored disposable e-cigarettes may present with

¹¹¹ Press Release, Truth Initiative, “It’s Everywhere”: Middle and High School Educators Sound Alarm Perceiving Vaping Disruption in Schools (Sept. 4, 2025), <https://truthinitiative.org/press/press-release/its-everywhere-middle-and-high-school-educators-sound-alarm-pervasive-daily>.

¹¹² Valley High School, *Crossroads Program* <https://valley.aps.edu/programs/crossroads> (last visited Mar. 17, 2026) (describing substance-use prevention and intervention program, including tobacco/nicotine); N.M. Pub. Educ. Dep’t, *E-Cigarettes and Vaping*, <https://web.ped.nm.gov/bureaus/safe-and-healthy-schools/e-cigarettes-and-vaping> (last visited Mar. 17, 2026).

¹¹³ FDA, *Retailers Warned to Stop Selling Illegal E-Cigarettes Resembling Youth-Appealing Characters, School Supplies, Toys, and Drinks* (Aug. 2023), <https://www.fda.gov/tobacco-products/ctp-newsroom/retailers-warned-stop-selling-illegal-e-cigarettes-resembling-youth-appealing-characters-school>.

symptoms that require attention for nicotine intoxication including: respiratory symptoms, gastrointestinal issues, cardiovascular complaints, or exacerbated anxiety.

116. New Mexico’s Department of Health has conducted vaping-related surveillance to document vaping-associated illness. Publicly available analyses from poison-control systems show an increase in calls involving e-cigarette-related exposures among minors. New Mexico’s Poison and Drug Information Center has received calls involving youth who ingested, inhaled, or were otherwise exposed to flavored e-cigarette liquids or aerosol.¹¹⁴ Poison center data and national surveillance systems have indicated rising trends associated with disposable vaping devices.¹¹⁵

117. Clinicians treating adolescent e-cigarette users have described patterns of dependence and withdrawal consistent with tobacco addiction. Quitting vaping can lead to varying withdrawal symptoms such as difficulty concentrating, irritability, headaches, sleep disruptions, and cravings that interfere with daily functioning. These symptoms may negatively impact school performance, give rise to behavioral issues, and are commonly addressed through school counseling and support services.¹¹⁶

¹¹⁴ CDC, *Notes from the Field: E-Cigarette-Associated Cases Reported to Poison Centers—United States, April 1, 2022–March 31, 2023*, 72 MMWR Morb. Mortal. Wkly. Rep. 694 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/mm7225a5.htm>.

¹¹⁵ 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, 694–95 (2023), <https://www.cdc.gov/mmwr/volumes/72/wr/mm7225a5.htm>.

¹¹⁶ Nicholas Chadi, et al., *Understanding the Implications of the “Vaping Epidemic” Among Adolescents and Young Adults: A Call for Action*, 40 *Subst. Abuse* 7, 8–9 (2019) (summarizing that nicotine withdrawal symptoms in youth appear earlier and more frequently than in adults and include headaches, irritability, sleep difficulty, difficulty concentrating, and increased appetite; discussing youth vulnerability to nicotine addiction), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6583912/>; Craig T. Dearfield, et al., *E-Cigarette Initiation Predicts Subsequent Academic Performance Among Youth: Results from the PATH Study*, 153 *Prev. Med.* 106781 (2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8595658/>

118. Public-health agencies have responded by increasing their expenditures on anti-vaping campaigns, prevention education, digital outreach, community partnerships, and cessation programs tailored to youth. These programs require funding, staff, and resources that would not be necessary but for the proliferation of flavored disposable e-cigarette products in New Mexico.

119. State and local health departments have had to prepare educational materials, respond to public inquiries, conduct community presentations, and maintain surveillance on adolescent vaping trends. These activities consume limited public-health capacity.

3. Environmental Impacts

120. Flavored disposable e-cigarettes sold by Defendants exacerbate environmental hazards due to their single-use nature, lithium-ion batteries, plastic housings, nicotine residues, and lack of proper disposal mechanisms. These devices accumulate rapidly in public waste streams as consumption increases.¹¹⁷ Public health and environmental guidance documents and reporting describe schools and local governments increasingly confronting discarded devices and associated waste in facilities and waste systems, including through confiscation and collection. New Mexico's guidance on hazardous-waste treats nicotine waste as acutely hazardous, with municipal waste programs similarly directing public agencies to use permitted vendors to comply with disposal.¹¹⁸

(analysis finding that initiating e-cigarette use was associated with lower subsequent academic performance).

