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October 13, 2023

FILED VIA EDIS

The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Certain Disposable Vaporizer Devices and Components and Packaging Thereof

Dear Secretary Barton,

Enclosed for filing please find documents in support of a request by R.J. Reynolds Tobacco Company (“RJRT”) and R.J. Reynolds Vapor Company (“RJRV”) (collectively “Complainants”) that the U.S. International Trade Commission institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, concerning certain disposable vaporizer devices and components and packaging thereof, sold for importation, imported, or sold within the United States after importation. We are submitting a separate letter requesting confidential treatment for the unredacted versions of confidential exhibits 18, 21, 24, 28, 35-49 and 54 included with this filing.

On March 16, 2020, the Commission issued a notice that it was temporarily waiving and amending certain Commission’s rules that require the filing of paper copies, CD-ROMs, and other physical media in section 337 investigation to address concerns about COVID-19. *See* 85 Fed. Reg. 15798 (Mar. 19, 2020). The Commission also indicated it would permit parties to file section 337 complaints, exhibits, attachments, and appendices electronically. *See id.* Accordingly, Complainants’ filing only contains certain electronic documents.

Specifically, Complainants’ filing includes the following:

1. One (1) electronic copy of R.J. Reynolds Tobacco Company and R.J. Reynolds Vapor Company’s Verified Complaint, pursuant to Commission Rule 210.8(a)(1)(i);

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Albany. Amsterdam. Atlanta. Austin. Berlin. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Las Vegas. London. Long Island. Los Angeles. Mexico City. Miami. Milan. Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul. Shanghai. Silicon Valley. Singapore. Tallahassee. Tampa. Tel Aviv. Tokyo. Warsaw. Washington, D.C. West Palm Beach. Westchester County.

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2. One (1) electronic copy of the public exhibits to the Verified Complaint pursuant to Commission Rule 210.8(a)(1)(i);
3. One (1) electronic copy of each confidential exhibit to the Verified Complaint, pursuant to Commission Rule 210.8(a)(1)(ii);
4. A letter requesting confidential treatment for the information contained in confidential exhibits 18, 21, 24, 28, 35-49 and 54 to the Verified Complaint, pursuant to Commission Rules 201.6(b) and 210.5(d); and
5. A Public Interest Statement regarding the requested relief, pursuant to Commission Rule 210.8(b).

Complainants confirm that, upon notice of institution of an investigation, they will serve all nonconfidential copies of the Verified Complaint and exhibits on the Proposed Respondents and all other appropriate entities, per the Commission's March 16, 2020, Notice.

Please contact me with any questions regarding this filing.

Respectfully submitted,

/s/ Harold H. Davis
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R.J. Reynolds Vapor Company*

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The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Certain Disposable Vaporizer Devices and Components and Packaging Thereof

Dear Secretary Barton,

Pursuant to Commission Rules 201.6 and 210.5, 19 C.F.R. §§ 201.6 and 210.5, Complainants R.J. Reynolds Tobacco Company (“RJRT”) and R.J. Reynolds Vapor Company (“RJR”) (collectively “Complainants” or “Reynolds”) respectfully request confidential treatment of certain confidential business information contained in Confidential Exhibits 18, 21, 24, 28, 35-49 and 54 to the Verified Complaint. The information in the exhibits to the Verified Complaint for which Complainants seek confidential treatment consists of proprietary commercial information, including various financial data related to Complainant’s domestic operations, information related to product shipments and purchases, and personal identifiable information related to the same. This information qualifies as confidential business information under Commission Rule 201.6 because substantially-identical information is not available to the public, the disclosure of this information would cause substantial competitive harm to Complainants, and the disclosure of this information would likely impede the Commission’s efforts and ability to obtain similar information in the future.

Please contact me with any questions regarding this request for confidential treatment.

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Page 2

Respectfully submitted,

/s/ Harold H. Davis

Harold H. Davis

*Counsel for Complainants R.J.
Reynolds Tobacco Company and
R.J. Reynolds Vapor Company*

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN DISPOSABLE VAPORIZER
DEVICES AND COMPONENTS AND
PACKAGING THEREOF**

Inv. No. 337-TA-_____

COMPLAINANTS' STATEMENT REGARDING THE PUBLIC INTEREST

Pursuant to Commission Rule 210.8(b), Complainants R.J. Reynolds Vapor Company ("RJR") and R.J. Reynolds Tobacco Company ("RJRT") (collectively, "Reynolds") respectfully submit this Statement Regarding the Public Interest concurrently with the above-captioned complaint.

Reynolds is seeking the issuance of a general exclusion order under 19 U.S.C. § 1337(d)(2) to bar from entry into the United States illegal¹ disposable vaping devices (the "Accused Products") or, in the alternative, limited exclusion orders directed to the proposed respondents. The requested remedy of a general exclusion order is necessary (1) to prevent circumvention of any limited exclusion orders issued to named entities and also (2) because there is a widespread pattern of violation of Section 337 and it is difficult to identify the source of the Accused Products, as detailed in Reynolds' Complaint and accompanying materials. Reynolds is also seeking the issuance of cease-and-desist orders under 19 U.S.C. § 1337(f).

The remedial orders requested by Reynolds would promote the public interest by prohibiting the unfair methods of competition and/or unfair acts by foreign companies in

¹ For purposes of this document, the term "illegal" refers to disposable vaping devices (i) that do not have a timely filed premarket application pending with FDA, or a marketing denial order that has been stayed by FDA or a court, (ii) that are marketed toward youth, or (iii) for which the manufacturer has failed to take (or is failing to take) adequate measures to prevent youth access.

association with the Accused Products and by protecting consumers in the U.S., including non-adults. As explained below, Reynolds' requested relief would not have any adverse effects on public health, safety, or welfare in the U.S., competitive conditions in the U.S. economy, the production of like or directly competitive articles in the U.S., or U.S. consumers. To the contrary, if the Commission grants Reynolds its requested relief, the public interest will be served.

I. How the Accused Products Are Used in the United States

The Accused Products are disposable vaping devices ("disposable vapes"), the vast majority of which are manufactured in China. Disposable vapes are currently the most commonly used electronic nicotine delivery system ("ENDS") by youth. Disposable vapes are generally battery-powered and filled with a solution, or "e-liquid," containing varying amounts of nicotine. In general, puffing on a disposable vape activates a battery-powered heating element, which vaporizes the e-liquid that the user inhales. E-liquids are chemical mixtures of synthetic or natural nicotine and, in the case of disposable vapes, are often combined with artificial dessert or candy flavors. Flavored disposable vapes are illegal in the United States. Most disposable vapes are advertised to provide thousands of puffs and can then be thrown away after the e-liquid is used up.

II. There Are No Public Health, Safety, or Welfare Concerns Relating to the Requested Remedial Orders

Excluding the Accused Products would not negatively impact public health, safety, or welfare in the United States. The Accused Products in this context would not "deprive the public of products necessary for some important health or welfare need [such as] energy efficient automobiles, basic scientific research, or hospital equipment." *Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010) (citations omitted). Indeed, the Commission has previously considered the public interest in the context of ENDS and found, based on the facts in those investigations, that no public health, safety, or welfare concerns weighed against issuing

remedies directed against similar products. *See, e.g., Certain Tobacco Heating Articles & Components Thereof*, Inv. No. 337-TA-1199, Comm’n Op. at 56-64 (Oct. 19, 2021) (granting a limited exclusion order and cease and desist orders); *Certain Elec. Nicotine Delivery Sys. & Components Thereof*, Inv. No. 337-TA-1139, Comm’n Op. at 16-18 (May 5, 2020) (granting limited exclusion orders); *Certain Cartridges for Elec. Nicotine Delivery Sys. & Components Thereof*, Inv. No. 337-TA-1141, Comm’n Notice (Apr. 7, 2020) (granting limited exclusion orders against defaulting respondents after briefing on issues including the public interest). The Commission has reached the same conclusion when a general exclusion order was sought. *See Certain Vaporizer Cartridges & Components Thereof*, Inv. No. 337-TA-1211, Comm’n Op. at 8-17 (Mar. 1, 2022) (granting a general exclusion order and cease and desist orders). As the Commission has consistently found in prior investigations involving ENDS products, Reynolds’ requested relief would not raise any public health, safety, or welfare concerns.

III. There Are Numerous Like or Directly Competitive Articles That Could Replace the Accused Products if They Were to Be Excluded

Reynolds manufactures, markets, and sells Vuse-brand e-cigarettes in the United States, which are alternatives to combustible cigarettes for adult current smokers. Four lines of Vuse products—Solo, Vibe, Ciro, and Alto (collectively, “Vuse Products”) have been marketed and sold in the United States. As such, Reynolds, with its own Vuse Products, can readily fill any void experienced by current adult smokers from the exclusion of the Accused Products. In addition to Reynolds’ products, current adult smokers can also choose from several other ENDS products that are on the market and that do not fall within the scope of Reynolds’ requested remedial orders. These include but are not limited to certain other e-liquid products and heat-not-burn products. Several oral tobacco and nicotine products are also available in the United States, such as Velo nicotine pouches, Grizzly snuff, Kodiak snuff, and Camel Snus, REVEL nicotine lozenges, and

Nicorette gum. Accordingly, adult smokers will still be able to obtain replacement products from either Reynolds or third parties if the Accused Products are excluded from the U.S. market.

IV. Reynolds and Third Parties Have the Capacity to Replace the Volume of the Accused Products in a Commercially Reasonable Time

Reynolds has sold and will continue to sell its Vuse Products in the United States, unaffected by Reynolds' requested relief. Reynolds has the capacity to replace any increase in demand if the Accused Products were excluded from importation.² Reynolds is willing to meet any increased demand and can do so in a commercially reasonable time, given that it already supplies the industry with significant quantities of ENDS products, as well as oral tobacco and nicotine products. In addition, various third parties currently sell ENDS products and, on information and belief, would be able to increase their production capacity to help replace the volume of the Accused Products in a commercially reasonable time. Accordingly, adult current users of Accused Products in the United States would be able to obtain ENDS or oral tobacco and nicotine products either from Reynolds or third parties in the event the requested relief is granted.

V. The Requested Remedial Orders Would Impact U.S. Consumers Positively

Reynolds' requested relief would have no adverse impact on U.S. consumers. On the contrary, the requested relief would positively impact and protect U.S. consumers, including minors. The proposed respondents import and sell the Accused Products in an unlawful manner and do not take adequate measures to prevent minors' access to the Accused Products. Indeed, the majority of the Accused Products appear specifically targeted to minors.

In contrast to the unregulated flow of the Accused Products into the United States (and particularly towards minors), Reynolds expends significant resources to comply with requirements

² See Confidential Declaration of Valerie Mras at ¶21.

established for the importation and sale of its products and employs stringent policies and controls to prevent its ENDS devices from getting into the hands of minors. If the Commission grants the requested relief, adult consumers would still be able to obtain ENDS and oral tobacco and nicotine products (either from Reynolds or other approved third parties), but the unfair competition and/or acts associated with the Accused Products (and the corresponding effects on consumers, including minors) would cease. Accordingly, U.S. consumers would be impacted positively by the requested remedial orders.

VI. Conclusion

For the foregoing reasons, there are no public interest concerns that should preclude the issuance of Reynolds' requested remedies. Exclusion of the Accused Products would not raise any public health, safety, or welfare concerns, nor would it adversely affect U.S. consumers. To the contrary, if the Commission grants Reynolds' requested relief, the public interest will be served—specifically, the strong public interest in prohibiting unfair methods of competition and unfair acts, including those specifically targeted towards non-adults. In addition, an adequate supply of substitute devices—Reynolds' own ENDS products, as well as third-party products that are not within the scope of Reynolds' requested remedial orders—will continue to be available. Accordingly, there are no public interest concerns that would outweigh the strong public interest in prohibiting unfair methods of competition and unfair acts and in protecting U.S. consumers.

October 13, 2023

Respectfully submitted,

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**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN DISPOSABLE VAPORIZER
DEVICES AND COMPONENTS AND
PACKAGING THEREOF**

Inv. No. 337-TA-_____

**VERIFIED COMPLAINT UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AS AMENDED**

Complainants:

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Proposed Respondents:

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American Vape Company, LLC a/k/a American
Vapor Company, LLC
13326 Immanuel Road
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Breeze Smoke, LLC
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Flawless Vape Wholesale & Distribution Inc.
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Price Point Distributors Inc. d/b/a Prince Point
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El Monte, CA 91731

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Room 306-311, Tianshu Building, No. 6099,
Bao'an Avenue, Bao'an District, Shenzhen,
China 518000

VICA Trading Inc. d/b/a Vapesourcing
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1	Surgeon General's Advisory on E-Cigarette Use Among Youth (Dec. 2018)
2	CDC Foundation Data Brief, Monitoring U.S. E-Cigarette Sales: National Trends (Mar. 2023)
3	Exemplars of Product Packaging for the Accused Products
4	Fatma R. Ali et al., <i>E-Cigarette Unit Sales by Product and Flavor Type, and Top-Selling Brands, United States, 2020-2022</i> , 72 Ctrs. For Disease Control & Prevention Morbidity & Mortality Weekly Rep. 672 (2023)
5	Matthew Perrone, <i>5 Takeaways from the AP's Report on Chinese Disposable E-Cigarettes Flooding the US Market</i> , AP (June 26, 2023)
6	Eunice Park-Lee et al., <i>Notes from the Field: E-Cigarette Use Among Middle and High School Students—National Youth Tobacco Survey, United States, 2021</i> , 70 Ctrs. For Disease Control & Prevention Morbidity & Mortality Weekly Rep. 1387 (2021)
7	U.S. Food & Drug Admin., <i>FDA Notifies Companies, Including Puff Bar, to Remove Flavored Disposable E-Cigarettes and Youth-Appealing E-Liquids from Market for Not Having Required Authorization</i> (July 20, 2020)
8	Ctr. for Tobacco Prods., <i>Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization (Revised)</i> (Apr. 2020)
9	Mitch Zeller, <i>Perspective: FDA's Preparations for the September 9 Submission Deadline</i> (Aug. 31, 2020)
10	U.S. Food & Drug Admin., <i>FDA Conducts Retailer Inspection Blitz, Cracks Down on Illegal Sales of Popular Disposable E-Cigarettes</i> (May 31, 2023)
11	U.S. Food & Drug Admin., <i>FDA Notifies Companies, Including Puff Bar, to Remove Flavored Disposable E-Cigarettes and Youth-Appealing E-Liauids from Market for Not Having Required Authorization</i>
12	U.S. Food & Drug Admin., <i>Requirements for Products Made with Non-Tobacco Nicotine Take Effect April 14</i> (Apr. 13, 2022)
13	Jidong Huang et al., <i>Changing Perceptions of Harm of E-Cigarette Vs. Cigarette Use Among Adults in 2 US National Surveys from 2012 to 2017</i> , JAMA Network Open, Mar. 29, 2019
14	U.S. Food & Drug Admin., <i>Import Alert 98-06</i>
15	Matthew Perrone, <i>Thousands of Unauthorized Vapes Are Pouring into the US Despite the FDA Crackdown on Fruity Flavors</i> , AP (June 26, 2023)

