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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

12 **IN AND FOR THE COUNTY OF MARICOPA**

13 STATE OF ARIZONA, *ex rel.* MARK  
14 BRNOVICH, Attorney General,

15 Plaintiff,

16 v.

17  
18 EONSMOKE, LLC, a New Jersey limited  
19 liability company,

20 Defendant.

Case No.: CV 2020-000318

**COMPLAINT FOR INJUNCTIVE  
AND OTHER RELIEF**

**(Consumer Fraud Act)**

(Complex Court Assignment Requested)

(Jury Trial Demanded)

21 Plaintiff, the State of Arizona *ex rel.* Mark Brnovich, the Attorney General, alleges the  
22 following for its Civil Complaint against Defendant Eonsmoke, LLC. ("Eonsmoke" or  
23 "Defendant").  
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1 **INTRODUCTION**

2 1. Federal and state health officials have sounded the alarm that Arizona, along with  
3 the rest of the nation, faces an epidemic of youth e-cigarette use (“vaping”).<sup>1</sup> This national  
4 crisis prompted Congress in recent weeks to enact a new law, effective immediately,  
5 prohibiting the sale of tobacco products—including e-cigarettes—to anyone under the age of  
6 21. Nicotine consumption by young people in any quantity or form is unsafe.

7 2. Defying these scientific facts and Arizona law, Eonsmoke has engaged in social-  
8 media marketing campaigns and marketed vaping flavors in a clear effort to appeal to young  
9 people. When its largest competitor in the e-cigarette market, JUUL, engaged in such  
10 marketing, Eonsmoke doubled down using the same strategy.

11 3. The federal government informed Eonsmoke that its vaping products were illegal,  
12 first in 2018 and more recently on October 24, 2019. In response, Eonsmoke took no action.  
13 Its products currently are littered throughout Arizona and openly advertised and sold in retail  
14 stores in most Arizona counties, rural and urban—months after the United States Food and  
15 Drug Administration (“FDA”) has declared them to be illegal.

16 4. The State of Arizona files this action pursuant to the Arizona Consumer Fraud  
17 Act, A.R.S. §§ 44-1521 to 44-1534 (“the CFA”), to pursue all available legal remedies against  
18 Eonsmoke for contributing to the crisis of vaping in Arizona, and to hold the company  
19 responsible for its actions.

20 **JURISDICTION AND VENUE**

21 5. The State files this action pursuant to the CFA to enjoin permanently and prevent  
22 the unlawful acts and practices alleged in this Complaint, and to obtain other relief including  
23 restitution, disgorgement of profits, gains, gross receipts, or other benefits, civil penalties, and  
24 costs and attorneys’ fees.

25 6. This Court has subject-matter jurisdiction.

26  
27 <sup>1</sup> Ariz. Dep’t of Health Serv., *Bureau of Tobacco and Chronic Disease, Biennial Report*  
28 *2017-2018*, 3 (2018).

1           7.     This Court may issue appropriate orders both prior to and following a  
2 determination of liability, pursuant to A.R.S. § 44-1528.

3           8.     Defendant transacted business within Arizona at all times relevant to this  
4 Complaint.

5           9.     Defendant caused events to occur in this state out of which the claims which are  
6 the subject of this Complaint arose.

7           10.    Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

8                                   **PARTIES**

9           11.    Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of  
10 Arizona, who is authorized to bring this action under the CFA.

11           12.    Defendant Eonsmoke, LLC is a New Jersey limited liability corporation with its  
12 principal office located in Clifton, NJ. Eonsmoke transacts business in Arizona and nationwide  
13 by manufacturing, importing, marketing, promoting, advertising, offering for sale and/or  
14 distribution, and selling e-cigarettes.

15                                   **GENERAL ALLEGATIONS**

16           **I.     History of Big Tobacco's Exploitation of Youth**

17           13.    An understanding of the history of the tobacco industry is necessary to appreciate  
18 the risks and dangers of vaping,<sup>2</sup> and thereby the conduct of this Defendant.

19           14.    The success of the tobacco industry, often referred to as "Big Tobacco," lies in  
20 selling a delivery device for the addictive chemical nicotine. In an internal memo from July 17,  
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24           <sup>2</sup> Terms such as "vaping" and "e-cigarette use" are used interchangeably throughout the  
25 industry, among regulators, health officials, and consumers. These terms also vary according to  
26 time periods dating back to 2006. The State uses them interchangeably throughout this  
27 Complaint to refer to the use of devices that deliver nicotine by "vaporizing," i.e., aerosolizing,  
28 a liquid that includes chemicals and flavorings to create an aerosol that is inhaled by the user.