¹¹⁷ Pub. Health L. Ctr. At Mitchell Hamline Sch. of Law, *Disposing of E-Cigarette Waste: FAQ for Schools and Others* at 1–2, <https://www.publichealthlawcenter.org/sites/default/files/resources/Disposing-of-E-Cigarette-Waste-FAQ-for-Schools-and-Others.pdf> (stating that institutions like schools “have to deal with increasing amounts of dangerous waste” from e-cigarette devices, pods, and e-liquids, and that when schools confiscate and dispose of them, they are likely hazardous waste requiring compliant handling).

¹¹⁸ N.M. Env't Dep't, *Fact Sheet for Electronic Cigarette (E-Cigarette) Retailers* at 1–2 (Feb. 6, 2017) https://www.env.nm.gov/wp-content/uploads/sites/12/2016/11/FACT_SHEET_vape-shops-2017-2-6-FINAL.pdf (stating that waste nicotine is “acutely toxic hazardous waste” and

121. Disposable e-cigarettes contain hazardous materials that cannot be discarded safely in standard trash without posing chemical and fire risks. Public guidance from environmental agencies has warned that e-cigarettes pose waste-management challenges and should be handled with caution.

122. The improper disposal of flavored disposable e-cigarettes contributes to environmental contamination. Plastics and nicotine residues may enter landfills or water systems. Lithium-ion batteries present risks of fire, chemical leakage, and soil contamination¹¹⁹.

123. Municipal sanitation and school custodial workers must devote time and resources to collecting, storing, and disposing of discarded e-cigarettes safely. These tasks require gloves, specialized receptacles, and training, increasing maintenance costs for overburdened public institutions.

124. As youth use has grown, so too has the environmental toll of disposable e-cigarettes. These harms were foreseeable and avoidable. Defendants, who sold tens of thousands of disposable devices in New Mexico, materially contributed to this waste stream.

4. Enforcement

125. State and local agencies have also incurred investigative and enforcement costs associated with responding to the proliferation of flavored disposable e-cigarettes.¹²⁰ These costs

cannot be disposed of with municipal solid waste and must be managed through permitted hazardous-waste disposal).

¹¹⁹ EPA, *How to Safely Dispose of E-Cigarettes: Information for Schools and Small Businesses* (Mar. 13, 2026), <https://www.epa.gov/hw/how-safely-dispose-e-cigarettes-information-schools-and-small-businesses>.

¹²⁰ Tax'n & Revenue Dep't, *Tax Fraud Investigations Division*, <https://www.tax.newmexico.gov/about-us/tax-fraud-investigations-division> (last visited Mar. 17, 2026).

include field investigations, staff hours, purchase of evidence, administrative review, contractor support, and litigation expenses.

D. Ongoing Harm, Foreseeability, and the Need for Judicial Intervention

126. The harms described in this Complaint are ongoing and continue to affect New Mexico residents, schools, health systems, and public institutions. Flavored disposable e-cigarettes remain widely available in convenience stores and other retail environments accessible to minors. As long as these products remain in circulation, the State will continue to face escalating youth addiction, increased public health burdens, and growing environmental waste.

127. Youth vaping remains a significant concern in New Mexico. Recent reports from schools, parents, youth advocates, and local law enforcement indicate that adolescents continue to use flavored disposable e-cigarettes at high rates. These reports describe regular confiscations of flavored disposables in school bathrooms, hallways, athletic fields, and parking lots. School administrators have also reported increased disciplinary incidents linked to flavored disposable e-cigarette use.

128. Students who have developed nicotine dependence continue to experience withdrawal symptoms during school hours, which can lead to classroom disruptions, behavioral problems, and declines in academic performance. Teachers and administrators report that these symptoms interfere with students' ability to focus, remain in class, and participate fully in educational activities.