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16	Reynolds Am. Inc., <i>Reynolds Completes 2020 PMTA Submissions with Vuse Alto E-Cigarette Applications</i> , PR Newswire (Sept. 4, 2020)
17	U.S. Food & Drug Admin., <i>Premarket Tobacco Product Marketing Granted Orders</i>
18	Declaration of Eric Flagg
19	<i>Warning Letter to Breeze Smoke, LLC</i> (May 25, 2023)
20	Intelligence Report on Breeze Smoke
21	Consumer Report for Purchase of Disposable Vape from Price Point on September 20, 2023
22	<i>VPR Brands v. Shenzehn Weiboli Tech. Co Ltd.</i> , First Amended Complaint for Trademark Infringement, Unfair Competition, Cybersquatting and Patent Infringement (S.D. Fla. Dec. 16, 2022)
23	Intelligence Report on Elf Bar
24	Consumer Report for Purchase of Disposable Vape from Element Vape on February 27, 2023
25	<i>Warning Letter to Shenzhen Innokin Technology Co., Ltd.</i> (May 25, 2023)
26	<i>City of New York v. Magellan Tech., Inc.</i> , Complaint (S.D.N.Y. July 10, 2023)
27	<i>Magellan Tech., Inc. v. Hydevapeofficial.com</i> , Verified Complaint (E.D. Va. July 13, 2023)
28	Consumer Report for Purchase of Disposable Vape from VaporDNA on February 20, 2023
29	Photographs of Various Hyde Disposable Vapes Purchased Online from Mi-One
30	<i>EVO Brands, LLC v. Al Khalifa Grp. LLC</i> , Second Amended Complaint (C.D. Cal. Mar. 16, 2023)
31	Intelligence Report on Puff Bar
32	<i>Warning Letter to EVO Brands, LLC and PVG2, LLC d/b/a Puff Bar</i> (Oct. 6, 2022)
33	<i>Warning Letter to Shenzhen Fumot Technology Co., Ltd.</i> (Nov. 16, 2022)
34	Intelligence Report on R and M
35	Consumer Report for Purchase of Disposable Vape from Flawless Vape on February 27, 2023
36	Consumer Report for Purchase of Disposable Vape from Element Vape on September 23, 2023

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37	Consumer Report for Purchase of Disposable Vape from Price Point on June 9, 2023
38	Consumer Report for Purchase of Disposable Vape from Mi-One on February 27, 2023
39	Consumer Report for Purchase of Disposable Vape from Mi-One on July 10, 2023
40	Declaration of Valerie Mras
41	Consumer Report for Purchase of Disposable Vape from Price Point on May 20, 2023
42	Consumer Report for Purchase of Disposable Vape from Flawless Vape on June 15, 2023
43	Consumer Report for Purchase of Disposable Vape from Hyde Vape Official on February 28, 2023
44	Consumer Report for Purchase of Disposable Vape from Price Point on May 15, 2023
45	Consumer Report for Purchase of Disposable Vapes from Element Vape on November 7, 2022
46	Consumer Report for Purchase of Disposable Vape from Flawless Vape on June 15, 2023
47	Consumer Report for Purchase of Disposable Vape from Mi-One on June 9, 2023
48	Consumer Report for Purchase of Disposable Vape from Price Point on June 9, 2023
49	Consumer Report for Purchase of Disposable Vape from Vape Sourcing on June 21, 2023
50	Excerpts from HTS Chapter 85
51	Excerpts from HTS Chapter 99
52	Intelligence Report on HydeVapeOfficial.com
53	Spreadsheet of Imports for Breeze Smoke, LLC
54	Consumer Report for Purchase of Disposable Vapes from Mi-One on November 7, 2022
55	<i>Am. Vape Co., LLC v. Uday Grp., Inc.</i> , Complaint for Trademark Infringement, Trade Dress Infringement, False Designation of Origin, and Unfair Competition (W.D. Tex. July 25, 2022)
56	Spreadsheet of Imports for Affiliated Imports, LLC

Exhibit Number	Description
57	Layla Malt et al., <i>Perception of the Relative Harm of Electronic Cigarettes Compared to Cigarettes Amongst US Adults from 2013 to 2016: Analysis of the Population Assessment of Tobacco and Health (PATH) Study Data</i> , Harm Reduction J., Sept. 18, 2020
58	Christina Jewett, <i>Illicit E-Cigarettes Flood Stores as F.D.A. Struggles to Combat Imports</i> , The New York Times (Oct. 10, 2023)
59	Made-in-China Website, E-Cigarette Online

I. INTRODUCTION

PURPOSE OF THE ACTION

1. R.J. Reynolds Tobacco Company (“RJRT”) and R.J. Reynolds Vapor Company (“RJRV”) (collectively “Complainants” or “Reynolds”) respectfully request that the United States International Trade Commission (“ITC” or “Commission”) institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on Proposed Respondents’ unfair acts in the importation into, sale for importation, and/or sale after importation in the United States of flavored disposable vaporizer devices that lack FDA authorization (or at least a timely filed, pending marketing application with FDA), are falsely advertised and marketed, and do not comply with federal laws.

2. In importing and selling these products, Proposed Respondents engage in unfair competition and unfair acts in violation of Section 337. These unfair acts include: false and misleading advertising, violating federal laws regulating the sale of tobacco products, and violating federal Customs laws and regulations. These illegal tactics harm Complainants because adult smokers are turning to Proposed Respondents’ illegal disposable vaporizer devices rather than purchasing products from manufacturers who are complying with federal directives and policies. Worse still, many traffickers of these disposable vaporizer devices also intentionally and systematically market to youth, endangering that vulnerable population. To protect not only Complainants’ interests in a fair market among adult consumers of Complainants’ products, but also to protect America’s youth, the Commission should institute an investigation into Proposed Respondents and issue a general exclusion order.

ELECTRONIC NICOTINE DELIVERY SYSTEMS – IN GENERAL

3. Electronic nicotine delivery systems (“ENDS”) are hand-held devices designed to deliver nicotine to the user via an inhaled aerosol. ENDS products are commonly known as “vape”

products, the use of which is commonly referred to as “vaping.”

4. Vapes may have the potential to assist adult smokers seeking to transition from smoking cigarettes to vaping, but the use of these disposable vaporizer devices by minors puts youth at risk for addiction. *See* Exhibit 1. It is unsafe for children to use tobacco products in any form, including vapes. There are a number of different types of ENDS. As relevant here, one type is cartridge-based e-cigarettes. That type of device has a reusable power unit that accepts cartridges pre-filled with e-liquid and used with the power unit to create an inhalable aerosol. Complainants make cartridge-based e-cigarettes under the brand name Vuse. Another type of ENDS is a disposable e-cigarette. That type of device combines the power source (typically a battery) and the e-liquid in a self-contained unit. After the user finishes using the device, he or she discards the entire product. The accused products fall into this second type category of devices.

FEDERAL REGULATION OF ENDS

The FD&C Act Requires Pre-Authorization for Vapes

5. The Food, Drug, and Cosmetic Act (“FD&C Act”) requires premarket review for any “new tobacco product,” which means any tobacco product that was not commercially marketed in the United States as of February 15, 2007, or any modification of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007. *See* 21 U.S.C. § 387j(a) (Section 910(a) of the FD&C Act). A new tobacco product requires a “marketing granted order” under 21 U.S.C. § 387j(c)(1)(A)(i) (Section 910(c)(1)(A)(i) of the FD&C Act) unless: (1) FDA issues an order finding the product substantially equivalent to a tobacco product on the market as of February 15, 2007; or (2) FDA issues an order finding the product to be exempt from the requirements of substantial equivalence and the required submission is made under 21 U.S.C. § 387e(j)(1)(A)(ii) (Section 905(j)(1)(A)(ii) of the FD&C Act). *See* 21 U.S.C. § 387j(a)(2)(A).

6. The U.S. Food and Drug Administration (“FDA”) established a compliance policy allowing all newly-deemed products that were on the market as of August 8, 2016, to remain on the market so long as the manufacturer filed a premarket tobacco product application (“PMTA”) by a deadline that was later extended to September 9, 2020, and FDA took no negative action against the application. *See* Exhibit 9 at 1-2.

The FDA Threatens Action Against Unauthorized Flavored ENDS

7. In early 2020, the FDA adopted an enforcement policy that was designed to balance the potential benefits to adults that ENDS can provide against the risks of ENDS winding up in the hands of youth. Consequently, the FDA continued to allow certain ENDS to remain on the market per its enforcement policy, but announced that three categories of ENDS products with tobacco-derived nicotine would be priorities for enforcement: (i) cartridge-based e-cigarettes with flavors other than tobacco and menthol, (ii) ENDS products without adequate measures to prevent minors’ access, and (iii) ENDS products marketed in a way that would promote the use of ENDS by minors. *See* Exhibit 8 at 24.

8. Following FDA’s issuance of this guidance regarding flavored cartridges, responsible entities ceased selling flavored pre-filled cartridges. Nevertheless, sales of flavored disposable products have vastly increased. *See* Exhibit 4 at 3.

9. This increase was largely because traffickers of disposable vapes began exploiting an ambiguity in the FD&C Act by arguing products containing synthetic nicotine—as opposed to natural nicotine found in tobacco—fell outside FDA’s regulatory authority over “tobacco products.”

10. In response, in March 2022, Congress passed additional legislation clarifying that FDA can regulate tobacco products containing nicotine from any source. *See* Exhibit 12 at 1. The legislation required applications for synthetic-nicotine ENDS to be submitted to FDA by May 12,

2023; otherwise, the product had to come off the market at that time. *Id.*

11. Accordingly, disposable vapes are illegal if (i) they do not have a timely filed premarket tobacco product application pending with FDA, or a marketing denial order that has been stayed by FDA or a court, (ii) they are marketed toward youth, and/or (iii) the manufacturer of the product has failed to take (or is failing to take) adequate measures to prevent youth access. For brevity, this complaint will refer to these products as “Illegal Disposable Vapes.”

12. Despite the fact that most disposable vapes fall into the category of being “Illegal Disposable Vapes,” between January 2020 and December 2022, sales of disposable vapes in the United States more than doubled from 24.7% to 51.8% of total e-cigarette sales. *See* Exhibit 4 at 1. More than 5,800 varieties of disposables are currently being sold in the United States, up more than 1,500% from 356 disposables available in early 2020. *See* Exhibit 5 at 2. But not only is the sale of Illegal Disposable Vapes cutting into the legitimate (adult-centered) market for ENDS, these products are also endangering youth. The vast majority of these disposable vapes contain sweet flavorings specifically marketed to youth, such as “Gummy Bear,” “Rainbow Candy,” “Rainbow Skittle,” “Cotton Candy Ice,” “Candy Hearts,” “Watermelon Bubble Gum,” “Strawberry Cheesecake,” and “Strawberry Sundae.” Many illegally use images and iconography popular with minors. This increase is almost entirely driven by imports of the Chinese manufactured Illegal Disposable Vapes.

13. In fact, by 2021, flavored disposable vapes had become the most commonly used ENDS device among teenagers. *See* Exhibit 6 at 1.

14. The FDA has acknowledged this dangerous trend, repeatedly expressing its “particular[] concern[] about the appeal of flavored, disposable e-cigarettes to youth.” Exhibit 7 at 1.

15. Nevertheless, the number and type of flavored disposable vapes in the U.S. market have increased exponentially, and the limited federal and state regulation of sales has been ineffective to stop the rising underage use of these products. According to a New York Times article from just this week, “[t]he latest flood of illicit e-cigarettes is arriving from China in Barbiecore colors, ... ice cream and slushy flavors, and accounts for a major share of the estimated \$5.5 billion e-cigarette market in the United States.” Exhibit 58 at 1.

While Laudable, FDA’s Enforcement is Too Shallow to Effectively Penetrate the Market

16. The FDA has recently added various flavored Illegal Disposable Vapes, including products manufactured and sold by Proposed Respondents, to a “[l]ist of firms and their products subject to Detention without Physical Examination,” commonly known as the “Red List.” Exhibit 14 at 3.

17. The FDA has explicitly stated that the flavored Illegal Disposable Vapes are “[t]obacco products that lack the premarket authorization requirements [and] are considered adulterated.” Exhibit 14 at 3-8, 16-18.

18. Proposed Respondents who are on the “Red List” include GUANGDONG QISITECH CO., LTD. (Elf Bar or Elfbar or EBESIGN ENDS products); IMIRACLE (SHENZHEN) TECHNOLOGY CO., LTD. (same); SHENZHEN FUNYIN ELECTRONIC TECHNOLOGY CO., LTD. (All Esco Bars or Escobars ENDS products); SHENZHEN PINGRAY TECHNOLOGY (same) and SHENZHEN FUMOT TECHNOLOGY CO., LTD. (R and M ENDS products). *See* Exhibit 14.

19. Unfortunately, the products on the Red List account for only approximately 14% of Illegal Disposable Vape sales. *See* Exhibit 15 at 3. Dozens of other brands, including those sold and distributed by Proposed Respondents, have been left untouched. *See id.*

20. For instance, while the FDA has enforced the prohibition on “misbranding,”

including false and misleading claims that vaping devices are less harmful or pose fewer risks than other tobacco products, its efforts have not leveled the playing field for responsible manufacturers—many adult users of ENDS purchase Illegal Disposable Vapes instead of legitimate ENDS from responsible manufacturers such as Complainants. Nor have the FDA’s enforcement efforts stopped the proliferation of Illegal Disposable Vapes that are targeted to America’s youth. According to the New York Times this week “though the F.D.A. has fired off hundreds of warning letters, the effect is barely felt: Flavored vape sales have surged 60 percent over the past three years, to 18 million vaping products a month in June from 11 million a month in early 2020....” Exhibit 58 at 1.

21. The number of different vaping devices sold in the United States nearly tripled to over **9,000** since 2020, driven almost entirely by a wave of Illegal Disposable Vapes from China. *See* Exhibit 15 at 2.

Complainants’ Devices, Marketing, and Sales Practices Comport with the Law

22. In contrast to peddlers of Illegal Disposable Vapes, Complainants have vigorously maintained a policy of responsibly selling and marketing their tobacco and menthol ENDS to adults seeking alternatives to traditional tobacco products. Complainants have similarly complied with FDA regulations: Complainants’ e-cigarette product, branded Vuse®, was on the market as of August 8, 2016, and Complainants prepared and filed PMTAs for its Vuse® portfolio by the FDA’s September 2020 deadline. *See generally* Exhibit 16. To date, the FDA has authorized only 23 tobacco-flavored e-cigarette products and devices, nine of which are Complainants’ products. *See generally* Exhibit 17.

23. Complainants also maintain stringent controls to prevent their e-cigarette devices from getting into the hands of non-adults. For example, Complainants’ websites for their Vuse products do not function as e-commerce platforms. The websites do not sell any products directly,

and Complainants only offer traditional tobacco and menthol products. Complainants direct visitors, whose ages have been verified, to retailers where an in-store purchase of Complainants' products can be made, and the user's identity re-verified.

24. Complainants' websites feature robust "login gates" that guard against underage access to their products by prohibiting navigation beyond a home page without proper identification and verification. Complainants' websites implement a four-step process for age and identity verification:

Step One: Users are required to provide their full legal name as it appears on a government-issued ID, a current physical address and e-mail address, and a phone number, date of birth, and a certification that the user is 21 years or older;

Step Two: Users must set up a password and provide a security question and answer;

Step Three: Users must verify the last four digits of their Social Security Number; and

Step Four: Users must upload an image of a government-issued photo ID.

25. Thus, to access Complainants' websites concerning their Vuse products, all users must have their age and identity verified. This dramatically reduces the chances of underage access to Complainants' websites and the possibility of underage access to Complainants' vaping devices.

26. Complainants also maintain an uncompromising "adults only" marketing policy for their vaping devices. Complainants use analytical tools to select partnerships with third-party promoters who have a majority-adult following. Complainants do not use open social media to promote their vaping devices.

27. Complainants train retail employees to check identification through the "We Card" program, in an effort to prohibit underage purchase and consumption of their vaping devices.

28. Complainants have also followed all FDA and other requirements in launching, selling, and importing their vaping products. In October 2019, RJRV filed a PMTA for its Vuse Solo® product. Complainants likewise filed PMTAs for their other Vuse® products (Vibe®,

Ciro®, and Alto®) and the Velo® products (pouch and lozenge) by the September 2020 deadline. In October 2021, the FDA granted marketing authorization for the Vuse Solo® device and its tobacco (“original”) flavor. In May 2022, the FDA issued marketing authorization orders for tobacco-flavored Vuse Vibe® and Ciro® products.¹ RJRV’s PMTA for tobacco-flavored Vuse Alto® remains pending.

29. Complainants have a substantial domestic industry in vaping devices and employ thousands of American workers. Proposed Respondents’ unfair trade practices have caused substantial injury and threaten further injury to Complainants’ domestic industry.