1 1963, a lawyer for one major tobacco corporation boldly stated, "Nicotine is addictive. We are,  
2 then, in the business of selling nicotine, an addictive drug."<sup>3</sup>

3 15. If youth can be prevented from exposure to nicotine, the odds of developing a  
4 lifelong addiction are reduced dramatically.<sup>4</sup>

5 16. For decades, Big Tobacco has been aware of the importance of introducing youth  
6 to nicotine before they age out of the critical window of opportunity for developing a lifetime  
7 addiction. In a 1973 memo entitled "Research Planning Memorandum on Some Thoughts  
8 About New Brands of Cigarettes for the Youth Market," the Assistant Chief of Research and  
9 Development for R.J. Reynolds recognized that "[r]ealistically, if our Company is to survive  
10 and prosper, over the long term, we must get our share of the youth market. In my opinion this  
11 will require new brands tailored to the youth market."<sup>5</sup>

12 17. Big Tobacco has a long history of targeting youth with marketing, from Winston  
13 ads featuring Fred Flintstone and Barney Rubble in the 1960s, to Marlboro placements in  
14 Superman films in the 1980s, to the Joe Camel cartoon used through the late 1990s.

15 18. The United States Surgeon General has found that the tobacco industry  
16 "capitalized on the vulnerability" of youth to promote their products and that extensive research  
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19 <sup>3</sup> Stanton A. Glantz et al., *The Cigarette Papers*, Berkeley: Univ. of Calif. Press 74  
20 (1996) (quoting Memorandum by Addison Yeaman, *Implications of Battelle Hippo 1 & 11 and*  
21 *the Griffith Filter*, Document No. 1802.05 (July 17, 1963)),  
22 <https://publishing.cdlib.org/ucpressebooks/view?docId=ft8489p25j;brand=ucpress> (accessed on  
23 Dec. 18, 2019).

24 <sup>4</sup> Inst. of Med. of the Nat'l Acad., *Public Health Implications of Raising the Minimum*  
25 *Age of Legal Access to Tobacco Products* 4 (2015).

26 <sup>5</sup> Internal Memorandum by Claude Teague, R.J. Reynolds Tobacco Company, *Research*  
27 *Planning Memorandum on Some Thoughts About New Brands of Cigarettes for the Youth*  
28 *Market* 1 (Feb. 2, 1973), <https://www.industrydocuments.ucsf.edu/tobacco/docs/#id=gnjc0068>  
(accessed on Dec. 18, 2019).

1 “consistently and coherently points to the intentional marketing of tobacco products to youth as  
2 being a cause of young people’s tobacco use.”<sup>6</sup>

3 19. Internal memos show that part of Big Tobacco’s youth-marketing scheme  
4 included developing flavors that would appeal to teenagers and younger customers, suggesting  
5 that “teenagers like sweet products,” and “[h]oney might be considered.”<sup>7</sup> Internal memos even  
6 reveal that Big Tobacco companies discussed swapping research on flavors with youth appeal  
7 with the makers of Life Savers Candy.<sup>8</sup>

8 20. In 1998, forty-six states led in part by Arizona pursued litigation against Big  
9 Tobacco for, among other things, engaging in widespread consumer fraud including directly  
10 marketing its addictive, deadly products to youth. The states and certain tobacco manufacturers  
11 ultimately entered into a landmark public health agreement known as the Master Settlement  
12 Agreement (“MSA”), which the settling states viewed as a path to “reduce Youth smoking, to  
13 promote the public health and to secure monetary payments.”<sup>9</sup>

14 21. The MSA contains several provisions that are designed specifically to prevent  
15 tobacco marketing that targets youth. The first provision sets out a general prohibition on “any  
16 action, directly or indirectly, to target Youth . . . in the advertising, promotion or marketing of  
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18 <sup>6</sup> Office of the Surgeon Gen., U.S. Dep’t of Health and Human Serv., *Preventing*  
19 *Tobacco Use Among Youth and Young Adults: Executive Summary* 2, 5 (2012).

20 <sup>7</sup> Students Working Against Tobacco, Okla. Dep’t of Health, *Tobacco Industry Quotes*  
21 *on Nicotine Addiction* (quoting Brown & Williamson memorandum from consultants (1972)),  
22 <https://www.ok.gov/okswat/documents/Tobacco%20Industry%20Quotes%20on%20Nicotine%20Addiction.pdf> (accessed on Dec. 18, 2019).

23 <sup>8</sup> Students Working Against Tobacco, Fla. Dep’t of Health, *Tobacco Industry*  
24 *Quotes and Facts Related to Flavored Tobacco* (quoting Sedgefield Idea Sessions 790606-  
25 790607 (June 8, 1979)), <http://swatflorida.com/uploads/fightresource/Flavored%20Tobacco%20Industry%20Quotes%20and%20Facts.pdf> (accessed on Dec. 18, 2019).