129. School districts have also continued to spend financial resources on vape detectors, staff training, parent outreach, student education, cessation programming, and facility

maintenance. These expenditures are ongoing and will persist unless flavored disposable e-cigarettes are removed from youth accessible retail channels.

130. Health systems in New Mexico continue to observe cases involving adolescent nicotine dependence, respiratory complaints related to vaping, gastrointestinal symptoms, and acute nicotine exposure. Emergency rooms and urgent care centers in multiple counties report continued encounters with young patients experiencing symptoms linked to flavored e-cigarette use.

131. Public health agencies continue to allocate resources to address youth vaping. These resources include staff time for outreach and education, public information campaigns, data gathering, school support, and other preventative measures. These costs are not incidental. They represent a continuing diversion of public resources to address harms that were foreseeable to Defendants.

IV. CAUSES OF ACTION

COUNT I

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D)

Unconscionable Trade Practices by Encouraging Youth Nicotine Addiction

(Against All Defendants)

132. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

133. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

134. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

135. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. Because of the highly addictive nature of Defendants e-cigarettes, and the recognized appeal of these products to youth, Defendants distribution and sales practices have contributed to an alarming increase in youth tobacco product use and addiction. Defendants had a non-delegable duty to guard against and prevent access to unregulated, harmful devices that were manufactured and marketed to attract underage consumers. Defendants engaged in unconscionable trade practices as defined by NMSA 1978, § 57-12-2(E), including but not limited to:

A. The distribution and sale of e-cigarettes with flavors including candy, fruit, and desert flavors known to appeal to youth.

B. The distribution and sale of e-cigarettes that were marketed using bright colors and imagery designed to mimic products that appeal to children while minimizing the harm associated with tobacco products.

C. The distribution and sale of e-cigarettes that were chemically engineered to disable the body's physical defenses by masking the harshness of nicotine vapor, thereby increasing both the adverse health consequences and the risk of addiction.

D. The distribution and sale of e-cigarettes that were designed to be sleek and easily concealable, facilitating surreptitious use by youth.

E. The failure to warn children and their parents that these products are known to be appealing to youth, and the harmful consequence of nicotine on the developing adolescent brain.

136. Defendants' unfair, deceptive, and unconscionable practices caused and continue to cause injury to the State of New Mexico and its residents, including but not limited to: (a) increased public health expenditures; (b) school enforcement and prevention costs; (c) environmental remediation expenses; and (d) diversion of state resources to address youth nicotine addiction.

137. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

138. Defendants' unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

139. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

140. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

141. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

142. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

COUNT II

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D) Unconscionable Trade Practices by the Sale and Distribution of an Unregulated and Dangerous Product (Against All Defendants)

143. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

144. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

145. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

146. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. These products pose serious potential dangers to consumers and

studies show flavored disposable products contain harmful chemicals. They also have not been reviewed and authorized by the FDA. Defendants had a non-delegable duty to guard against and prevent access to tobacco products which are potentially dangerous in addition to products whose sale in the United States has been prohibited by the FDA. Defendants engaged in unconscionable trade practices as defined by NMSA 1978, § 57-12-2(E), including but not limited to:

A. Defendants distributed and sold a dangerous and addictive tobacco product that could potentially contain dangerous levels of heavy metals and other toxins, without warning and in blatant disregard for the public health; and

B. Defendants distributed and sold a dangerous and addictive tobacco product without disclosing that the FDA had prohibited the sale and marketing of these products in the United States, despite consumers being entitled to believe that products sold in a retail establishment are legally compliant with applicable laws, including federal law.

147. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

148. Defendants' unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

149. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

150. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

151. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

152. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

COUNT III

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D)

Unfair and Deceptive Trade Practices Through Omissions

(Against All Defendants)

153. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

154. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

155. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

156. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. In doing so, Defendants omitted material information regarding flavored disposable e-cigarettes and these omissions had a tendency to mislead consumers acting reasonably under the circumstances.