Summary of Proposed Respondents’ Unfair Acts and Relief Requested

30. Proposed Respondents have imported, sold for importation into the United States, or sold within the United States after importation certain Illegal Disposable Vapes in violation of Section 337 based upon one or more of the following unfair acts and/or unfair methods of competition: (1) falsely advertising their Disposable Vapes as authorized for sale in the United States by the United States Government and as if they are “clear” rather than flavored; (2) failing to comply with federal laws imposing registration and reporting requirements and limitations on sales of ENDS products; and (3) violating various Customs laws and regulations applicable to imported goods.

31. Consequently, Complainants seek a general exclusion barring from entry into the United States all unfairly traded Illegal Disposable Vapes that are manufactured abroad, sold for importation, imported, or sold in the United States after importation.

32. To be clear, Complainants are not requesting that the Commission directly apply, enforce, or interpret the FD&C Act. Complainants are requesting only that the Commission, under

¹ Complainants stopped selling Ciro products earlier this year.

Section 337, issue a remedy to prohibit the unlawful importation and sale after importation of the Accused Products. Additionally, Complainants request that Proposed Respondents be required to play by the rules and compete lawfully and fairly with Complainants, instead of harming Complainants' domestic injury by falsely and unfairly marketing and selling their Disposable Vapes in a way that states or suggests they also have been authorized and/or approved by the United States government when the FDA has explicitly stated that such products are not in fact authorized, and by failing to comply by federal laws regulating ENDS and committing unfair acts of importation by violating customs laws.

33. Proposed Respondents continue to unfairly, unlawfully, and falsely advertise, promote, market, and sell their unauthorized Illegal Disposable Vapes in competition with Complainants' products, thereby causing substantial injury not only to Complainants' domestic industry, but also to consumers and others along the value chain in the domestic market, such as wholesalers, distributors, and retailers, all of whom are given the false impression that Proposed Respondents' Disposable Vapes have been determined by the FDA to meet the same standards Complainants have met, at high cost, when in fact no such FDA authorization has ever been made.

34. Proposed Respondents' false marketing of their Illegal Disposable Vapes endangers the public health because they have not obtained authorization from the FDA, do not have a marketing denial order that has been stayed by FDA or a court, are not under FDA review, or did not meet the deadline for filing an application with FDA. The PMTA process was set up to ensure that all new vaping products lawfully on the market have been evaluated by the FDA to determine whether marketing of such products is appropriate for the protection of the public health. Because Proposed Respondents have sought to skip the line for lawful authorization process for new vaping devices, their Illegal Disposable Vapes have not been found by the FDA to comply with its

stringent standards. Even if the Proposed Respondents' Illegal Disposable Vapes are later shown to meet the FDA's standards, the statements by Proposed Respondents in the marketplace knowingly create the materially false impression that the FDA has already issued its authorization. Such knowing misrepresentations create significant harm to the entire market and its participants, including Complainants.

35. In order to prevent Proposed Respondents from utilizing their myriad methods, affiliates, and surrogates to circumvent limited exclusion orders directed to products of named Respondents, because there has been a pattern of violation of Section 337, and because it is difficult to identify the source of unfairly traded Disposable Vapes, a general exclusion order is necessary.

36. A limited exclusion order would be insufficient for many reasons.

37. First, foreign manufacturers of Illegal Disposable Vapes are not required to register with the FDA or other U.S. agencies, limiting the ability to identify the true manufacturers and importers of Illegal Disposable Vapes.

38. Second, the economic barriers to entry are low: Chinese manufacturers offer dozens of designs and flavors for as little as \$2 per device when an order is placed for 10,000 or more units. The devices sell in the United States for \$10 to \$30. *See* Exhibit 59.

39. Third, Chinese manufacturers and importers can easily skirt existing import bans by just renaming and/or reclassifying their products. For example, the FDA's import ban against Chinese manufacturers of Elf Bar products does not specifically identify numerous other brands offered by the company, including Lost Mary and Funky Republic.

40. Fourth, Chinese manufacturers and importers have created a "whack-a-mole" situation, quickly and deftly changing identity, branding, and distribution methods when necessary to avoid bans on their products and detection by the FDA, Bureau of Alcohol, Tobacco, Firearms

and Explosives, and Customs and Border Protection. For example, the Chinese Disposable Vape exporter Heaven Gifts recently stated that it stopped shipping Disposable Vapes, but such entities are known to simply create another website under a different name and continue to ship Disposable Vapes into the United States. *See* Exhibit 18 at ¶ 18.

41. The constant changes in product and business names by the companies involved in the distribution chain, including several of the Proposed Respondents, pose a challenge for government agencies in their efforts to prevent the sale of Illegal Disposable Vapes in the United States. Continuous monitoring is required to identify new products and players in the marketplace.

42. Although a limited exclusion order would be insufficient to stem the adverse impacts of Proposed Respondents' Illegal Disposable Vape imports, Complainants seek, at a minimum, a limited exclusion order directed to each of the Proposed Respondents, barring from entry into the United States all unfairly traded Illegal Disposable Vapes that are manufactured abroad, sold for importation, imported, or sold in the United States after importation.

43. Complainants further seek permanent cease and desist orders under 19 U.S.C. § 1337(f) prohibiting Proposed Respondents and their subsidiaries, related companies, and agents from, among other things, engaging in the importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, or assisting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of all unfairly traded Illegal Disposable Vapes. Further, Complainants request that the Commission impose a bond upon Proposed Respondents' importation of all their Illegal Disposable Vapes during the 60-day Presidential review period, pursuant to 19 U.S.C. §§ 1337(j), to prevent further injury to

Complainants' domestic industry.

II. THE PARTIES

A. Complainants

44. Complainant RJRT is a North Carolina corporation with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101. RJRT provides research and technical support and produces components for Reynolds' Vuse products.

45. Complainant RJRV is a North Carolina corporation with its principal place of business located at 401 North Main Street, Winston-Salem, North Carolina 27101. RJRV is responsible for developing, distributing, and selling Reynolds' Vuse Products.

B. Manufacturer Respondents

46. Certain Respondents manufacture the Accused Products in China and import and/or sell them for importation into the United States. These Respondents are collectively referred to herein as the "Manufacturer Respondents."

Breeze Respondents

1. Breeze Smoke, LLC

47. Breeze Smoke, LLC ("Breeze Smoke") is a Michigan limited liability company with a registered address at 4654 Lilly Court, West Bloomfield, Michigan 48323. Upon information and belief, the address 1471 E. Nine Mile Road, Unit 200, Hazel Park, Michigan 48039 is also associated with Breeze Smoke. *See* Exhibit 19 at 4. Breeze Smoke owns the trademark for the Disposable Vapes sold under the trade names "Breeze," "Breeze Pro," and "Breeze Prime," among others. *See* Exhibit 20 at 7.

2. Dongguan (Shenzhen) Shikai Technology Co., Ltd.

48. Dongguan (Shenzhen) Shikai Technology Co., Ltd. ("Shikai Technology") is a Chinese limited company located at L5 Block A Shuangjinhui, Tongfuyu Fuyong, Baoan

Shenzhen, Guangdong, China 518101. Shikai Technology manufactures Breeze-brand Disposable Vapes. *See* Exhibit 21 at 4.

49. Breeze Smoke and Shikai Technology, collectively, are referred to herein as the “Breeze Respondents.”

Elf Bar Respondents

3. Shenzhen Weiboli Technology Co. Ltd.

50. Shenzhen Weiboli Technology Co. Ltd. (“Shenzhen Weiboli”) is a Chinese limited company with its principal place of business at Room 312, Tianshuzuo, No. 6099 Bao’an Avenue, Bao’an District, Shenzhen, China 518000. Shenzhen Weiboli is a manufacturer and supplier of Elf Bar Disposable Vapes. *See* Exhibit 22 at 8-9.

4. Vapeonly Technology Co. Ltd.

51. Vapeonly Technology Co. Ltd. (“Vapeonly”) is a Chinese limited company with its principal place of business at Room 306-311, Tianshu Building, No. 6099, Bao’an Avenue, Bao’an District, Shenzhen, China 518000. Vapeonly also manufactures and supplies Elf Bar Disposable Vapes. *See* Exhibit 23 at 5.

5. iMiracle (Shenzhen) Technology Co., Ltd.

52. iMiracle (Shenzhen) Technology Co., Ltd. (“iMiracle (Shenzhen)”) is a Chinese limited company with an address at Room 1203, Block 1, Wanting Building, Xixiang Subdistrict, Bao’an District, Shenzhen, China 518126. The packaging of Elf Bar and Lost Mary products lists iMiracle (Shenzhen) Technology Co., Ltd. as the corporation responsible for those brands. iMiracle (Shenzhen) is the registered trademark owner of, among other things, ELFBAR BC5000. *See id.* at 15.

6. Guangdong Qisitech Co., Ltd.

53. Guangdong Qisitech Co., Ltd. (“Guangdong Qisitech”) is a Chinese limited

company with an address at Fuxing Road, Changan Town Room 201, Building 3, No. 36, Dongguan City, Guangdong Province, China 523000. Guangdong Qisitech is the white-label manufacturer of Elf Bar Disposable Vapes for iMiracle (Shenzhen). *See id.*

7. Shenzhen Han Technology Co., Ltd.

54. Shenzhen Han Technology Co., Ltd. (“Shenzhen Han”) is a Chinese limited company with an address at Qianwan Hard Technolgy Park, Baoan District, Shenzhen, Guangdong, China 518126. Shenzhen Han manufactures ENDS, including Lost Mary Disposable Vapes. *See Exhibit 24 at 14.*

55. Shenzhen Weiboli, Vapeonly, iMiracle (Shenzhen), Guangdong Qisitech, and Shenzhen Han, collectively, are referred to herein as the “Elf Bar Respondents.”

56. On May 17, 2023, the FDA issued an import alert for Elf Bar and EB Design Disposables, putting them on the “Red List.” This means that Ef Bar and EB Design Disposable Vapes can be refused or detained at their time of entry into the United States from China. All Elf Bar- and EB Design-brand products are included on the Red List and are “subject to [d]etention without [p]hysical [e]xamination.” *See Exhibit 14 at 3-4.* The import alert identifies Guangdong Qisitech and iMiracle (Shenzhen) as firms that “may be importing/manufacturing/shipping a new tobacco product (Elf Bar/Elfbar or EB DESIGN) without marketing authorization.” *Id.*

Esco Bars Respondents

8. American Vape Company, LLC a/k/a American Vapor Company, LLC

57. American Vape Company, LLC a/k/a American Vapor Company, LLC (“AVC”) is a Texas limited liability company located at 13326 Immanuel Road, Pflugerville, Texas 78660. AVC co-owns the trademark of Disposable Vapes sold under the trade name “Esco Bars.” AVC also owns the trademark to the trade name “Pastel Cartel.” AVC sells for importation, imports, or

sells after importation Esco Bars Disposable Vapes.

9. Pastel Cartel, LLC

58. Pastel Cartel, LLC (“Pastel Cartel”) is a Texas limited liability company located at 13326 Immanuel Road, Pflugerville, Texas 78600. Pastel Cartel co-owns the trademark of Disposable Vapes sold under the trade name “Esco Bars.” Pastel Cartel sells for importation, imports, or sells after importation Esco Bars Disposable Vapes.

10. Affiliated Imports, LLC

59. Affiliated Imports, LLC is a Texas limited liability company located at 13326 Immanuel Road, Pflugerville, Texas 78600. Affiliated Imports is registered to AVC and acts as AVC’s and Pastel Cartel’s consignee and importer of record for incoming shipments of Esco Bars Disposable Vapes to the United States. Affiliated Imports also uses the address 13501 Immanuel Road, Pflugerville, Texas 78600, which is across the street from 13326 Immanuel Road and a mere 0.2 miles apart.

11. Shenzhen Innokin Technology Co., Ltd.

60. Shenzhen Innokin Technology Co., Ltd. (“Innokin”) is a Chinese limited company with an address at Building 6, XinXinTian Industrial Park, Xinsha Road, Shajing, Baoan District, Shenzhen, China 518104. Innokin manufactures Esco Bars Disposable Vapes. *See* Exhibit 25 at 2.

12. Shenzhen Funyin Electronic Technology Co., Ltd.

61. Shenzhen Funyin Electronic Technology Co., Ltd. (“Funyin Electronic”) is a Chinese limited company with its principal place of business at 205 and 401, Building A3, Fuyan Ind. Zone Tangwei Community, Fuhai St., Bao’an Dist. Shenzhen, Guangdong, China 518000. Funyin Electronic manufactures ENDS, ENDS accessories, and CBD products. Funyin Electronic manufactures Esco Bars Disposable Vapes. *See* Exhibit 14 at 6.

13. Shenzhen Pingray Technology

62. Shenzhen Pingray Technology (“Pingray”) is a Chinese limited company with its principal place of business at 3rd Floor, No. 9 Building, HuaFeng International Made City, WanLe Rd., Shajing St., Bao’an District, Shenzhen City, China 518000. Pingray manufactures Esco Bars Disposable Vapes. *See* Exhibit 14 at 6.

63. Innokin, Funyin Electronic, and Pingray, collectively, are referred to herein as the “Chinese Esco Bars Manufacturer Respondents.”

64. AVC, Pastel Cartel, Affiliated Imports, and the Chinese Esco Bars Manufacturer Respondents, collectively, are referred to herein as the “Esco Bars Respondents.”

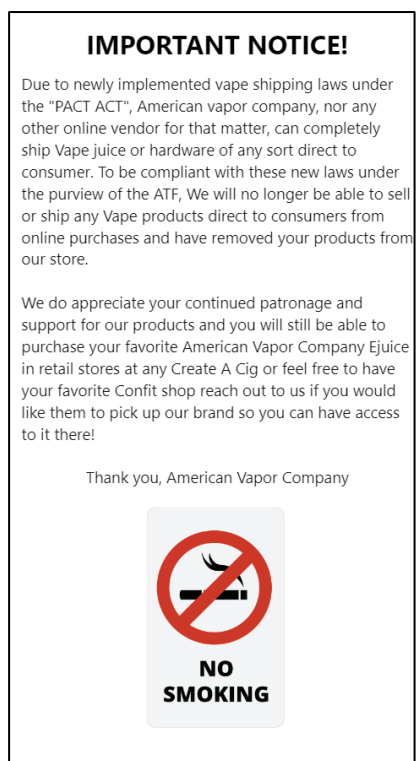
65. AVC is owned and operated by the Suriff family, consisting of Darrell Suriff and his sons Carson and Justin. The Suriffs also own and operate Pastel Cartel and are the company’s directors.

66. According to AVC’s website, www.americanvaporcompany.com, the company “design[s] and develop[s] an assortment of decadent e-liquids” and their “Master Flavorist and formulators are some of the best out there, never [ceasing] to surprise with their creativity.”

67. Pastel Cartel touts on its website, www.escobars.com, that it is an “international sensation,” and that Esco Bars Disposable Vapes are “immensely popular” and the “fastest-growing disposable ENDS in the United States.”

68. Esco Bars Disposable Vapes have generated over \$240 million in sales for Pastel Cartel since their introduction to the market. *See* Exhibit 15 at 6.

69. AVC’s website was visited on September 21, 2023, and the following pop-up appeared:



70. The pop-up claims that “due to newly implemented vape shipping laws under the ‘PACT ACT,’ [AVC], nor any other online vendor for that matter, can completely ship Vape juice or hardware of any sort direct to consumer.” AVC claims that “to be compliant with these new laws . . . [w]e will no longer be able to sell or ship any Vape products direct to consumers from online purchases.” Esco Bars products are not available to purchase directly from AVC’s website.

71. Pastel Cartel’s website, www.escobars.com, was visited on September 21, 2023, and did not contain a similar pop-up. On the “Wholesale” page on the website, shown below, Pastel Cartel states that it uses “[s]wift and discrete [sic] shipment from our Texas fulfillment center” to ship products, including Disposable Vapes, to distributors and resellers. Esco Bars products are not available to purchase directly from Pastel Cartel’s website.