26  
27 <sup>9</sup> Master Settlement Agreement (“MSA”) § I, p1.  
28

1 Tobacco Products.”<sup>10</sup> Subsequent provisions prohibit specific actions such as utilizing  
2 cartoons, sponsoring certain music or sporting events, advertising on billboards or on public  
3 transportation, using paid product placement in media, creating and distributing tobacco brand-  
4 name merchandise, distributing free samples, and providing gifts to youth in exchange for  
5 proofs of purchase, rewards points, or coupons.

6 22. In 2009, the federal government passed the Family Smoking Prevention and  
7 Tobacco Control Act (the “TCA”), which prohibited the sale of cigarettes with “characterizing  
8 flavors” other than menthol, in an effort to prevent youth targeting through flavored products.

9 23. The implementation of the MSA’s marketing restrictions in the late 1990s,  
10 combined with public health and public policy efforts inspired or funded by the MSA,  
11 disclosure documents related to Big Tobacco’s wrongdoing, and subsequent litigation enforcing  
12 the MSA, contributed to dramatic declines in tobacco use, including among youth.

13 24. For example, Arizona’s youth smoking rate declined from 37.7 percent in 2000 to  
14 7.1 percent in 2017.<sup>11</sup>

15 **A. The E-Cigarette Youth Epidemic**

16 25. In less than a decade, e-cigarettes have reversed most of this significant progress.

17 26. Unfortunately for Arizona’s youth, the dramatic and hard-fought decrease in  
18 youth smoking rates has been offset in recent years by a spike in e-cigarette use. Current youth  
19 use of any nicotine product now sits at 31.2 percent nationwide in 2019.<sup>12</sup>

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21 <sup>10</sup> *Id.* § III(a).

22 <sup>11</sup> CDC, *Extinguishing the Tobacco Epidemic in Arizona*,  
23 <https://www.cdc.gov/tobacco/about/osh/state-fact-sheets/arizona/index.html> (accessed on Dec.  
24 18, 2019); CDC, *Youth Tobacco Surveillance—United States, 2000* Table 3 (Nov. 2, 2001),  
25 <https://www.cdc.gov/mmwr/preview/mmwrhtml/ss5004a1.htm> (accessed on Dec. 18, 2019).

26 <sup>12</sup> Karen A. Cullen, et al., *E-cigarette Use Among Youth in the United States*, 2019,  
27 322(21) JAMA 2095, E3-E4 (electronic pagination) (Nov. 5, 2019),  
28 <https://jamanetwork.com/journals/jama/fullarticle/2755265> (accessed on Dec. 18, 2019).

27. The modern e-cigarette was invented in 2006 in China and began appearing in the United States in about 2007. The device is comprised of a battery that powers a heating element which heats a liquid mixture of one or more humectants, typically a combination of propylene glycol and glycerin, plus nicotine and flavoring to create an aerosol that is inhaled by the user.

28. Tobacco laws at all levels of government typically defined “tobacco products” as products that contained or burned tobacco. As a result, e-cigarettes initially fell outside of nearly all tobacco regulations, including age restrictions.

29. In the early 2010s, states began passing laws to restrict the purchase age of e-cigarettes, including a revision to Arizona's Youth Furnishing Statute, A.R.S. § 13-3622, that went into effect in September 2013.

30. The 2010 implementation of the TCA provided the United States Food and Drug Administration (“FDA”) with authority over all products made or *derived from* tobacco.

31. Although the FDA had immediate jurisdiction over cigarettes, smokeless tobacco, and roll-your-own tobacco, it needed to take additional regulatory action to "deem" any additional tobacco products under its jurisdiction.

32. The FDA issued a deeming rule that went into effect on August 8, 2016 (the “Deeming Rule”) and initiated the first stages of regulation of the e-cigarette industry, such as a national minimum sales age of at least eighteen. The vaping industry including Eonsmoke, however, exploited the time period leading up to the Deeming Rule and the issues the FDA’s initial regulatory actions did not yet cover.

33. The risks of nicotine addiction are well-known and undisputed. As far back as 1988, the United States Surgeon General declared that cigarettes and other forms of tobacco are addicting, that nicotine is the drug in tobacco that causes addiction, and the pharmacologic and behavioral processes that determine tobacco addiction are similar to those that determine addiction to drugs such as heroin and cocaine.

1        34. The risks of e-cigarettes even to adults—beyond the risks of nicotine addiction—  
2 are largely unknown. There has not been sufficient time for appropriate testing in the scientific  
3 and medical communities to fully understand these risks. Vaping products, including  
4 Eonsmoke’s specifically, contain a number of components whose health effects are not fully  
5 understood by government regulators or health professionals, such as the long-term effects of  
6 regular inhalation of propylene glycol, glycerin, benzoic acid, metallic particles, and flavors  
7 that contain unknown and untested ingredients.