157. Defendants engaged in unfair or deceptive trade practices as defined by NMSA 1978, § 57-12-2(D)(14), by omitting material facts, and failing to disclose material facts necessary to prevent statements being made from being misleading under the circumstances. These omissions include, but are not limited to:

A. Defendants failed to disclose that the high levels of nicotine in their products, coupled with the use of nicotine salts and other chemical additives, significantly increased the risk of nicotine addiction;

B. Defendants failed to disclose to youth and their parents that e-cigarettes are particularly harmful to adolescents who are biologically more vulnerable to nicotine addiction, withdrawal symptoms, and long-term cognitive impacts;

C. Defendants failed to disclose that the chemical composition of the vapor disables some of the body's natural defenses by masking the harshness of the vapor, thereby increasing inhalation depth, frequency of use, and the harmful health effects of using such products;

D. Defendants routinely omitted information about nicotine strength, total nicotine content, or nicotine equivalence to combustible cigarettes, thereby depriving

consumers of relevant information necessary to assess the addictive potential and health risks of the products;

E. Defendants failed to disclose that the high volume of e-liquid in their products, combined with the use of nicotine salts and other additives, could result in consumers receiving significantly more nicotine on a daily basis as compared to combustible cigarettes; and

F. Defendants failed to disclose that their products were not authorized by the FDA because of the addictive potential of these products with respect to youth.

158. Defendants' unfair, deceptive, and unconscionable practices caused and continue to cause injury to the State of New Mexico and its residents, including but not limited to: (a) increased public health expenditures; (b) school enforcement and prevention costs; (c) environmental remediation expenses; and (d) diversion of state resources to address youth nicotine addiction.

159. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

160. Defendants' unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

161. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

162. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

163. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

164. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

COUNT IV

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D)

Unfair and Deceptive Trade Practices Through Misrepresentations

(Against All Defendants)

165. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

166. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

167. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

168. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. In doing so, Defendants made or brought about representations regarding flavored disposable e-cigarettes that had a tendency to mislead consumers acting reasonably under the circumstances.

169. Defendants engaged in unfair or deceptive trade practices as defined by NMSA 1978, § 57-12-2(D), including but not limited to representing that e-cigarettes had characteristics, uses, benefits, or safety attributes that they did not have, including by implying that these products were safe and appropriate for consumption by children, in violation of § 57-12-2(D)(5) and (7). These misrepresentations include, but are not limited to, the distribution and sale of e-cigarettes with product descriptors that mimic candy, fruit, desserts, or other treats that appeal to children. These descriptors are directly associated with products marketed to children and imply that e-cigarettes are safe and appropriate for youth consumption.

170. Defendants' unfair, deceptive, and unconscionable practices caused and continue to cause injury to the State of New Mexico and its residents, including but not limited to: (a) increased public health expenditures; (b) school enforcement and prevention costs; (c) environmental remediation expenses; and (d) diversion of state resources to address youth nicotine addiction.

171. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

172. Defendants' unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

173. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

174. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

175. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

176. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

COUNT V

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D)

Unfair and Deceptive Trade Practices Through Misrepresentations

(Against All Defendants)

177. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

178. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

179. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

180. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. In doing so, Defendants made or brought about representations regarding flavored disposable e-cigarettes that had a tendency to mislead consumers acting reasonably under the circumstances.

181. Defendants engaged in unfair or deceptive trade practices as defined by NMSA 1978, § 57-12-2(D), including but not limited to representing that e-cigarettes had characteristics, uses, benefits, or safety attributes that they did not have, including by implying that these products were safe and appropriate for consumption by children, in violation of § 57-12-2(D)(5) and (7). These misrepresentations include, but are not limited to, the distribution and sale of e-cigarettes sold as "tobacco free nicotine," which implies that the products are less addictive, and less harmful, than products that containing nicotine derived from tobacco plants. In fact, synthetic nicotine and nicotine derived from tobacco plants are the same with respect to addiction and adverse health impacts.

182. Defendants' unfair, deceptive, and unconscionable practices caused and continue to cause injury to the State of New Mexico and its residents, including but not limited to: (a) increased public health expenditures; (b) school enforcement and prevention costs; (c) environmental remediation expenses; and (d) diversion of state resources to address youth nicotine addiction.

183. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

184. Defendants' unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

185. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

186. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

187. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

188. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

COUNT VI

Violation of the New Mexico Unfair Practices Act, NMSA 1978, §§ 57-12-2(D)

Unfair and Deceptive Trade Practices Through Misrepresentations

(Against Retail Defendants)

189. The State re-alleges all prior paragraphs of this Complaint, as if set forth fully herein.

190. At all times relevant herein, Defendants violated the New Mexico Unfair Practices Act, §§ 57-12-1 to -26, by committing repeated and willful unfair or deceptive acts or practices, in the conduct of commerce, which are violations of the Act.

191. The Attorney General may bring an action in the name of the State to remedy violations of the New Mexico Unfair Practices Act ("UPA"). NMSA 1978, §§ 57-12-8(A), 57-12-15. This action is proper in this Court because Defendants are using, have used, and are about to use practices that are unlawful under the Act. NMSA 1978, § 57-12-8(A).

192. As alleged above, Defendants marketed, offered for sale, sold, and distributed flavored disposable e-cigarettes to New Mexico adult and adolescent consumers and through New Mexico channels of commerce. In doing so, Defendants made or brought about representations regarding flavored disposable e-cigarettes that had a tendency to mislead consumers acting reasonably under the circumstances.

193. Defendants engaged in unfair or deceptive trade practices as defined by NMSA 1978, § 57-12-2(D), including but not limited to representing that e-cigarettes had characteristics, uses, benefits, or safety attributes that they did not have, including by implying that the sale of

these products was lawful, authorized, or compliant with applicable laws when it was not, in violation of § 57-12-2(D)(2) and (15). These misrepresentations include, but are not limited to:

A. Sale of e-cigarettes with signage describing these products as “legal,” “compliant,” “approved” or “regulated,” when in fact, none of these have been authorized by the FDA, and hence cannot be marketed or sold in the United States.

B. Sale of flavored disposable e-cigarettes next to other authorized tobacco products, for example authorized e-cigarettes, cigarettes, and cigars, which implies that all of these products have been reviewed by the FDA, and based on that review are authorized for marketing and sale in the United States.

194. Defendants’ unfair, deceptive, and unconscionable practices caused and continue to cause injury to the State of New Mexico and its residents, including but not limited to: (a) increased public health expenditures; (b) school enforcement and prevention costs; (c) environmental remediation expenses; and (d) diversion of state resources to address youth nicotine addiction.

195. Each sale of a flavored disposable e-cigarette (or ENDS device) to a consumer in the State of New Mexico, and each shipment containing flavored disposable e-cigarette (or ENDS) devices into New Mexico, constitutes a separate violation of the UPA.

196. Defendants’ unfair, deceptive, and unconscionable representations and omissions were reasonably intended to deceive the State, adult and adolescent consumers of New Mexico, and did in fact deceive the State and consumers who purchased flavored disposable e-cigarettes.

197. Defendants' willful conduct, including selling, distributing, making product representations, and omitting material facts, continues to this day. Unless enjoined from continuing to do so, Defendants will continue to violate the New Mexico Unfair Practices Act.

198. Pursuant to NMSA 1978, § 57-12-11, Defendants' continuous unfair, deceptive, and unconscionable trade practices are willful and subject to civil penalties of up to \$5,000 per violation, per Defendant, in addition to all other relief authorized by law, including restitution.

199. Each and every sale of a flavored disposable e-cigarette (or ENDS device) by each Defendant constitutes a separate violation of the Unfair Practices Act.

200. Each and every flavored disposable e-cigarette (or ENDS device) that was shipped into New Mexico by Defendants or received by Defendants constitutes a separate violation of the Unfair Practices Act.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of New Mexico, seeks all available legal and equitable relief permitted under the UPA, including: (a) permanent injunctive relief prohibiting Defendants from engaging in the unlawful conduct alleged herein; (b) restitution; (c) civil penalties of \$5,000 per violation per Defendant under NMSA 1978, § 57-12-11; (d) disgorgement of ill-gotten profits; (e) attorneys' fees and costs; (f) pre- and post-judgment interest; and (g) such further relief as the Court deems just and proper.

DATED: March 31, 2026

ATTORNEY GENERAL OF NEW MEXICO

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ATTORNEY GENERAL OF NEW MEXICO

By /s/ Anthony Juzaitis

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