The screenshot shows the top navigation bar of the ESCO BARS website with links: SHOP ALL, DELTA DISPOSABLES, DELTA GUMMIES, PRE-ROLLS, VAPE DISPOSABLES, E-LIQUID, and ACCESSORIES. Below the navigation bar is a breadcrumb trail: Home > Wholesale. The main heading is "WHOLESALE". The text describes the company's commitment to quality and provides a list of benefits: Superior products at competitive prices, Highly responsive Sales & Customer Support team, Third party lab testing of all materials, Swift & discrete shipment from our Texas fulfillment center, and Commitment to quality and customer satisfaction. A contact prompt follows: "Contact a member of our Sales team today! We can't wait to meet you." To the right is a registration form with fields for: First Name, Last Name, Company Name, Street Address, and Address line 2.

PASTEL CARTEL
ESCO BARS

SHOP ALL DELTA DISPOSABLES ▾ DELTA GUMMIES ▾ PRE-ROLLS VAPE DISPOSABLES ▾ E-LIQUID ACCESSORIES

Home > Wholesale

WHOLESALE

Pastel Cartel is committed to providing the best and highest quality products possible, at prices that ensure our goods remain accessible to all consumers while supporting a healthy profit margin for resellers. Our world-class sales & support teams are prepared to serve any client, from small retail establishments to leading national distributors.

Why Pastel Cartel?

- Superior products at competitive prices
- Highly responsive Sales & Customer Support team
- Third party lab testing of all materials
- Swift & discrete shipment from our Texas fulfillment center
- Commitment to quality and customer satisfaction

Contact a member of our Sales team today! We can't wait to meet you.

* First Name

* Last Name

* Company Name

* Street Address

Address line 2

72. Upon information and belief, Esco Bars Disposable Vapes are still available for purchase on third-party online retail websites.

73. On May 17, 2023, the FDA issued an import alert for Esco Bars Disposables, putting them on the “Red List.” This means that Esco Bars Disposable Vapes can be refused or detained at their time of entry into the United States. All Esco Bars products are included on the Red List and are “subject to [d]etention without [p]hysical [e]xamination.” *See* Exhibit 14 at 6-7, 14. The import alert identifies Pastel Cartel as a “firm that may be importing/manufacturing/shipping a new tobacco product (Esco Bar/Escobar) without marketing authorization.” *Id.* at 17.

Hyde Respondents

14. Magellan Technology Inc.

74. Magellan Technology Inc. (“Magellan”) is a Virginia corporation with a principal place of business at 2225 Kenmore Avenue, Buffalo, New York 14207. Magellan owns the trademark of Disposable Vapes sold under the trade name “Hyde.” Magellan also sells ENDS products, including Disposables, at retail and wholesale to consumers and stores across the

country. *See* Exhibit 26 at 7; Exhibit 27 at 4.

15. Shenzhen IVPS Technology Co., Ltd.

75. Shenzhen IVPS Technology Co., Ltd. (“Shenzhen IVPS”) is a Chinese limited company with an address 101, Building B8, No. 2, Cengayo, Industrial Area, Yuluv Community, Yutang Subdistrict, Guangming District, Shenzhen, China 518001. Shenzhen IVPS also has an address at Room 101, Building 69, Liantang Indus. Zone Fenghuang Street, Guangming New District, Shenzhen, China 518000. Shenzhen IVPS manufactures Hyde Disposable Vapes. *See* Exhibit 28 at 4.

16. Shenzhen Noriyang Technology Co., Ltd.

76. Shenzhen Noriyang Technology Co., Ltd. (“Shenzhen Noriyang”) is a Chinese limited company with a principal place of business at Room 303, Building A, Zhonghengsheng High-Tech Park, Xinyu Road, Shajing Town, Baoan District, Shenzhen, Guangdong Province, China, 518104. Shenzhen Noriyang manufactures Hyde Disposable Vapes. *See* Exhibit 29.

77. Magellan, Shenzhen IVPS, and Shenzhen Noriyang, collectively, are referred to herein as the “Hyde Respondents.”

Puff Bar Respondents

17. EVO Brands, LLC

78. EVO Brands, LLC (“EVO Brands”) is a Delaware limited liability company with a registered address at 251 Little Falls Drive, Wilmington, Delaware 19808. EVO Brands owns all of the foreign and domestic Puff Bar-related trademarks. *See* Exhibit 30 at 3. On July 6, 2022, EVO Brands submitted a change-of-address form to the U.S. Patent and Trademark Office, proposing to change its address to 1700 Santa Fe Avenue, Ste. 420, Los Angeles, California. *See* Exhibit 31 at 10. This address is also registered to three branches of the company PVG2, LLC. *See id.*

18. PVG2, LLC

79. PVG2, LLC (“PVG2”) is a Delaware limited liability company with a registered address at 251 Little Falls Drive, Wilmington, Delaware 19808. PVG2 has 11 branches across 11 states, three of which are registered to the same address as EVO Brands. *See* Exhibit 31 at 10. PVG2 sells Disposable Vapes from the website www.puffbar.com. *See* Exhibit 30 at 3.

80. PVG2 is affiliated with EVO Brands. *See, e.g.*, Exhibit 32 at 1.

19. Shenzhen Daosen Vaping Technology Co., Ltd.

81. Shenzhen Daosen Vaping Technology Co., Ltd. (“Shenzhen Daosen”) is a Chinese limited company with an address at #501, Building B1, Quanzhi Zhihui Park, Ligang S. Road, Shajin Street, Baon’an District, Shenzhen, China 518104. Shenzhen Daosen manufactures Puff Bar products and sells them on the website www.dsvaping.en.made-in-china.com. *See* Exhibit 31 at 6. Shenzhen Daosen owns numerous trademarks in the United States, including the popular Disposable Vape brand “Rare,” as well as two versions of the Disposable Vape brand “Flum” (“Flum Mi” and “Flum Wafer”). *See id.* at 7.

82. EVO Brands, PVG2, and Shenzhen Daosen, collectively, are referred to herein as the “Puff Bar Respondents.”

83. On October 6, 2022, the FDA sent a warning letter to EVO Brands and PVG2, among others, stating that the agency “reviewed the website <https://puffbar.com> . . . and determined that [ENDS] products listed there are received and delivered in the United States without a marketing authorization order.” Exhibit 32 at 2.

R and M Respondent

20. Shenzhen Fumot Technology Co., Ltd.

84. Shenzhen Fumot Technology Co., Ltd. (“Shenzhen Fumot” or “R and M Respondent”) is a Chinese limited company with an address of A2907, Building A Longguan

Jiuzuan Business Center, Minzhi Longhua, Shenzhen, China 518000. Shenzhen Fumot is a Chinese ENDS manufacturer and is the manufacturer of the popular Disposable Vape brand “R and M.” *See* Exhibit 33. Shenzhen Fumot has filed an application with the U.S. Patent and Trademark Office for “RANDM VAPE.” *See* Exhibit 34 at 10-12. Shenzhen Fumot sells R and M products through its website www.randm-shop.online and through third-party wholesale websites such as www.made-in-china.com.

85. On August 29, 2023, the FDA issued an import alert for Shenzhen Fumot, putting them on the “Red List.” This means that Shenzhen Fumot’s Disposable Vapes can be refused or detained at their time of entry into the United States. All R and M products are included on the Red List and are “subject to [d]etention without [p]hysical [e]xamination.” *See* Exhibit 14 at 5.

C. Distributor Respondents

86. Numerous entities, including the below Respondents, sell after importation into the United States several of the Accused Products through websites and electronic marketplaces. These Respondents are collectively referred to herein as the “Distributor Respondents.”

1. Flawless Vape Shop Inc.

87. Flawless Vape Shop Inc. is a California corporation with a registered address at 1021 E. Orangethorpe Avenue, Anaheim, California 92801. On various filings with the California Secretary of State, Flawless Vape Shop Inc. lists its principal office at 17421 Nichols Lane, Ste. P, Huntington Beach, California 92647. Flawless Vape Shop Inc. sells ENDS, including some or all of the Accused Products, to consumers across the country from the website www.flawlessvapeshop.com.

2. Flawless Vape Wholesale & Distribution Inc.

88. Flawless Vape Wholesale & Distribution Inc. is a California corporation with a registered address at 1021 E. Orangethorpe Avenue, Anaheim, California 92801. On various

filings with the California Secretary of State, Flawless Vape Wholesale & Distribution Inc. lists its principal office at 5589 E. Santa Ana Canyon Road, Anaheim, California 92807. Flawless Vape sells ENDS, including some or all of the Accused Products, to consumers across the country from the website www.flawlessvapeshop.com.²

3. Price Point Distributors Inc.

89. Price Point Distributors Inc. d/b/a Price Point NY (“Price Point”) is a New York corporation with its principal place of business at 500 Smith Street, Farmingdale, New York 11735. Price Point’s fulfillment warehouse is located at that same address. *See* Exhibit 37 at 14. Price Point sells ENDS, including some or all of the Accused Products, at retail and at wholesale to consumers and stores in New York and elsewhere, including from the website www.pricepointny.com.

4. SV3 LLC d/b/a Mi-One Brands

90. SV3 LLC d/b/a Mi-One Brands (“Mi-One”) is an Arizona limited liability company with its corporate headquarters at 4908 E. McDowell Road, Phoenix, Arizona 85008. Mi-One’s fulfillment warehouse is located at that same address. *See* Exhibit 38 at 2. Mi-One also has a fulfillment warehouse at 3325 W. Alibaba Lane, #616, Las Vegas, NV 89118. *See* Exhibit 39 at 5-6. Mi-One sells ENDS, including some or all of the Accused Products, to consumers across the country from the website <https://www.mipod.com>.

² Flawless Vape Shop Inc. and Flawless Vape Wholesale & Distribution Inc., collectively, are referred to herein as “Flawless Vape.” Upon information and belief, Flawless Vape uses Empire Imports, LLC (“Empire”), a distributor located at 4250 E. Lowell Street, Ontario, California 91761, to fulfill orders placed on Flawless Vape’s website. Upon information and belief, Empire stores various Accused Products at its warehouse until Flawless Vape receives an online order and then instructs Empire to fulfill the order and ship the products to the purchaser. *See* Exhibit 35 at 2-4.

5. Thesy, LLC d/b/a Element Vape

91. Thesy, LLC d/b/a Element Vape (“Element Vape”) is a California limited liability company with a principal place of business at 10620 Hickson Street, El Monte, California 91731. Element Vape’s fulfillment warehouse is located at that same address. *See* Exhibit 24 at 2-3, 14. Element Vape sells ENDS, including some or all of the Accused Products, to consumers across the country from the website www.elementvape.com.

6. VICA Trading Inc. d/b/a Vapesourcing

92. VICA Trading Inc. d/b/a Vapesourcing (“Vape Sourcing”) is a California corporation with a principal place of business at 3045 Edinger Avenue, Tustin, California 92780. Vape Sourcing’s fulfillment warehouse is located at that same address. *See* Exhibit 49 at 6. Vape Sourcing sells ENDS, including some or all of the Accused Products, to consumers across the country from the website www.vapesourcing.com.

III. THE PRODUCTS AT ISSUE

93. Per section 210.10(b)(1) of the Commission’s Rules of Practice and Procedure, 19 C.F.R. 210.10(b)(1), the Accused Products are disposable vaporizer devices (ENDS devices) and components (including e-liquids) and packaging thereof.

A. Complainants’ Vaping Devices

94. Complainants have a number of vaping devices that have been authorized by the FDA pursuant to Premarket Tobacco Product Marketing Granted Orders. These include Complainants Vuse® line of vaping devices including Solo®, Ciro®, and Vibe® devices:

Product Name	Date Issued	FDA Decision Summary
Vuse Solo Power Unit	10/12/2021	PM0000551
Vuse Replacement Cartridge Original 4.8% G1	10/12/2021	PM0000553
Vuse Replacement Cartridge Original 4.8% G2	10/12/2021	PM0000560
Vuse Ciro Power Unit	05/12/2022	PM0000646
Vuse Ciro Cartridge Original 1.5%	05/12/2022	PM0000712

Vuse Ciro Power Unit	05/12/2022	PM0004293
Vuse Vibe Power Unit	05/12/2022	PM0000635
Vuse Vibe Tank Original 3.0%	05/12/2022	PM0000636
Vuse Vibe Power Unit	05/12/2022	PM0004287

95. Sample images of Complainants' vaping devices appear below:



96. Complainants also timely submitted a PMTA to the FDA for their Vuse Alto product. Complainants' PMTA for Vuse Alto tobacco remains pending as of the filing of this complaint. This device is pictured below.



B. Proposed Respondents' Disposable Vapes

1. Breeze Respondents

97. The Breeze Respondents are responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Disposable Vapes under the Breeze Pro and Breeze Plus brands among others (“Breeze brands”).

98. These companies act as a single, concerted entity for the importation, sale and distribution of Illegal Disposable Vapes under the Breeze brands.

99. Examples of Breeze Respondents' Illegal Disposable Vapes appear below:



100. On May 23, 2023, the FDA issued a warning letter to Breeze Smoke indicating that its products “are adulterated under section 902(6)(A) of the FD&C Act (21 U.S.C. § 387b(6)(A)). In addition, these products are misbranded under section 903(a)(6) of the FD&C Act (21 U.S.C. § 387c(a)(6)) because a notice or other information respecting these products were not provided as required by section 905(j) of the FD&C Act.” *See* Exhibit 19 at 2.

2. Elf Bar Respondents

101. The Elf Bar Respondents are responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Illegal Disposable Vapes under the ElfBar, Elf Bar, EB Design, Lost Mary, and Funky Republic brands among others (collectively “Elf Bar brands”).

102. The Elf Bar Respondents act as a single, concerted entity for the importation, sale, and distribution of Illegal Disposable Vapes under the Elf Bar brands.

103. Examples of Elf Bar Respondents' Illegal Disposable Vapes appear below:





3. Esco Bars Respondents

104. The Esco Bars Respondents are responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Illegal Disposable Vapes under the Esco Bars or Escobars brands among others (collectively, “Esco Bars brands”).

105. The Esco Bars Respondents act as a single, concerted entity for the importation, sale, and distribution of Illegal Disposable Vapes under the Esco Bars brands.

106. Examples of the Esco Bars Respondents’ Illegal Disposable Vapes appear below:





4. Hyde Respondents

107. The Hyde Respondents are responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Disposable Vapes under the Hyde brand among others (“Hyde brands”).

108. The Hyde Respondents act as a single, concerted entity for the importation, sale, and distribution of Illegal Disposable Vapes under the Hyde brands.

109. Magellan submitted a PMTA for various disposable vaping products on September 8, 2020. On September 8, 2021, the FDA issued a Marketing Denial Order (“MDO”) to Magellan. The FDA concluded that Magellan’s PMTAs “lack[ed] sufficient evidence demonstrating that [its] flavored ENDS will provide a benefit to adult users that would be adequate to outweigh the risks to youth.” Specifically, the FDA determined that Magellan had not shown the comparative efficacy of its flavored ENDS products over tobacco-flavored ENDS products in helping smokers completely switch to ENDS products or stop smoking altogether. After the

FDA issued the MDO, Magellan appealed the FDA's MDO to the United States Court of Appeals for the Second Circuit. On June 16, 2023, the Second Circuit affirmed the FDA's MDO.

110. Nevertheless, Magellan still imports, sells, and otherwise distributes its Disposable Vapes.

111. Examples of Hyde respondent Disposable Vapes appear below:





5. Puff Bar Respondents

112. The Puff Bar Respondents are responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Illegal Disposable Vapes under the Puff Bar, Rare, and Flum brands among others (“Puff Bar brands”).

113. The Puff Bar Respondents act as a single, concerted entity for the importation, sale and distribution of Illegal Disposable Vapes under the Puff Bar brands.

114. Examples of Puff Bar Respondents' Illegal Disposable Vapes appear below:





115. On October 6, 2022 the FDA issued a warning letter to EVO Brands, LLC and PVG2, LLC d/b/a Puff Bar indicating that its products “are adulterated under section 902(6)(A) of the FD&C Act (21 U.S.C. § 387b(6)(A)). In addition, these products are misbranded under section 903(a)(6) of the FD&C Act (21 U.S.C. § 387c(a)(6)) because a notice or other information respecting these products were not provided as required by section 905(j) of the FD&C Act.” *See* Exhibit 32 at 3.