## 8        **II. History of Eonsmoke**

9        35. Both before and after the implementation of the Deeming Rule, Eonsmoke  
10 aggressively targeted youth in Arizona and nationwide.

11        36. This strategy helped drive Eonsmoke’s growth and profits.

12        37. In Arizona alone, Eonsmoke has reaped at least half a million dollars in revenue  
13 through its online and retail channels, from 2016 forward.

14        38. The same strategy that produced much of Eonsmoke’s profits also produced an  
15 epidemic of youth e-cigarette use in Arizona and across the nation.

16        39. A study by the nonprofit organization Truth Initiative found that “teens between  
17 15 and 17 years old have 16 times greater odds of using JUUL than 25- to 34-year-olds.”<sup>13</sup>  
18 Eonsmoke mimicked JUUL’s strategy of marketing to youth to drive Eonsmoke’s business  
19 model.

20        40. In just a few years, the e-cigarette industry—including Eonsmoke—has reversed  
21 decades of intense efforts to reduce youth smoking and nicotine addiction.

22        41. Eonsmoke’s products contain nicotine.

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24        <sup>13</sup> Truth Initiative, *Behind the Explosive Growth of Juul: Social Influences and Flavors*  
25 *Drive Rising Teen Use of the Top E-cigarette* 2 (2018),  
26 [https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-](https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-of-JUUL.pdf)  
27 [of-JUUL.pdf](https://truthinitiative.org/sites/default/files/media/files/2019/03/Behind-the-explosive-growth-of-JUUL.pdf) (accessed on Dec. 18, 2019).

1        42.    Eonsmoke’s nicotine is administered to the user through a delivery system which  
2 permits this chemical to enter the bloodstream rapidly. Nicotine acts very effectively to alter  
3 brain chemistry in young persons under the approximate age of 25, making them far more  
4 susceptible to addiction, not only to vaping, but to other forms of tobacco, and other harmful  
5 drugs.<sup>14</sup>

6        43.    In 2018, the United States Surgeon General declared youth use of e-cigarettes to  
7 be an “epidemic” following a 70 percent increase in youth use rates from 2017 to 2018.  
8 Between 2018 and 2019 youth use rates continued to increase.<sup>15</sup>

9        44.    In 2018, almost half of Arizona high school seniors that were surveyed reported  
10 trying e-cigarettes, and more than 25 percent reported using an e-cigarette in the last thirty  
11 days. The same year, more than 25 percent of Arizona eighth graders that were surveyed  
12 reported trying e-cigarettes, and more than 13 percent reported using an e-cigarette in the last  
13 thirty days.<sup>16</sup>

### 14        **III.    Eonsmoke Appealed To, Targeted, and Exploited a Generation of Youth**

15        45.    Eonsmoke appealed to, targeted, and exploited youth in Arizona and nationwide  
16 in at least three ways: (1) by selling youth-friendly flavors; (2) by marketing its products to  
17 youth; and (3) by selling illegal products to youth.

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20        <sup>14</sup> U.S. Dept. of Health and Human Services, *E-cigarette Use Among Youth and Young*  
21 *Adults: A Report of the Surgeon General* at 105 (2016) (“The prefrontal cortex, which is  
22 involved in higher level regulatory control of complex behaviors (such as planning, impulse  
23 control, and working memory), continues normal structural and functional development into  
young adulthood, to about 25 years of age.”)

24        <sup>15</sup> CDC, *Youth Tobacco Survey*,  
25 [https://www.cdc.gov/tobacco/data\\_statistics/surveys/yts/index.htm](https://www.cdc.gov/tobacco/data_statistics/surveys/yts/index.htm) (accessed on Dec. 18,  
26 2019).

27        <sup>16</sup> Ariz. Criminal Justice Comm’n, *2018 Arizona Youth Survey: State Report* 48-49  
28 (2019).

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1           55.    “Donut Cream” is a flavor that any reasonable person would know would appeal  
2 to existing or potential vape users below the age of 18.

3           56.    “Cereal Loops” is a flavor that any reasonable person would know would appeal  
4 to existing or potential vape users below the age of 18.

5           57.    Many of these flavors are present in Arizona stores to this day. Eonsmoke has  
6 produced them and allows them to remain available for consumption by consumers  
7 notwithstanding the well-documented history of decades of exploitation of youth by Big  
8 Tobacco through the use of youth-friendly flavors.

9           **B. Eonsmoke Marketed Its Products to Youth**

10          58.    Compounding the use of flavors that are attractive to youth are Eonsmoke’s  
11 marketing practices, which targeted young audiences through social media. The platforms  
12 Eonsmoke has used include Twitter, Instagram, YouTube, Facebook, and the online forum  
13 known as Reddit.