6. R and M Respondent

116. Shenzhen Fumot is responsible for the manufacture, importation, sale, sale for importation, marketing, advertisement, distribution, offering for sale or lease, use after importation, sale after importation, licensing, packaging, transfer (except for exportation), solicitation of United States agents or distributors, and/or aiding and abetting other entities in the

importation, sale for importation, sale after importation, transfer (except for exportation), or distribution of Illegal Disposable Vapes under the R and M brands among others (“R and M brands”).

117. Shenzhen Fumot and its related and affiliated entities manufacture, sell, import, and distribute products marketed toward minors by: (1) featuring popular trademarked and copyrighted cartoon characters such as the Simpsons, SpongeBob SquarePants, and Minions, as shown below; (2) offering candy flavors such as Cotton Candy and Gummy Bear; and (3) adding LED lighting on their devices.





118. On November 16, 2022, the FDA issued a warning letter to Shenzhen Fumot indicating that its products were “particularly concerning because the product labeling and/or advertising for the RandM products . . . are likely to promote use of the products by youth by imitating popular TV shows and movies Sales of such unauthorized tobacco products are prohibited, and FDA is concerned that your actions likely encourage unlawful sales, maintain or increase youth use, and contribute to the public health and safety concerns associated with ENDS products.” *See* Exhibit 33 at 2. Shenzhen Fumot manufactures one of the most egregious Illegal Disposable Vape brands found in the United States when it comes to products marketed toward minors. Without any ownership of the trademarks and/or copyrights in the images used on their packaging, and without any authorization of the owners of those trademarks and/or copyrights to use their intellectual property rights in connection with promoting their illegal products, R and M devices are packaged with images of popular animated TV show characters (e.g., The Simpsons, Family Guy, and Rick and Morty).

IV. RESPONDENTS' UNFAIR COMPETITION AND UNFAIR ACTS IN VIOLATION OF SECTION 337

119. Respondents' unlawful and unfair acts are summarized below:

Respondent	False and Misleading Advertising Under the Lanham Act	Violations of Federal Laws Regulating ENDS Products	Violations of Customs Laws and Regulations Applicable to Imported Goods
Breeze Respondents	X	X	
Elf Bar Respondents	X	X	
Esco Bars Respondents	X	X	
Hyde Respondents	X	X	X
Puff Bar Respondents	X	X	
R and M Respondent	X	X	
Distributor Respondents	X	X	

A. Unfair Competition and Unfair Acts Through False and Misleading Advertising under 15 U.S.C. § 1125(a)

1. Misleading and False Claims that Disposable Vapes are Authorized and/or "Allowed" for Sale in U.S. (All Respondents)

120. Proposed Respondents have intentionally misled and continue to mislead the public, consumers, wholesalers, distributors, and retailers as to the authorization status and nature of their Illegal Disposable Vapes, including, without limitation, falsely suggesting and implying that they are FDA authorized or "allowed" even though they are not.

121. Proposed Respondents' Illegal Disposable Vapes are unlawfully on the market because (i) they do not have a timely filed premarket tobacco product application pending with FDA, or a marketing denial order that has been stayed by FDA or a court, (ii) they are marketed toward youth, and/or (iii) the manufacturer of the product has failed to take (or is failing to take) adequate measures to prevent youth access.

122. However, Proposed Respondents continue to import, sell for importation into the United States, or sell within the United States after importation their Illegal Disposable Vapes with

the false and misleading advertising that such products are authorized when they are not.

123. Government authorization is material to purchasers because, to those purchasers, government authorized vaping devices provide purchasers assurance as to the legality of the product, and that the products will not target minors, all of which is not afforded to unauthorized flavored Illegal Disposable Vapes that Proposed Respondents falsely advertise and market. The Illegal Disposable Vapes false advertising and marketing may present a serious safety issue and threat to consumers, particularly American youth. And implying that the government has authorized the products misleads consumers into thinking that these risks do not exist.

124. Proposed Respondents fuel the misconceptions of wholesalers, distributors, retailers, and consumers as to the authorization status of the Accused Products in order to gain an unfair competitive advantage over Complainants' authorized vaping devices.

125. Specifically, Proposed Respondents make and have made public statements in commerce, such as references to government approval and/or authorization status of their products, that lead consumers to erroneously believe that all of the Illegal Disposable Vapes that they manufacture and sell are government-authorized, when in fact they are not.

126. In addition, exemplary product packaging of Proposed Respondents' Illegal Disposable Vapes indicate that they authorized and/or "allowed" for sale in the United States. *See generally* Exhibit 3 (showing photos of the Accused Products' packaging).

127. These statement are false because none of the Proposed Respondents have received a Marketing Granted Order from the FDA for their Illegal Disposable Vapes in the United States, or otherwise received any government guidance that would "allow" them to legally sell their products in the United States. To the contrary, FDA has repeatedly stated Respondents' products may not be legally sold in the United States. *See, e.g.,* Exhibit 19; Exhibit 10; Exhibit 11.

128. Proposed Respondents claiming and/or implying that their products are authorized and/or “allowed” for sale in the United States misleads consumers to think that these products have received government authorization and thus are appropriate for sale, when they have not, and are not.

129. Proposed Respondents’ Illegal Disposable Vapes are cheaper than Complainants’ competing and government-authorized products, offer candy and dessert-based flavors, and target wholesalers, distributors, retailers, and minors. As such, consumers are misled to believe that Proposed Respondents’ Accused Products are FDA-authorized and/or “allowed” by the government. Moreover, consumers are misled to believe that Proposed Respondents’ Accused Products are equivalent versions of Complainants’ products which are in fact authorized by the FDA. In fact, they are not equivalent versions of Complainants’ products nor are the Proposed Respondents’ Accused Products authorized or allowed by the government. Accordingly, consumers substitute Complainants’ vaping devices for Proposed Respondents’ Illegal Disposable Vapes and thereby directly injure not only Complainants but the entire marketplace.

130. Proposed Respondents also mislead actors in the supply chain, such as wholesalers, distributors and retailers, by failing to disclose the illegal status of their Illegal Disposable Vapes. This induces these third parties to provide false and misleading information to purchasers regarding the Accused Products’ authorization status.

131. Wholesalers, distributors, retailers, and consumers attempting to determine whether the Illegal Disposable Vapes are government-authorized are, and will continue to be, deceived or misled by the Proposed Respondents’ statements about their business and products. Upon information and belief, because of the Proposed Respondents’ public statements, advertising and product packaging that state and/or imply that their products comply with FDA standards or

guidelines and that their products are authorized and/or “allowed” by the FDA, Proposed Respondents’ customers reasonably, albeit falsely, believe that the Illegal Disposable Vapes were authorized by the FDA or otherwise “allowed” by the government.

132. Upon information and belief, Proposed Respondents also knowingly induce or cause third parties, such as retailers, to perpetuate their false advertising about the unauthorized status of the Illegal Disposable Vapes. Thus, Proposed Respondents are also contributorily liable for the misleading and unfair marketing practices of those third parties. For example, retailers lead consumers to believe that the Accused Products are FDA authorized vaping products by offering them for sale in the same space, location, and display as Complainants’ FDA authorized products. Moreover, Proposed Respondents’ false advertising misleads retailers as to the authorization of their product, who in turn, mislead consumers. This misinformation is particularly damaging because consumers rely on this advertising for accurate information about the Illegal Disposable Vapes.

133. Any Proposed Respondent that manufactures or has manufactured Illegal Disposable Vapes for others are further complicit in the unfair and misleading marketing and advertising by the other Proposed Respondents because they know or should have known that those Respondents are intentionally failing to disclose material facts to customers.

134. In any event, any Proposed Respondents that manufacture or have manufactured Disposable Vapes for others also manufacture or have manufactured the labels and packaging materials of the Illegal Disposable Vapes, which (as discussed above) contain misleading information, and therefore directly violate the Lanham Act, 15 U.S.C. § 1125(a).

135. Proposed Respondents also have committed false and misleading acts by intentionally using unauthorized candy and dessert flavorings for their Illegal Disposable Vapes

to appeal to minors.

136. Proposed Respondents further use famous animated characters and designs that they do not have authority to use to illegally entice consumers to seek out their Illegal Disposable Vapes.

2. Misleading and False Claims that Disposable Vapes are “Clear” (Elf Bar, Esco Bars, and Puff Bar Respondents)

137. The Elf Bar, Esco Bars, and Puff Bar Respondents have also intentionally misled and continue to mislead wholesalers, distributors, retailers, and consumers as to whether their products actually have a flavoring.

138. Specifically, the Elf Bar, Esco Bars, and Puff Bar Respondents make and have made public statements in commerce, advertising, and product packaging that their products are “clear,” giving wholesalers, distributors, and consumers the false and misleading impression that these products do not have a flavoring. For example, so-called “clear” Elf Bar, Esco Bars, and Puff Bar Respondents products are shown below:



139. This false and misleading advertising as to whether “clear” products have flavoring leads consumers to erroneously believe that Elf Bar, Esco Bars, and Puff Bar Respondents do not have a flavoring when in fact they do.

140. In fact, law enforcement agencies seeking to remove candy and dessert flavored Illegal Disposable Vapes report that they have not removed “clear” products because those products through their “clear” designation purport not to have such flavors. *See* Exhibit 18 at ¶¶ 36-38.

141. Elf Bar, Esco Bars, and Puff Bar Respondents fuel the misconceptions of wholesalers, distributors, retailers, and consumers regarding the flavoring of their products in order to gain an unfair competitive advantage over Complainants’ authorized vaping devices.

142. Because Elf Bar, Esco Bars, and Puff Bar Respondents’ Illegal Disposable Vapes sold at cheaper price points than Complainants’ products and purport to have no flavoring, when in fact they do, these respondents mislead wholesalers, distributors, retailers, and consumers to believe their Disposable Vapes are unflavored, equivalent versions of Complainants’ products (when in fact they are not). Thus, wholesalers, distributors, retailers, and consumers substitute Complainants vaping devices for Elf Bar, Esco Bars, and Puff Bar Respondents’ Illegal Disposable Vapes and thereby directly injure not only Complainants but the entire marketplace, including consumers who wish to have unflavored vaping products.

3. Misleading and False Designation of Origin (R&M Respondent)

143. Proposed R and M Respondent and other unidentified manufacturers, importers, distributors and retailers further mislead the public as to its association or affiliation with, or sponsorship by, popular cartoon characters such as the Simpsons, SpongeBob SquarePants, and the Minions (“Animated Character Marks”).

144. Upon information and belief, Proposed R and M Respondent and other unidentified

manufacturers, importers, distributors and retailers does not have authorization to use these Animated Character Marks and copyrighted images, and their association of these marks and copyrighted images with their Illegal Disposable Vapes is intended to cause confusion, mistake and/or to deceive wholesalers, distributors, retailers, and consumers as to the origin sponsorship and/or approval of these goods by the trademark and copyright owners.

145. The Proposed Respondents, and other unidentified manufacturers, importers, distributors and retailers have, without the trademark owner's authorization, manufactured abroad, imported, distributed and/or sold Illegal Disposable Vapes in the United States featuring these Animated Character Marks, or marks confusingly similar thereto. Such actions are likely to cause consumer confusion, mistake or deception.

146. Proposed Respondents' actions complained of herein are intentional, deliberate and willful and were made with knowledge of third parties' exclusive rights in and to the Animated Character Marks, and with knowledge that the Proposed Respondents, and other unidentified manufacturers, importers, distributors and retailers are **not** authorized to use the Animated Character Marks. Proposed Respondents have acted in bad faith with the intent to cause consumer confusion and to deceive consumers into believing that they are connected to, sponsored by or affiliated with the mark holders.

147. As a result of the intentional and bad faith actions of Proposed Respondents and other unidentified manufacturers, importers, distributors and retailers of the infringing Illegal Disposable Vapes, Complainants have and will continue to suffer substantial and irreparable injury.

4. Injury Resulting From Proposed Respondents False and Misleading Advertising

148. As detailed in the previous subsections 1-3 above, Proposed Respondents have

made false and/or misleading statements in commercial advertisements and/or promotions, including without limitation, on the packaging of the Illegal Disposable Vapes.

149. Moreover, as explained in the previous subsections 1-3 above and further below, these false and/or misleading states deceives and/or tends to deceive customers.

150. Importantly, the deception is material to consumers. Consumers make purchasing decisions based on Proposed Respondents' false and/or misleading advertising that their products are "allowed" or otherwise authorized for sale in the United States, that certain Proposed Respondents products are "clear," when in fact they have flavors, and impermissibly use Animated Character Marks.

151. Proposed Respondents' false and/or misleading advertising is disseminated in or effects interstate commerce as explained in subsections 1-3 above and in Section V below.

152. Proposed Respondents' deceptive and misleading advertising as alleged above in Sections IV(A)(1)-(3) directly results in economic and reputational injury to Complainants in many ways. For example, without limitation, sales of Complainants' products are decreased because adult consumers buy unauthorized and Illegal Disposable Vapes instead of Complainants' authorized vaping products. Proposed Respondents are capable of and do significantly undercut prices for their unauthorized products because they do not actually go through the time-consuming and capital-intensive effort of obtaining FDA authorization. This further leads to price erosion in the marketplace. Moreover, the public has, and will, negatively associate Complainants' FDA-authorized products targeted for sale only to adults with Proposed Respondents' harmful flavored and youth-targeted Illegal Disposable Vapes. The conflation of Complainants' legitimate products with Proposed Respondents' illegal products targeted toward American youth bring unwarranted criticism and destroy Complainants' goodwill for their adult-oriented products. *See* Exhibit 13 at

9 (concluding that “a large proportion of US adults perceived e-cigarettes as equally or more harmful than cigarettes, and this proportion has increased substantially from 2012 to 2017”); *see also* Exhibit 57 at 4 (noting an increase in the proportion of U.S. adults who believed that electronic cigarettes were as harmful or more harmful than combustible cigarettes over several years). Further, Proposed Respondents trafficking of Illegal Disposable Vapes is likely to cause consumers to conflate their legitimate and legal adult-oriented products with those that are directed to underage youth thereby furthering damaging Complainants’ goodwill.

153. As a direct result of Proposed Respondents’ false and misleading descriptions of fact, false and misleading representations, and false and deceptive advertising and unfair competition, Complainants have suffered, currently suffer, and will continue to suffer the threat of substantial injury, including injury to their business, reputation, and goodwill, unless an exclusion order and other relief is ordered by the Commission. Moreover, the Proposed Respondents’ unlawful advertising, promotion, sale, and distribution of their Illegal Disposable Vapes will continue to pose grave risks and threat of substantial injury to consumers, especially children, unless the Commission takes action.

154. In summary, Proposed Respondents have made false and/or misleading statements regarding the allowance for sale of their products in the United States, whether such products have a flavor, and made false associations with trademarks and copyrights they do not own and are not authorized to use. All of these false and/or misleading statements have been made in commercial advertisements or promotions on product packaging, posters, and directly to wholesalers, distributors, retailers, and consumers in interstate commerce. These false and/or misleading statements deceive and/or tends to deceive consumers into falsely believing that such products have been allowed for sale in the U.S., have no flavor, and/or are associated with various trademark

and/or copyright holders' products. The deception to wholesalers, distributors, retailers, and consumers is material: these groups would be unlikely to purchase Proposed Respondents' products without these false and/or misleading statements. Finally, Proposed Respondents' false and/or misleading statements have harmed and are likely to continue to harm Complainants by decreasing the sale of their authorized products and causing price erosion.

B. Unfair Competition and Unfair Acts Through Violations of Federal Laws Regulating ENDS

155. The Jenkins Act, 15 U.S.C. §§ 375-378, is a federal law that governs the collection of taxes on, and trafficking in, various tobacco products.

156. On March 31, 2010, the Prevent All Cigarette Trafficking ("PACT") Act, Pub. L. No. 111-154, 124 Stat. 1087 (codified at 15 U.S.C. §§ 375-378, 18 U.S.C. § 1716E) was signed into law. The PACT Act amended the Jenkins Act by, among other things, updating various definitions and providing new requirements for registration, shipping, and reporting sales of certain tobacco products.

157. On December 27, 2020, Congress passed the Preventing Online Sales of E-Cigarettes to Children Act, Pub. L. No. 116-260, 134 Stat. 3136 (codified at 15 U.S.C. § 375, 18 U.S.C. § 1716E), amending the PACT Act effective March 27, 2021. Among other things, Congress amended the PACT Act's definition of "cigarette" to include "an electronic nicotine delivery system." 15 U.S.C. § 375(2)(A)(ii)(II).

158. An "electronic nicotine delivery system" is defined as "any electronic device that, through an aerosolized solution, delivers nicotine, flavor, or any other substance to the user inhaling from the device." 15 U.S.C. § 375(7)(A). This includes, among other things, "an e-cigarette" "a vape pen," and "any . . . liquid, part, or accessory of a device described in subparagraph (A)." 15 U.S.C. § 375(7)(B)(vii).

159. Accordingly, effective March 27, 2021, ENDS are included in the PACT Act’s definition of “cigarette” and, therefore, all PACT Act requirements and limitations apply to the sale of Disposable Vapes.

160. One of the major aspects of the PACT Act was to address “delivery sales” of cigarettes (and, as of 2021, ENDS). Delivery sales include any sale of ENDS to a consumer if the consumer orders “by telephone . . . or the Internet . . . or the seller is otherwise not in the presence of the buyer when the request for purchase or order is made,” or if “the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes.” 15 U.S.C. § 375(5).

161. The PACT Act defines a “consumer” as “any person that purchases cigarettes” other than a person “lawfully operating as a manufacturer, distributor, wholesaler, or retailer of [ENDS products].” 15 U.S.C. § 375(4).

162. Under the PACT Act, a person selling, transferring, shipping for profit, advertising, or offering for sale ENDS in interstate commerce whereby the ENDS are shipped into a state or locality that taxes the sale of ENDS must: (1) register with the U.S. Attorney General and the tobacco tax administrator of the state into which the ENDS are shipped; and (2) on the tenth day of each month, file with the state tobacco tax administrator a memorandum or copy of the invoice covering the previous month’s shipment of ENDS products. *See* 15 U.S.C. § 376(a)(1)-(2).

163. The PACT Act also requires delivery sellers to comply with “all State, local, tribal, and other laws generally applicable to the sale of [ENDS] . . . as if the delivery sales occurred entirely within the specific State and place.” 15 U.S.C. § 376a(a)(3).

164. Additionally, the PACT Act imposes several shipping requirements and limitations for delivery sales. Delivery sellers must, among other things, place a “clear and conspicuous statement” on the bill of lading and/or shipping package stating:

“CIGARETTES/NICOTINE/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS.” 15 U.S.C. § 376a(b)(1) (“Required PACT Act Statement”).

165. Delivery sellers must also use a method of shipping that requires: (1) the purchaser (or an adult over the minimum age required for the purchase of ENDS products in the place of delivery) to sign to accept delivery; and (2) the person who signs to accept delivery to provide proof that the person is over the minimum age required for the purchase of ENDS products in the place of delivery via a valid, government-issued photo ID. *See* 15 U.S.C. § 376a(b)(4)(A)(ii).

166. Further, delivery sellers cannot accept a delivery sale order from a person without first obtaining their full name, birth date, and residential address, and then verifying that information through a commercially available database. *See* 15 U.S.C. § 376a(b)(4)(A)(iii).

167. The PACT Act also generally prohibits mailing ENDS, cigarettes, and smokeless tobacco through the U.S. Postal Service (“USPS”). *See* 18 U.S.C. § 1716E(a)(1).

168. Moreover, the PACT Act requires delivery sellers to ensure that, before selling or delivering any ENDS product to any consumer or tendering ENDS products to a delivery service, any applicable state excise taxes must be paid to the state. *See* 15 U.S.C. § 376a(d)(1).

169. Under the PACT Act, a delivery sale is “deemed to have occurred in the State and place where the buyer obtains personal possession of the [ENDS] . . . and a delivery pursuant to a delivery sale is deemed to have been initiated or ordered by the delivery seller.” 15 U.S.C. § 376a(f).

170. Proposed Respondents sell, transfer, or ship ENDS in interstate commerce and are, therefore, subject to the PACT Act’s stringent requirements. However, the Manufacturer

Respondents do not typically sell the Accused Products directly to consumers. Instead, the Manufacturer Respondents rely on the Distributor Respondents to sell the Accused Products to individual consumers. Many of the Distributor Respondents' sales are "delivery sales" to a "consumer."

171. When passing the PACT Act, Congress specifically found, among other things, that "unfair competition from illegal sales of cigarettes and smokeless tobacco is taking billions of dollars of sales away from law-abiding retailers throughout the United States." PACT Act, Pub. L. No. 111-154, § 1(b)(6), 124 Stat. at 1087.

172. Congress specifically stated that one of the purposes of the PACT Act was to "require Internet and other remote sellers of cigarettes and smokeless tobacco to comply with the same laws that apply to law-abiding tobacco retailers[.]" PACT Act, Pub. L. No. 111-154, § 1(c)(1), 124 Stat. at 1088.

173. Contrary to the PACT Act's purpose, Proposed Respondents are not complying with the "same laws that apply to law-abiding tobacco retailers," such as Complainants, as evidenced by their numerous PACT Act violations. These violations constitute unfair competition.

174. To comply with the PACT Act, RJRV incurs significant costs in time, resources, infrastructure, and labor. These costs are ultimately passed on to consumers who purchase RJRV's Vuse products because RJRV must factor those costs into the purchase price. *See generally* Exhibit 40.

175. RJRV's costs associated with PACT Act compliance include, but are not limited to, costs to build and maintain a system that generates monthly PACT Act reports to be submitted to various state tobacco tax administrators, costs to submit the monthly PACT Act reports, costs to submit the required registration materials to the U.S. Attorney General and state tobacco tax

administrators, as well as costs for the time expended by employees to ensure the timely submission of the PACT registrations and monthly reports. *See* Exhibit 40 at ¶¶ 27-29. These costs are incurred regardless of whether RJRV makes delivery sales of ENDS products to consumers. *See* Exhibit 40 at ¶ 27.

176. Until February 2023, RJRV engaged in delivery sales of ENDS products in accordance with the PACT Act's stringent delivery sale requirements. To comply with PACT, RJRV was unable to use certain common carriers to deliver the products to consumers, including USPS. Accordingly, Complainants had to alter their delivery methods to use third-party carriers with much higher shipping rates than carriers such as USPS, UPS, or FedEx. In doing so, Complainants incurred significant shipping costs. For example, while the cost of shipping using USPS might have been \$6 or \$7 per package, some third-party carriers of RJRV charged substantial costs to ship a single package. *See* Exhibit 40 at ¶ 28.

177. Additionally, Complainants incurred significant costs associated with ensuring that these third-party carriers themselves complied with the PACT Act. For example, the carrier would be required to ensure that the person who accepts delivery of the product(s) was over the minimum age required to purchase ENDS. *See* Exhibit 40 at ¶ 28.

178. By early 2023, the costs incurred to comply with the PACT Act reached a point where RJRV could not compete with Proposed Respondents in the ENDS delivery sales market, as it was no longer profitable for RJRV to continue in the ENDS delivery sale market while Proposed Respondents violated PACT enabling Proposed Respondents to sell their products at lower prices. Accordingly, RJRV stopped ENDS delivery sales in February 2023. *See* Exhibit 40 at ¶ 29.

179. By failing to comply with the PACT Act's requirements, Proposed Respondents

unfairly compete with RJRV because they can avoid the significant costs that RJRV incurred and continues to incur in complying with the required federal regulations governing the sale of ENDS. Indeed, any ENDS manufacturer or distributor complying with the PACT Act would incur similar costs.

180. From November 2022 to the present, several online orders were placed on the Distributor Respondents' websites for the Accused Products for delivery to consumers in multiple states including Alabama, California, New Jersey, New York, and Virginia. The PACT Act requires the Distributor Respondents to comply with these states' "laws generally applicable to sales of [ENDS]." 15 U.S.C. § 376a(a)(3). Paragraphs 181-192 below provide an overview of these states' applicable laws pertaining to the sale of ENDS.

Alabama

181. Alabama maintains a directory of compliant e-liquid manufacturers and ENDS products (the "Alabama Directory"). No ENDS products may be sold in Alabama unless they are listed on the Alabama Directory. *See* Ala. Code § 28-11-17.1. None of the Accused Products are currently listed on the Alabama Directory.

California

182. California imposes a 12.5% sales tax on the sale of electronic cigarettes. *See* Cal. Rev. & Tax Code § 31002(a). California defines "electronic cigarette," in relevant part, as a "device or delivery system sold in combination with any liquid substance containing nicotine that can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, . . . [or] vape pen[.]" Cal. Rev. & Tax Code § 31001(c).

183. California law requires that anyone selling, transferring, or shipping for profit ENDS with nicotine originating outside California into the state must have a California seller's permit, a California Cigarette and Tobacco Products Distributor's License, a California Electronic

Cigarette Excise Tax account, and a California PACT Act account. *See Tax Guide for Cigarettes and Tobacco Products*, CAL. DEP'T OF TAX & FEE ADMIN., <https://www.cdtfa.ca.gov/industry/cigarette-and-tobacco-products.htm#get-started> (last visited September 21, 2023).

184. California prohibits the sale of flavored tobacco products in retail locations in the state, including any “product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, . . . inhaled, . . . or ingested by any other means” and any “electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette” that “contains a constituent that imparts a characterizing flavor.” Cal. Health & Safety Code §§ 104495, 104559.5.

New Jersey

185. New Jersey imposes a sales tax on liquid nicotine at a rate of \$0.10 per fluid milliliter. *See* N.J. Stat. Ann. § 54:40B-3.2(a). “Liquid nicotine” is defined as “any solution containing nicotine that is designed or sold for use with an electronic smoking device.” N.J. Stat. Ann. § 54:40B-2.

186. New Jersey prohibits the sale of flavored vapor products, which include “any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, . . . [or] vape pen” that “has a characterizing flavor.” N.J. Stat. Ann. § 2A:170-51.12 (“New Jersey Flavor Ban”).

New York

187. New York imposes a 20% sales tax on vapor products. *See* N.Y. Tax Law § 1181.

188. New York prohibits the sale of flavored vapor products, which include “any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured into a finished product for use in an electronic cigarette, including any device that contains such

noncombustible liquid or gel” that has “a distinguishable taste or aroma, other than the taste or aroma of tobacco.” N.Y. Pub. Health Law §§ 1399-AA, 1399-MM-1 (“New York Flavor Ban”).

189. New York requires that when any person engaged in the business of selling vapor products ships or causes to be shipped vapor products other than in the manufacturer’s original container, the packaging must be “plainly and visibly marked with the words ‘vapor products.’” N.Y. Pub. Health Law § 1399-ll (“Required New York Statement”).

190. New York prohibits “any person engaged in the business of selling vapor products to ship or cause to be shipped any vapor products intended or reasonably expected to be used with or for the consumption of nicotine to any person” in New York who is not a registered vapor products dealer, export warehouse proprietor or customs bonded warehouse operator, or someone who is not a government official. *See* N.Y. Pub. Health Law § 1399-ll. In other words, vapor products dealers cannot sell ENDS products online for delivery within New York.

191. New York requires manufacturers of vapor products distributed, sold, or offered for sale in New York to disclose ingredient information on their public website and to the New York Commissioner of Health. *See* N.Y. Pub. Health Law § 1701 (the “New York Health Disclosure Law”). The required information includes each product’s ingredients, information about any “chemicals of concern,” and health-related research. *See id.*

Virginia

192. Virginia imposes a tax on liquid nicotine at a rate of \$0.066 per milliliter. *See* Virginia 2020 Appropriation Act, § 3-5.21. “Liquid nicotine” is defined as “a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a nicotine vapor product.” Va. Code Ann. §58.1-1021.01. A “nicotine vapor product” includes “any electronic cigarette . . . or any similar product or device and any . . . other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette . . . or similar

product or device.” *Id.*

193. The Distributor Respondents have failed to comply with many of the PACT Act’s delivery sale requirements. *See* Section IV.B.7 through IV.B.11, *infra* (describing, in detail, the Distributor Respondents’ delivery sale violations).

194. The Manufacturer Respondents and the Distributor Respondents have failed to comply with the PACT Act’s requirement that persons shipping ENDS in interstate commerce must register with the U.S. Attorney General and state tobacco tax administrators, and to provide monthly reports to the various state tobacco tax administrators for the states in which they sell ENDS products. *See* Sections IV.B.1 through IV.B.11, *infra*.

195. As the holder of a permit under 26 U.S.C. § 5712, RJRT has standing to prevent and restrain violations of the PACT Act. *See* 15 U.S.C. § 378(d).

1. Breeze Respondents

196. The Breeze Respondents do not sell Breeze Disposable Vapes directly to consumers. They sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Breeze Disposable Vapes in interstate commerce to Respondent Price Point, located in New York. *See generally* Exhibit 21. New York taxes the sale of ENDS. *See* ¶ 187, *supra*.

197. The Breeze Respondents are required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Breeze Disposable Vapes.

198. The Breeze Respondents have not registered with the U.S. Attorney General before selling, transferring, or shipping Breeze Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

199. The Breeze Respondents are also required to register with the New York tobacco tax administrator (the New York State Department of Taxation and Finance) before making any sales, transfers, or shipments of Breeze Disposable Vapes.

200. The Breeze Respondents did not register with the New York State Department of

Taxation and Finance before selling, transferring, or shipping Breeze Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

201. The Breeze Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into New York.

202. The Breeze Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Breeze Disposable Vapes into New York with the New York State Department of Taxation and Finance. *See* Exhibit 18 at ¶ 39.

2. Elf Bar Respondents

203. The Elf Bar Respondents do not sell Elf Bar, Funky Republic, or Lost Mary Disposable Vapes directly to consumers. They sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Elf Bar, Funky Republic, and Lost Mary Disposable Vapes in interstate commerce to Respondent Price Point, located in New York. *See generally* Exhibit 41. New York taxes the sale of ENDS. *See* ¶ 187, *supra*. The Elf Bar Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Elf Bar, Funky Republic, and Lost Mary Disposable Vapes in interstate commerce to Respondents Element Vape and Flawless Vape located in California. *See generally* Exhibit 24 Exhibit 35. California taxes the sale of ENDS. *See* ¶ 182, *supra*.³

204. The Elf Bar Respondents are required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into states that tax the sale of ENDS.

³ The Elf Bar Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Elf Bar, Funky Republic, and Lost Mary Disposable Vapes in interstate commerce to Respondent Mi-One's warehouse in Arizona, but Arizona does not tax the sale of ENDS.

205. The Elf Bar Respondents did not register with the U.S. Attorney General before selling, transferring, or shipping Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into New York or California (both of which tax the sale of ENDS). *See* Exhibit 18 at ¶ 39.

206. The Elf Bar Respondents are also required to register with the New York tobacco tax administrator (the New York State Department of Taxation and Finance) before selling, transferring, or shipping Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into New York.

207. The Elf Bar Respondents did not register with the New York State Department of Taxation and Finance before selling, transferring, or shipping Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

208. The Elf Bar Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into New York.

209. The Elf Bar Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

210. The Elf Bar Respondents are also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling, transferring, or shipping Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into California.

211. The Elf Bar Respondents did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

212. The Elf Bar Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS

made during the previous calendar month into California.

213. The Elf Bar Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Elf Bar, Funky Republic, or Lost Mary Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

3. Esco Bars Respondents

214. The Esco Bars Respondents do not sell Esco Bars Disposable Vapes directly to consumers. They sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Esco Bars Disposable Vapes in interstate commerce to Respondent Price Point, located in New York. *See generally* Exhibit 37. New York taxes the sale of ENDS. *See* ¶ 187, *supra*. The Esco Bars Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Esco Bars Disposable Vapes in interstate commerce to Respondent Flawless Vape located in California. *See generally* Exhibit 42. California taxes the sale of ENDS. *See* ¶ 182, *supra*. The Esco Bars Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Esco Bars Disposable Vapes in interstate commerce to Respondent Mi-One, who has a fulfillment warehouse located in Nevada. *See* Exhibit 39 at 5-6; Exhibit 47 at 7. Nevada taxes the sale of ENDS. *See* NEV. REV. STAT. ANN. § 370.450(1) (imposing a tax on “other tobacco products,” the definition of which includes “any vapor product” under NEV. REV. STAT. ANN. § 370.0318).⁴

215. The Esco Bars Respondents are required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Esco Bars Disposable Vapes into states that tax the sale of ENDS.