14          59.    Twitter, Instagram, YouTube, Facebook, and Reddit have disproportionately  
15 young audiences.

16          60.    In a statement reported by CNN on October 24, 2019, Defendant’s CEO Michael  
17 Tolmach claimed that Eonsmoke was shutting down its accounts on Instagram, Facebook, and  
18 Twitter. This was too little, too late, given the company’s eight years of maintaining an active  
19 and aggressive presence on social media.

20          61.    In addition to being too late, Defendant’s promised efforts to “shut down” its  
21 social media presence have been incomplete. As of the date of this filing, an Instagram account  
22 with the handle of @eonsmokediscounts is still accessible on Instagram, with an active link to  
23 the company’s website.<sup>17</sup>

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25  
26               <sup>17</sup> Eonsmokediscounts, Instagram, <https://www.instagram.com/eonsmokediscounts/>  
27 (accessed on Dec. 20, 2019).

62. Instagram is a social media platform that centers on photos and videos posted by users. In 2017, Instagram boasted that its membership consisted of 700 million users.<sup>18</sup> Its website in 2019 touted over one billion active users.<sup>19</sup> It is widely known that Instagram's user base is primarily teenagers and young adults in their twenties, as reflected by a recent Wall Street Journal article referencing exactly that fact.<sup>20</sup>

63. Defendant's @eonsmokediscounts account provides a useful archive of Eonsmoke's past marketing strategies. In a post dated February 6, 2014, Defendant relies on sex appeal and other youthful themes and hashtags, such as: #smokecloud, #clean, #fresh, #urban, #hipster, #s4s,<sup>21</sup> #vapegurls, #girlswhovape, #twerk, and #booty. A screenshot of this post is as follows:

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<sup>18</sup> @heysp, *700 Million*, Instagram, <https://instagram-press.com/blog/2017/04/26/700-million/> (accessed on Dec. 20, 2019).

<sup>19</sup> *Our Story*, Instagram, <https://instagram-press.com/our-story/> (accessed on Dec. 20, 2019).

<sup>20</sup> Georgia Wells & Jeff Horwitz, *Instagram's Content Factories Are Huge—And That's a Problem for Facebook*, Wall Street Journal (Sept. 26, 2019) (“The app allows the company to span the gap between Facebook’s graying parents and their teenage and 20-something children, who largely prefer Instagram.”), <https://www.wsj.com/articles/instagrams-content-factories-are-hugeand-a-growing-problem-for-facebook-11569510271> (accessed on Dec. 12, 2019).

<sup>21</sup> “s4s” means “shoutout for shoutout,” according to an entry from 2014 on UrbanDictionary.com. This, in turn, is a reference to two persons promoting each other’s accounts.



64. Similarly, Defendant posted this from its Instagram account on February 5, 2014:



65. Defendant also posted this from its Instagram account on February 5, 2014:



66. In addition to failing to keep its promise to scrub the Internet of its own accounts, Defendant also has failed to invoke its intellectual-property rights to force third parties to remove improper references to Eonsmoke. On Instagram, the hashtag #eonsmoke remains active and has a post count of 8,820 posts. The most recent post under the #eonsmoke hashtag was posted just eleven hours prior to this paragraph being drafted, on December 11, 2019, by another company evidently seeking to piggyback off of Defendant's popularity (edited to add underlined highlight to "eonsmoke"):



67. Third-party posts that promote Eonsmoke specifically are also abundant on Instagram, even today, under the #eonsmoke hashtag. This post from December 11, 2019, showcases a number of Defendant's products in addition to using the #eonsmoke hashtag (underlined highlight added):



68. Defendant's conduct is the same on YouTube. A search for "eonsmoke" on YouTube's website produces large numbers of videos as of the date of this filing. One video dated February 19, 2019, entitled, "The best Juul pod flavors (4x pods, eonsmoke, sea100 pods)," has 66,000 views.<sup>22</sup>

69. "4X" is an Eonsmoke product.

70. These YouTube videos openly use Eonsmoke's name, but Defendant has taken no meaningful action to remove them as of the date of this filing, even though YouTube provides specific methods for companies to do so. For example, YouTube provides companies like

<sup>22</sup> Video, Vape Reviews, *The Best JUUL Pod Flavors*, YouTube, <https://youtu.be/35fSz4Vmajw> (accessed on Dec. 20, 2019).

1 Eonsmoke with a process for flagging videos that violate Eonsmoke's trademark rights.  
2 YouTube also provides a process for flagging videos that depict nicotine usage.<sup>23</sup>

3 71. Eonsmoke also has opened an account on the online forum known as Reddit,  
4 under the username of "Eonjuulcompatiblepod." This account also remains accessible and  
5 active on the Internet.