216. The Esco Bars Respondents did not register with the U.S. Attorney General before

⁴ The Esco Bars Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Elf Bar, Funky Republic, and Lost Mary Disposable Vapes in interstate commerce to Respondent Mi-One’s warehouse in Arizona, but Arizona does not tax the sale of ENDS.

selling, transferring, or shipping Esco Bars Disposable Vapes into either New York, California, or Nevada (all of which tax the sale of ENDS). *See* Exhibit 18 at ¶ 39.

217. The Esco Bars Respondents are also required to register with the New York tobacco tax administrator (the New York State Department of Taxation and Finance) before selling, transferring, or shipping Esco Bars Disposable Vapes into New York.

218. The Esco Bars Respondents did not register with the New York State Department of Taxation and Finance before selling, transferring, or shipping Esco Bars Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

219. The Esco Bars Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into New York.

220. The Esco Bars Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Esco Bars Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

221. The Esco Bars Respondents are also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling, transferring, or shipping Esco Bars Disposable Vapes into California.

222. The Esco Bars Respondents did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping Esco Bars Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

223. The Esco Bars Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into California.

224. The Esco Bars Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Esco Bars Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

225. The Esco Bars Respondents are also required to register with the Nevada tobacco tax administrator (the Nevada Department of Taxation) before selling, transferring, or shipping Esco Bars Disposable Vapes into Nevada.

226. The Esco Bars Respondents did not register with the Nevada Department of Taxation before selling, transferring, or shipping Esco Bars Disposable Vapes into Nevada. *See* Exhibit 18 at ¶ 39.

227. The Esco Bars Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into Nevada.

228. The Esco Bars Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Esco Bars Disposable Vapes into Nevada. *See* Exhibit 18 at ¶ 39.

4. Hyde Respondents

229. The Hyde Respondents do not sell Hyde Disposable Vapes directly to consumers. They sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Hyde Disposable Vapes in interstate commerce to Respondent Price Point, located in New York. *See generally* Exhibit 44. New York taxes the sale of ENDS. *See* ¶ 187, *supra*. The Hyde Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Hyde Disposable Vapes in interstate commerce to Respondent Element Vape located in California. *See generally* Exhibit 45. California

taxes the sale of ENDS. *See* ¶ 182, *supra*.⁵

230. The Hyde Respondents are required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Hyde Disposable Vapes into states that tax the sale of ENDS.

231. The Hyde Respondents did not register with the U.S. Attorney General before selling, transferring, or shipping Hyde Disposable Vapes into either New York, California, or Virginia (all of which tax the sale of ENDS). *See* Exhibit 18 at ¶ 39.

232. The Hyde Respondents are also required to register with the New York tobacco tax administrator (the New York State Department of Taxation and Finance) before selling, transferring, or shipping Hyde Disposable Vapes into New York.

233. The Hyde Respondents did not register with the New York State Department of Taxation and Finance before selling, transferring, or shipping Hyde Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

234. The Hyde Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into New York.

235. The Hyde Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Hyde Disposable Vapes into New York. *See* Exhibit 18 at ¶ 39.

236. The Hyde Respondents are also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling,

⁵ The Elf Bar Respondents also sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Elf Bar, Funky Republic, and Lost Mary Disposable Vapes in interstate commerce to Respondent Mi-One's warehouse in Arizona, but Arizona does not tax the sale of ENDS.

transferring, or shipping Hyde Disposable Vapes into California.

237. The Hyde Respondents did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping Hyde Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

238. The Hyde Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into California.

239. The Hyde Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Hyde Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

5. Puff Bar Respondents

240. The Puff Bar Respondents do not sell Puff Bar, Rare, or Flum Disposable Vapes directly to consumers. They sell, transfer, ship, or advertise or offer for sale, transfer, or shipment Puff Bar, Rare, and Flum Disposable Vapes in interstate commerce to Respondent Element Vape located in California. *See generally* Exhibit 45. California taxes the sale of ENDS. *See* ¶ 182, *supra*.

241. The Puff Bar Respondents are required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Puff Bar, Rare, or Flum Disposable Vapes into states that tax the sale of ENDS.

242. The Elf Bar Respondents did not register with the U.S. Attorney General before selling, transferring, or shipping Puff Bar, Rare, or Flum Disposable Vapes into California (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

243. The Puff Bar Respondents are also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling,

transferring, or shipping Puff Bar, Rare, or Flum Disposable Vapes into California.

244. The Puff Bar Respondents did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping Puff Bar, Rare, or Flum Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

245. The Puff Bar Respondents are also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into California.

246. The Puff Bar Respondents have not filed a memorandum or copy of the invoices covering each and every shipment of Puff Bar, Rare, or Flum Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

6. R and M Respondent

247. The R and M Respondent does not sell R and M Disposable Vapes directly to consumers. Instead, it sells, transfers, ships, or advertises or offers for sale, transfer, or shipment R and M Disposable Vapes in interstate commerce to Respondent Vape Sourcing, located in California. *See generally* Exhibit 49. California taxes the sale of ENDS. *See* ¶ 182, *supra*.

248. The R and M Respondent is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of R and M Disposable Vapes into states that tax the sale of ENDS.

249. The R and M Respondent did not register with the U.S. Attorney General before selling, transferring, or shipping R and M Disposable Vapes into California (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

250. The R and M Respondent is also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling, transferring, or shipping R and M Disposable Vapes into California.

251. The R and M Respondent did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping R and M Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

252. The R and M Respondent is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into California.

253. The R and M Respondent has not filed a memorandum or copy of the invoices covering each and every shipment of R and M Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

7. Element Vape

254. Over the past several months, online orders for various Disposable Vapes, including the Accused Products, were placed on Element Vape's website, www.elementvape.com. During that time, Element Vape shipped orders for Accused Products to consumers in Virginia.

255. On September 23, 2023, an online order was placed on Element Vape's website, www.elementvape.com, for a 5000-puff flavored EB Design Disposable Vape to be delivered to a Virginia address ("Element Vape September 23 Order"). *See* Exhibit 36 at 10-14.

256. On September 29, 2023, the product arrived via USPS delivery and required a signature and proof that the person accepting the delivery was over the minimum age required for the purchase of ENDS in Virginia. *See id.* at 12.

257. The Element Vape September 23 Order did not contain the required PACT Act Statement on the bill of lading and/or shipping package. *See id.* at 13.

258. The Element Vape September 23 Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Element Vape was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery

was made by means of remote delivery.

259. The Element Vape September 23 Order violated the PACT Act in several ways, including but not limited to: using USPS to ship an ENDS product and failing to include the Required PACT Act Statement on the package identifying the contents.

260. As evidenced by the foregoing, Element Vape sells, transfers, ships, or advertises or offers for sale, transfer, or shipment Disposable Vapes in interstate commerce to consumers located in Virginia. Virginia taxes the sale of ENDS. *See* ¶ 192, *supra*.

261. Element Vape is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Disposable Vapes into states that tax the sale of ENDS.

262. Element Vape did not register with the U.S. Attorney General before selling, transferring, or shipping Disposable Vapes into Virginia (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

263. Element Vape is also required to register with the Virginia tobacco tax administrator (the Virginia Department of Taxation) before selling, transferring, or shipping Disposable Vapes into Virginia.

264. Element Vape did not register with the Virginia Department of Taxation before selling, transferring, or shipping Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

265. Element Vape is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into Virginia.

266. Element Vape has not filed a memorandum or copy of the invoices covering each and every shipment of Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

8. Flawless Vape

267. Over the past several months, online orders for various Disposable Vapes, including

the Accused Products, were placed on Flawless Vape’s website, www.flawlessvape.com. During that time, Flawless Vape shipped orders for Accused Products to consumers in Virginia.

268. On June 15, 2023, an online order was placed on Flawless Vape’s website, www.flawlessvapeshop.com, for a 6000-puff flavored Esco Bars Mesh Disposable Vape to be delivered to a Virginia address (“Flawless Vape June 15 Virginia Order”). When placing the order, the purchaser was required to verify their age using a third-party website; however, the website did not specify that an adult signature would be required upon delivery. *See* Exhibit 46.

269. On June 20, 2023, the product arrived via USPS delivery and although a signature was required upon delivery, proof that the person accepting delivery was over the minimum age required for the purchase of ENDS in Virginia was not. *See* Exhibit 46 at 4.

270. The Flawless Vape June 15 Virginia Order did not contain the Required PACT Act Statement on the bill of lading and/or shipping package. *See id.*

271. The Flawless Vape June 15 Virginia Order did not collect Virginia’s applicable excise taxes on liquid nicotine. *See id.* at 2. Thus, Flawless Vape could not have ensured that Virginia’s applicable excise taxes on liquid nicotine were paid to the state before tendering the product (illegally) to USPS for delivery.

272. The Flawless Vape June 15 Virginia Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Flawless Vape was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery was made by means of remote delivery.

273. The Flawless Vape June 15 Virginia Order violated the PACT Act in several ways, including but not limited to: using USPS to ship an ENDS product; failing to include the Required PACT Act Statement on the package identifying the contents; failing to require age verification

upon delivery; failing to collect Virginia's applicable excise taxes on liquid nicotine; and failing to ensure that Virginia's applicable excise taxes on liquid nicotine were paid to the state before tendering the product (illegally) to USPS for delivery.

274. As evidenced by the foregoing, Flawless Vape sells, transfers, ships, or advertises or offers for sale, transfer, or shipment Disposable Vapes in interstate commerce to consumers located in Virginia. Virginia taxes the sale of ENDS. *See* ¶ 192, *supra*.

275. Flawless Vape is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Disposable Vapes into states that tax the sale of ENDS.

276. Flawless Vape did not register with the U.S. Attorney General before selling, transferring, or shipping Disposable Vapes into Virginia (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

277. Flawless Vape is also required to register with the Virginia tobacco tax administrator (the Virginia Department of Taxation) before selling, transferring, or shipping Disposable Vapes into Virginia.

278. Flawless Vape did not register with the Virginia Department of Taxation before selling, transferring, or shipping Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

279. Flawless Vape is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into Virginia.

280. Flawless Vape has not filed a memorandum or copy of the invoices covering each and every shipment of Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

9. Mi-One

281. Over the past several months, online orders for various Disposable Vapes, including the Accused Products, were placed on Mi-One's website, www.mipod.com. During that time, Mi-

One shipped orders for Accused Products to consumers in Alabama and California.

282. On June 9, 2023, an online order was placed on Mi-Ones website, www.mipod.com, for a flavored Esco Bars Disposable Vape to be delivered to an Alabama address (“Mi-One June 9 Alabama Order”). When placing the order, the purchaser was required to verify their age using a third-party website; however, the website did not specify that an adult signature would be required upon delivery. *See generally* Exhibit 47.

283. On June 26, 2023, the product arrived via an unmarked Toyota Camry, and although the delivery required a signature, it did not require proof that the person accepting delivery was over the minimum age required for the purchase of ENDS in Alabama. *See id.* at 7.

284. The Mi-One June 9 Alabama Order did contain the Required PACT Act Statement on the bill of lading and/or shipping package. *See id.*

285. The Mi-One June 9 Alabama Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Mi-One was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery was made by means of remote delivery.

286. The Mi-One June 9 Alabama Order violated the PACT Act in several ways, including but not limited to: selling an ENDS product not listed on the Alabama Directory to a purchaser in Alabama in violation of Alabama law; and failing to require age verification upon delivery.

287. On February 27, 2023, an online order was placed on Mi-One’s website, www.mipod.com, for a 4500-puff flavored Hyde Disposable Vape to be delivered to a California address (“Mi-One February 27 Order”). When placing the order, the purchaser was required to verify their age using a third-party website; however, the website did not specify that an adult

signature would be required upon delivery. *See* Exhibit 38.

288. On March 9, 2023, the product arrived via GLS delivery without requiring a signature or proof that the person accepting delivery was over the minimum age required for the purchase of ENDS in California. *See id.* at 13.

289. The Mi-One February 27 Order did not contain the Required PACT Act Statement on the bill of lading and/or shipping package. *See id.* at 14.

290. The Mi-One February 27 Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Mi-One was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery was made by means of remote delivery.

291. The Mi-One February 27 Order violated the PACT Act in several ways, including but not limited to: failing to include the Required PACT Act Statement on the package identifying the contents; and failing to require a signature and age verification upon delivery.

292. As evidenced by the foregoing, Mi-One sells, transfers, ships, or advertises or offers for sale, transfer, or shipment Disposable Vapes in interstate commerce to consumers located in California. California taxes the sale of ENDS. *See* ¶ 182, *supra*.

293. Mi-One is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Disposable Vapes into states that tax the sale of ENDS.

294. Mi-One did not register with the U.S. Attorney General before selling, transferring, or shipping Disposable Vapes into California (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

295. Mi-One is also required to register with the California tobacco tax administrator (the California Department of Tax and Fee Administration) before selling, transferring, or shipping

Disposable Vapes into California.

296. Mi-One did not register with the California Department of Tax and Fee Administration before selling, transferring, or shipping Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

297. Mi-One is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into California.

298. Mi-One has not filed a memorandum or copy of the invoices covering each and every shipment of Disposable Vapes into California. *See* Exhibit 18 at ¶ 39.

10. Price Point

299. Over the past several months, online orders for various Disposable Vapes, including the Accused Products, were placed on Price Point's website, www.pricepointny.com. During that time, Price Point shipped orders for Accused Products to consumers in New Jersey.

300. On September 20, 2023, an online order was placed on Price Point's website, www.pricepointny.com, for two flavored Breeze Pro Disposable Vapes to be delivered to a New Jersey address ("Price Point September 20 Order"). When placing the order, the purchaser was required to verify their age; however, the website did not specify that an adult signature would be required upon delivery. *See* Exhibit 21.

301. On September 23, the product arrived via USPS delivery without requiring a signature or proof that the person accepting delivery was over the minimum age required for the purchase of ENDS in New Jersey. *See id.* at 3.

302. The Price Point September 20 Order did not contain the Required PACT Act Statement on the bill of lading and/or shipping package. *See id.*

303. The Price Point September 20 Order did not collect New Jersey's applicable excise

taxes on liquid nicotine. *See id.* at 1. Thus, Price Point could not have ensured that New Jersey's applicable excise taxes on liquid nicotine were paid to the state before tendering the product (illegally) to USPS for delivery.

304. The Price Point September 20 Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Price Point was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery was made by means of remote delivery.

305. The Price Point September 20 Order violated the PACT Act in several ways, including but not limited to: violating the New Jersey Flavor Ban by selling flavored Breeze Disposable Vapes to a purchaser in New Jersey; failing to include the Required PACT Act Statement on the package identifying the contents; failing to require a signature and age verification upon delivery; failing to collect New Jersey's applicable excise taxes on liquid nicotine; and failing to ensure that New Jersey's applicable excise taxes on liquid nicotine were paid to the state before tendering the product (illegally) to USPS for delivery.

306. As evidenced by the foregoing, Price Point sells, transfers, ships, or advertises or offers for sale, transfer, or shipment Disposable Vapes in interstate commerce to consumers located in New Jersey. New Jersey taxes the sale of ENDS. *See* ¶ 185, *supra*.

307. Price Point is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Disposable Vapes into states that tax the sale of ENDS.

308. Price Point did not register with the U.S. Attorney General before selling, transferring, or shipping Disposable Vapes into New Jersey (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

309. Price Point is also required to register with the New Jersey tobacco tax

administrator (the New Jersey Department of Treasury Division of Taxation) before selling, transferring, or shipping Disposable Vapes into New Jersey.

310. Price Point did not register with the New Jersey Department of Treasury Division of Taxation before selling, transferring, or shipping Disposable Vapes into New Jersey. *See* Exhibit 18 at ¶ 39.

311. Price Point is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made during the previous calendar month into New Jersey.

312. Price Point has not filed a memorandum or copy of the invoices covering each and every shipment of Disposable Vapes into New Jersey. *See* Exhibit 18 at ¶ 39.