6 72. Reddit boasts a user base of over 430 million people on its website  
7 (<https://www.redditinc.com/>) (accessed on Dec. 12, 2019). Reddit is a platform that appeals  
8 heavily to younger people.<sup>24</sup>

9 73. Defendant opened its Reddit account on December 12, 2017, weeks after  
10 launching its "Juul-compatible" operation. In the description for the account, Defendant wrote,  
11 "Eonsmoke.com is the 2nd largest pod company in the USA and top 5 in Salt Nicotine Bottled  
12 eLiquid. Our pods are JUUL compatible so you don't have to buy another device. 7 flavors  
13 including blueberry, watermelon and strawberry."

14 74. The majority of Defendant's Reddit comments are posted in the Reddit  
15 community specifically devoted to JUUL, known within Reddit as "r/juul."

16 75. Eonsmoke is consciously aware that JUUL's products appeal heavily to youth,  
17 and undertook a strategy to emulate and build on JUUL's success among youth. Its activity on  
18 Reddit reflects this strategy.

19 76. Eonsmoke's Reddit comments focus heavily on promoting Eonsmoke's youth-  
20 friendly flavors (similar to JUUL's) and positively comparing Eonsmoke's features to JUUL's  
21 youth-accented products.

22 77. Eonsmoke's Reddit comments were made to target a youth audience.

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24 <sup>23</sup> Video, *Sale of Illegal or Regulated Goods*, YouTube. [https://support.google.com/youtube/answer/9229611?hl=en&ref\\_topic=9282680](https://support.google.com/youtube/answer/9229611?hl=en&ref_topic=9282680) (accessed on Dec. 20, 2019).

25  
26 <sup>24</sup> William Sattelberg, *The Demographics of Reddit: Who Uses the Site?*,  
27 TechJunkie.com (July 22, 2019), <https://www.techjunkie.com/demographics-reddit/> (accessed  
28 on Dec. 12, 2019).

78. The first comment by Eonsmoke that is available on the Reddit site as of the date of this Complaint is from December 12, 2017 at 9:05 a.m. The most recent comment is from October 23, 2018 at 3:58 p.m.

79. On April 30, 2018, a Reddit user in "r/juul" asked a question on whether pineapple pods would be coming out soon. On May 1, 2018 at 9:07 a.m., Eonsmoke responded by posting the following: "We have been having trouble keeping blueberry, watermelon and our other flavors in stock, we just expanded our manufacturing facility to make more pods, as soon as we catch up, pineapple is first on our list. Our expansion took a little extra time because we wanted to make sure the burnt hits and the leak issues were 99+% fixed before we produced additional pods. Fixing the burnt hits, made the pods a little more leakier but our engineers handled that swiftly and all of the pods coming in now are way better than the ones we started with. We believe in quality over quantity and listen to everyones feedback both on here and instagram. Sorry for the long answer."

80. On June 22, 2018 at 8:07 a.m., Eonsmoke posted the following on Reddit, in “r/juul”: “We use a very reputable supplier overseas that makes our Juice. They have been around and making juice for over 11 years. The juice inside juuls pods are also made overseas but they word it very carefully.”

81. On October 23, 2018 at 3:40 p.m., Eonsmoke posted the following on Reddit, in "r/juul": "Oh man, we are launching 7% next week in our top 4 flavors, I feel like people are comparing throat hit to buzz but I could be wrong. Our throat hit is smoother, buzz is the same. We already have disposable pod system which is 1.3ml and 7% salt nic for 8\$ you get the battery plus one large pod that lasts like 2 juul pods."

### **C. Eonsmoke Sells Illegal Products to Youth and to Others**

82. On May 10, 2016, federal law put all e-cigarette manufacturers, including Eonsmoke, on notice that all new vaping products brought to market after August 8, 2016, must be approved by the FDA.

83. On October 12, 2018, the FDA's Center for Tobacco Products wrote and delivered a letter to Defendant at its office in Clifton, New Jersey.

84. The letter informed Defendant that it “may be manufacturing” various products “without premarket authorization, as required by” federal law. The letter also explained how the FDA’s regulations applied to Defendant, by stating that any new products that were put on the market after August 8, 2016 may be unlawful.

85. Defendant took no meaningful action to remove its products from Arizona or become compliant with FDA regulations after receiving this letter.

86. On October 24, 2019, the FDA wrote another letter to Defendant.

87. In this letter, the FDA informed Defendant that it had reviewed the company's submissions and a number of other facts, and concluded that a total of 96 different products created by Defendant were unlawful. The FDA also asserted other violations of federal law stemming from Defendant's marketing and business practices.

88. Nevertheless, as of January 2020, Eonsmoke products are available for sale in at least nine out of Arizona's fifteen counties: Coconino, Gila, Maricopa, Mohave, Navajo, Pima, Pinal, Yuma, and Yavapai. These nine counties represent approximately 96 percent of Arizona's population.

89. On December 12, 2019, a sixteen-year old female volunteer for the Arizona Attorney General's Tobacco Enforcement Unit walked into a retail store in Tempe, Arizona seeking to purchase a vaping device.

90. The volunteer was carrying identification that stated her true date of birth.

91. The store clerk offered the volunteer an Eonsmoke disposable device for purchase, which was an Eonsmoke Strawberry Banana Stik device containing 6.8 percent nicotine.

92. The clerk specifically suggested to the volunteer that she purchase an Eonsmoke device because it was popular.

1        93. The volunteer successfully purchased the Eonsmoke device. Her status as a  
2 minor posed no obstacle to her ability to do so.

3        94. Unlawful Eonsmoke products also were available for sale to Arizona residents via  
4 online purchases from Defendant's website as recently as November 27, 2019, according to  
5 website evidence captured by the State on that date and on November 22, 2019.

6        95. Ignoring the FDA's letters, Defendant has offered for sale and continues to offer  
7 for sale products that the FDA has determined violate the Federal Food, Drug and Cosmetic  
8 Act (FD&C Act) Deeming Rule because (a) they were introduced or modified after the August  
9 8, 2016 effective date of the final rule; and (b) they did not receive premarket authorization as  
10 required by § 910 of the FD&C Act.

11        96. The FDA has not yet approved any vaping product for therapeutic uses or for  
12 marketing.<sup>25</sup>

13        97. Unfortunately, a large percentage of youth do not even know that they are using a  
14 nicotine product when they use e-cigarettes.<sup>26</sup>

15        98. Nicotine is especially harmful to developing brains. Nicotine use during  
16 adolescence can harm the part of the brain responsible for memory, attention, and learning, and  
17 early exposure to nicotine increases the severity of future nicotine dependence.<sup>27</sup>

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20        <sup>25</sup> FDA, *Vaping Illness Update: FDA Warns Public to Stop Using Tetrahydrocannabinol*  
21 *(THC)-Containing Vaping Product and Any Vaping Products Obtained Off the Street* (Oct. 4,  
22 2019), [https://www.fda.gov/consumers/consumer-updates/vaping-illness-update-fda-warns-](https://www.fda.gov/consumers/consumer-updates/vaping-illness-update-fda-warns-public-stop-using-tetrahydrocannabinol-the-containing-vaping)  
23 [public-stop-using-tetrahydrocannabinol-the-containing-vaping](https://www.fda.gov/consumers/consumer-updates/vaping-illness-update-fda-warns-public-stop-using-tetrahydrocannabinol-the-containing-vaping) (accessed on Dec. 20, 2019).

24        <sup>26</sup> Rachel Boykan, *et al.*, *Self-Reported Use of Tobacco, E-cigarettes, and Marijuana*  
25 *Versus Urinary Biomarkers*, 143(5) *Pediatrics* (May 2019).

26        <sup>27</sup> CDC, *E-cigarettes: Talk to Youth About the Risks*, [https://www.cdc.gov/tobacco/](https://www.cdc.gov/tobacco/features/back-to-school/e-cigarettes-talk-to-youth-about-risks/index.html)  
27 [features/back-to-school/e-cigarettes-talk-to-youth-about-risks/index.html](https://www.cdc.gov/tobacco/features/back-to-school/e-cigarettes-talk-to-youth-about-risks/index.html) (accessed on Dec. 14,  
28 2019); *see* Office of the Surgeon Gen., *infra* note 29, at 104-107.

99. Youth who are exposed to nicotine through e-cigarette use are more likely to become cigarette smokers, regardless of their risk of cigarette addiction prior to e-cigarette use.<sup>28</sup>

100. Nicotine is a powerful neurotoxin and can be toxic when ingested, causing dizziness, nausea, vomiting, seizures, coma, and even death.<sup>29</sup>

101. Vaping manufacturers like Eonsmoke have created the perfect storm for a youth epidemic.

102. Eonsmoke exposed youth to e-cigarettes through advertising that it knew or should have known, from Big Tobacco's experience, would attract young customers.

103. Eonsmoke also lured young people in with sweet, kid-friendly flavors, and a delivery device that was easy to use and easy to hide.

104. Then Eonsmoke hooked youth who tried its products with high levels of nicotine, delivered through flavored aerosol that was gentle on the mouth, throat, and lungs.

105. Through these tactics, Eonsmoke successfully marketed and sold its extremely addictive products to Arizona youth, most of whom were new users to tobacco products and would have never become addicted to nicotine in the first place.

### CLAIM FOR RELIEF

**VIOLATIONS OF THE CONSUMER FRAUD ACT, A.R.S. § 44-1521 et seq.**

106. The State realleges all prior allegations as though fully set forth herein.

107. The conduct described in the preceding paragraphs of this Complaint constitutes deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,

<sup>28</sup> Michael S. Dunbar et al., *Disentangling Within- and Between-Person Effects of Shared Risk Factors on E-cigarette and Cigarette Use Trajectories From Late Adolescence to Young Adulthood*, 21(10) *Nicotine & Tob. Research* 1414, 1421 (2018).

<sup>29</sup> Office of the Surgeon Gen., U.S. Dept. of Health and Human Serv., *E-cigarette Use Among Youth and Young Adults: A Report of the Surgeon General* 119 (2016).

1 misrepresentations, or concealment, suppression or omission of material facts with intent that  
2 others rely on such concealment, suppression or omission, in connection with the sale or  
3 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to 44-1534, including but not  
4 limited to the following.

5 108. Defendant engaged in deceptive and unfair acts and practices by misrepresenting  
6 impliedly or expressly that the sale of its products in Arizona is lawful.

7 109. Defendant engaged in the concealment, suppression or omission of material facts  
8 by misrepresenting impliedly or expressly that the sale of its products in Arizona is lawful.

9 110. Defendant engaged in deceptive and unfair acts and practices by advertising its  
10 products in a manner that appealed to young people while misleading them on the risks  
11 associated with its products by failing to include disclaimers about (1) the presence of nicotine  
12 and (2) the addictive nature of nicotine.

13 111. Defendant engaged in the concealment, suppression or omission of material facts  
14 by advertising its products in a manner that appealed to young people while misleading them on  
15 the risks associated with its products by failing to include disclaimers about (1) the presence of  
16 nicotine and (2) the addictive nature of nicotine.

17 112. Defendant engaged in deceptive and unfair acts and practices by advertising its  
18 products in a manner that targeted young people while misleading them on the risks associated  
19 with its products by failing to include disclaimers about (1) the presence of nicotine and (2) the  
20 addictive nature of nicotine.

21 113. Defendant engaged in the concealment, suppression or omission of material facts  
22 by advertising its products in a manner that targeted young people while misleading them on  
23 the risks associated with its products by failing to include disclaimers about (1) the presence of  
24 nicotine and (2) the addictive nature of nicotine.

25 114. Defendant engaged in deceptive and unfair acts and practices by introducing  
26 products into the market that are unsafe for minors but failing to take adequate measures to  
27 avoid access to them by youth.

1 115. Defendant engaged in the conduct described above with the intent that others  
2 would rely on its concealment, suppression or omission of material facts.

3 116. Defendant's conduct described above caused or was likely to cause substantial  
4 injuries to consumers that were not reasonably avoidable by consumers and were not  
5 outweighed by countervailing benefits to consumers or to competition.

6 117. While engaging in the conduct alleged in this Complaint, Defendant knew or  
7 should have known that its conduct was of the nature prohibited by A.R.S. § 44-1522,  
8 subjecting itself to enforcement and penalties as provided in A.R.S. § 44-1531(A).

9 **PRAYER FOR RELIEF**

10 118. WHEREFORE, the State respectfully requests that the Court:

11 119. Pursuant to A.R.S. § 44-1528(A)(1), issue permanent injunctive relief, enjoining  
12 and restraining (a) Defendant, (b) its officers, agents, servants, employees, attorneys, and (c) all  
13 persons in active concert or participation with anyone described in part (a) or (b) of this  
14 paragraph, directly or indirectly, from engaging in the unlawful acts and practices alleged  
15 herein;

16 120. Pursuant to A.R.S. § 44-1528(A)(2), order that Defendant restore to all persons in  
17 interest any monies or property, real or personal which may have been acquired by any  
18 unlawful act or practice alleged herein;

19 121. Pursuant to A.R.S. § 44-1528(A)(3), order Defendant to disgorge all profits,  
20 gains, gross receipts, or other benefits obtained as a result of its unlawful acts alleged herein;

21 122. Pursuant to A.R.S. § 44-1531, order Defendant to pay to the State of Arizona a  
22 civil penalty of up to \$10,000 for each willful violation by Defendant of A.R.S. § 44-1522;

23 123. Pursuant to A.R.S. § 44-1534, order Defendant to reimburse the State for its costs  
24 and attorneys' fees incurred in the investigation and prosecution of Defendant's activities  
25 alleged in this Complaint;

26 124. Pursuant to A.R.S. § 44-1201, require Defendant to pay pre-judgment and post-  
27 judgment interest to the State and all consumers;

125. Order Defendant to instruct all Arizona retailers to immediately pull all of Defendant's illegal products from shelves and otherwise take all affirmative steps necessary to physically remove all of Defendant's illegal products from Arizona stores; and,

126. Award the State such further relief as the Court deems just and proper under the circumstances.

127. Respectfully submitted this 7th day of January, 2020.

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By:

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