11. Vape Sourcing

313. Over the past several months, online orders for various Disposable Vapes, including the Accused Products, were placed on Vape Sourcing's website, www.vapesourcing.com. During that time, Vape Sourcing shipped orders for Accused Products to consumers in Virginia.

314. On June 21, 2023, an online order was placed on Vape Sourcing's website, www.vapesourcing.com, for a 5200-puff flavored R and M Disposable Vape to be delivered to a Virginia address ("Vape Sourcing June 21 Order"). When placing the order, the purchaser was required to verify their age using a third-party website; however, the website did not specify that an adult signature would be required upon delivery. *See* Exhibit 49.

315. On June 26, 2023, the product arrived via USPS without requiring a signature or proof that the person accepting delivery was over the minimum age required for the purchase of ENDS in Virginia. *See id.* at 5-6.

316. The Vape Sourcing June 21 Order did not contain the Required PACT Act Statement on the bill of lading and/or shipping package. *See id.* at 6.

317. The Vape Sourcing June 21 Order was a delivery sale within the meaning of the PACT Act, 15 U.S.C. § 375(5), because Vape Sourcing was not in the presence of any buyer when the order was placed online, or when the order was delivered to the buyer, or the delivery was made by means of remote delivery.

318. The Vape Sourcing June 21 Order violated the PACT Act in several ways, including but not limited to: failing to include the Required PACT Act Statement on the package identifying the contents; using USPS to ship an ENDS product; and failing to require a signature and age verification upon delivery.

319. As evidenced by the foregoing, Vape Sourcing sells, transfers, ships, or advertises or offers for sale, transfer, or shipment Disposable Vapes in interstate commerce to consumers located in Virginia. Virginia taxes the sale of ENDS. *See* ¶ 192, *supra*.

320. Vape Sourcing is required to register with the U.S. Attorney General before making any sales, transfers, or shipments of Disposable Vapes into states that tax the sale of ENDS.

321. Vape Sourcing did not register with the U.S. Attorney General before selling, transferring, or shipping Disposable Vapes into Virginia (a state that taxes the sale of ENDS). *See* Exhibit 18 at ¶ 39.

322. Vape Sourcing is also required to register with the Virginia tobacco tax administrator (the Virginia Department of Taxation) before selling, transferring, or shipping Disposable Vapes into Virginia.

323. Vape Sourcing did not register with the Virginia Department of Taxation before selling, transferring, or shipping Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

324. Vape Sourcing is also required to file, no later than the tenth day of each calendar month, a memorandum or copy of the invoice covering each and every shipment of ENDS made

during the previous calendar month into Virginia.

325. Vape Sourcing has not filed a memorandum or copy of the invoices covering each and every shipment of Disposable Vapes into Virginia. *See* Exhibit 18 at ¶ 39.

C. Unfair Competition and Unfair Acts Through Violations of Customs Laws and Regulations

326. All merchandise imported into the United States must be “entered,” unless specifically excepted. *See* 19 C.F.R. § 141.4(a); 19 U.S.C. § 1484. “Entry” means, among other things, that an importer or its agent is required to file the necessary documents with Customs and Border Patrol (“CBP” or “Customs”) that allow the agency to assess the customs duties on the merchandise being imported. *See* 19 C.F.R. § 141.0a(a).

327. The required documents for completing “entry” into the United States include: (i) a bill of lading or air waybill; (ii) a commercial invoice verifying the value of the imported merchandise; and (iii) CBP Form 7501 (“Entry Summary Form”) declaring the value of the merchandise and the applicable duty rate(s). *See, e.g.*, 19 C.F.R. §§ 141.11 (requiring bill of lading or air waybill), 141.19(a) (requiring a declaration of entry), 141.81 (requiring invoice for each shipment), 141.86(a) (describing contents of imported merchandise invoice), 142.3(a) (requiring entry documentation), 142.6(a) (describing additional invoice requirements).

328. The entity acting as the “importer of record” must pay the applicable customs duties using “reasonable care” in making and providing correct and accurate documents to CBP. 19 U.S.C. § 1484(a)(1). For example, the importer must state the “declared value, classification and rate of duty applicable to the merchandise, and such other documentation or . . . information as is necessary to enable [CBP] to . . . properly assess duties on the merchandise.” 19 U.S.C. § 1484(a)(1)(B).

329. All merchandise imported into the United States is subject to import duties pursuant

to the Harmonized Tariff Schedule (“HTS”), codified at 19 U.S.C. § 1202. The HTS provides the applicable duty rates and classifications for imported merchandise. There are over 17,000 unique ten-digit HTS classification codes.

330. In most instances, to calculate the proper amount of customs duties owed, the importer must first determine the value of the merchandise. The value of the imported merchandise must be declared in the commercial invoice and Entry Summary Form. Generally, the value of imported merchandise is its “transaction value.” 19 U.S.C. § 1401a(a)(1)(A).

331. The “transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States,” plus, if applicable, various other costs incurred with respect to the merchandise. 19 U.S.C. § 1401a(b)(1). To determine how much duty is owed, the value of the merchandise is multiplied by the applicable duty rate found in the HTS.⁶

332. The HTS provisions that correspond to disposable vapes are 8543.40.00 (electronic cigarettes and similar electric vaporizing devices), 8543.40.00.30 (electronic cigarettes and similar electric vaporizing devices with substances containing nicotine), and/or 8543.40.00.40 (other electronic cigarettes and similar electric vaporizing devices). Each of these provisions imposes a duty of 2.6%, with an additional 25% duty for articles produced in China. *See* Exhibit 50 at 2; Exhibit 51.

333. The importer must deposit the appropriate amount of duties with Customs at the time of entry. *See* 19 U.S.C. § 1505; 19 C.F.R. § 141.101. *See* also 19 C.F.R. § 141.1(b)(1) (“The liability for duties constitutes a personal debt due from the importer to the United States which can

⁶ As a very basic example, assume the declared value of imported merchandise is \$100.00 and the applicable HTS duty is 2.5%. The importer would owe \$2.50 in customs duties (\$100.00 x 2.5%).

be discharged only by payment in full . . .”).

334. An importer must also declare under oath that, among other things, “all statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct.” 19 U.S.C. § 1485(a)(3). The Entry Summary Form also includes a declaration that “the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities . . . and are true and correct” and that the declarant “will immediately furnish to the appropriate [CBP] officer any information showing a different statement of facts.”

335. Additionally, no person “may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States” by fraud, gross negligence, or negligence. 19 U.S.C. § 1592(a)(1)(A).

336. It is a common practice for entities importing tobacco products, including ENDS, into the United States to falsely report the product to avoid detection by Customs. *See* Exhibit 18 at ¶ 9. For example, the importer may incorrectly describe the goods on the Customs entry documents, resulting in the use of an incorrect tariff provision, or understate the value of the goods, resulting in the underpayment of tariffs and charges. *See* Exhibit 18 at ¶¶ 9, 17, 22-24, 27, 29, 30, 34, 40.

337. Upon information and belief, Chinese manufacturers and exporters, attempting to sell more product, actively aid U.S. importers and distributors in concealing the true information about their shipments of Illegal Disposable Vapes. *See* Exhibit 18 at ¶¶ 12, 15-17, 19. This allows them to import Illegal Disposable Vapes into the United States undetected and to avoid paying the appropriate tariffs and charges on the Illegal Disposable Vapes. *See* Exhibit 18 at ¶¶ 12, 15-17, 19, 23.

338. Federal laws and regulations require statements to Customs and entry

documentation to be truthful and accurate so that imported goods are assessed the proper amount of tariffs and charges. *See* ¶¶ 326-335, *supra*.

339. The Hyde Respondents have not used an HTS provision that would properly classify their imports as disposable vapes: 8543.40.00 (electronic cigarettes and similar electric vaporizing devices), 8543.40.00.30 (electronic cigarettes and similar electric vaporizing devices with substances containing nicotine), and/or 8543.40.00.40 (other electronic cigarettes and similar electric vaporizing devices). *See* Exhibit 18 at ¶¶ 22-25.

340. As set forth below, the Hyde Respondents engaged in unfair competition and unfair acts by violating Customs laws and regulations applicable to imported goods. The Hyde Respondents violated Customs laws and regulations by using incorrect HTS provisions and inaccurate product descriptions on their Customs entry documents. *See* Exhibit 18 at 22-25. Upon information and belief, this allows the Hyde Respondents to underpay tariffs and charges associated with their imports of Hyde Disposable Vapes and avoid detection by CBP. *See* Exhibit 18 at ¶¶ 22-25.

1. The Hyde Respondents Use Incorrect HTS Codes and Misclassify Their Disposable Vapes

341. From May 2018 to November 2022, the Hyde Respondents sold Hyde Disposable Vapes for importation into the United States from Shenzhen, China. *See* Exhibit 52 at 18. Magellan was the consignee for all of these shipments. *See id.*

342. The HTS provisions that correspond to disposable vapes are 8543.40.00 (electronic cigarettes and similar electric vaporizing devices), 8543.40.00.30 (electronic cigarettes and similar electric vaporizing devices with substances containing nicotine), and/or 8543.40.00.40 (other electronic cigarettes and similar electric vaporizing devices). *See* Exhibit 18 at ¶ 21. Each of these codes imposes a tariff of 2.6%, with an additional 25% tariff for articles produced in China. *See*

Exhibit 50 at 2; Exhibit 51. Thus, the Hyde Respondents should pay at least 27.6% in tariffs on their Illegal Disposable Vape imports.

343. The HTS codes that the Hyde Respondents reported or caused to be reported on the entries of its products, such as the Entry Summary Form, included, but are not limited to: 8504.40.95.50 (other static converters). *See* Exhibit 18 at ¶ 22; Exhibit 52 at 18. This HTS provision is entitled to unconditional duty free treatment, but imports from China classified under this tariff provision are subject to 25% additional section 301 duties. *See* Exhibit 50 at 1; Exhibit 51. Thus, the Hyde Respondents are paying only 25% import duties on their Illegal Disposable Vape imports.

344. By reporting HTS code 8504.40.95.50 to CBP, the Hyde Respondents likely avoid paying import duties and tariffs by at least 2.6%. *See* Exhibit 18 at ¶ 23. In addition, by misclassifying the goods on bills of lading and Customs documents, the Hyde Respondents are able to conceal the true nature of their Illegal Disposable Vape imports and evade detection by Customs. *See* Exhibit 18 at ¶ 23. Such actions violate numerous Customs laws and regulations, as detailed above, including but not limited to the requirements that the importer deposit the appropriate amount of tariffs, duties, and fees with Customs, *see, e.g.*, 19 U.S.C. § 1505; 19 C.F.R. § 141.101, that the importer take “reasonable care” in making and providing truthful statements to CBP, *see, e.g.*, 19 U.S.C. § 1484(a)(1), that all statements in the entry are true and correct, *see, e.g.*, 19 U.S.C. § 1485(a)(3), and that no person enter merchandise by fraud, gross negligence, or negligence, *see* 19 U.S.C. § 1592(a)(1)(A).

345. The Hyde Respondents sold Hyde Disposable Vapes for importation into the United States on or about May 24, 2018 (“May 24 Hyde shipment”). *See* Exhibit 52 at 18. The May 24 Hyde shipment was shipped to the United States by Shenzhen Hoteam Art & Crafts Co.

Ltd. *See id.* The Hyde Respondents described or caused to be described the goods shipped as “acrylic display case” on their Customs forms. *See id.* The Hyde Respondents should have described the goods as an ENDS product or Disposable Vape. *See* Exhibit 18 at ¶¶ 22-25.

346. The Hyde Respondents sold Hyde Disposable Vapes for importation into the United States on or about December 17, 2018 (“December 17 Hyde shipment”). *See* Exhibit 52 at 18. The December 17 Hyde shipment was shipped to the United States by Brillipower Co., Ltd. *See id.* The Hyde Respondents described or caused to be described the goods shipped as a “battery charger” on their Customs forms. *See id.* The Hyde Respondents should have described the goods as an ENDS product or Disposable Vape. *See* Exhibit 18 at ¶¶ 22-25.

347. The Hyde Respondents sold Hyde Disposable Vapes for importation into the United States on or about March 7, 2022 (“March 7 Hyde shipment”). *See* Exhibit 52 at 18. The March 7 Hyde shipment was shipped to the United States by Guangzhou Sysmax Innovations Co. *See id.* The Hyde Respondents described or caused to be described the goods shipped as a “charger” and/or used HTS code 8504.40.95.50 (other power supplies) on its Customs forms. *See id.* The Hyde Respondents should have described the goods as an ENDS product or Disposable Vape and used HTS codes 8543.40.00 (electronic cigarettes and similar electric vaporizing devices), 8543.40.00.30 (electronic cigarettes and similar electric vaporizing devices with substances containing nicotine), and/or 8543.40.00.40 (other electronic cigarettes and similar electric vaporizing devices) for the March 7 Hyde shipment. *See* Exhibit 18 at ¶¶ 21-25.

348. These violations constitute unfair competition and unfair acts because they allow the Hyde Respondents to pay fewer tariffs, duties, and fees on their imports of ENDS products than law-abiding ENDS manufacturers, such as Complainants, who are using the correct HTS

codes and accurate product descriptions.⁷

V. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

349. The Accused Products are manufactured overseas, predominately in China, and then sold for importation into the United States by Respondents or on their behalf, imported into the United States by Respondents or on their behalf, and/or sold after importation by Respondents or on their behalf.

A. Manufacturer Respondents

Breeze Respondents

350. Breeze Smoke sells for importation, imports, and/or sells after importation the Accused Products. *See* Exhibit 53; Exhibit 19; Exhibit 21 at 4. In addition, on September 20, 2023, Breeze Disposable Vapes bearing Breeze Smoke’s name and indicating “Manufactured in China” were purchased online from Price Point. *See* Exhibit 21 at 4. Breeze Smoke continues to sell for importation, import, or sell after importation the Accused Products.

351. Shikai Technology sells for importation, imports, and/or sells after importation the Accused Products, including the Breeze brands. *See* Exhibit 21 at 4. In addition, on September 20, 2023, Breeze Disposable Vapes bearing Shikai Technology’s name and indicating “Manufactured in China” were purchased online from Price Point. *See id.* Shikai Technology continues to sell for importation, import, or sell after importation the Accused Products.

Elf Bar Respondents

352. Shenzhen Weiboli sells for importation, imports, and/or sells after importation the

⁷ The actions described in ¶¶ 341-348 may also violate the False Claims Act, 31 U.S.C. § 3729(a)(1)(G), which prohibits among other things, knowingly making, using, or causing to be made or used any “false record or statement material to an obligation to pay or transmit money or property to the Government,” or knowingly concealing or knowingly and improperly avoiding or decreasing “an obligation to pay or transmit money or property to the Government.”

Accused Products, including the Elf Bar brands. *See* Exhibit 22 at 12. The Elf Bar product packaging indicates that Elf Bar Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.,* Exhibit 24 at 14. Shenzhen Weiboli continues to sell for importation, import, or sell after importation the Accused Products.

353. Vapeonly sells for importation, imports, and/or sells after importation the Accused Products, including the Elf Bar brands. *See* Exhibit 23 at 5. An Elf Bar Disposable Vape that was purchased online bears Vapeonly's name and indicates "Made in [C]hina. *See id.* Vapeonly continues to sell for importation, import, or sell after importation the Accused Products.

354. iMiracle (Shenzhen) sells for importation, imports, and/or sells after importation the Accused Products, including the Elf Bar brands. *See* Exhibit 23 at 15. In addition, on February 27, 2023, Lost Mary Disposable Vapes bearing iMiracle Shenzhen's name and indicating "Made in China" were purchased online from Element Vape. *See id.* at 14. iMiracle Shenzhen continues to sell for importation, import, or sell after importation the Accused Products.

355. Guangdong Qisitech sells for importation, imports, and/or sells after importation the Accused Products, including the Elf Bar brands. *See* Exhibit 54 at 13. In addition, on November 7, 2022, Elf Bar Vapes bearing Guangdong Qisitech's name and indicating "Made in China" were purchased online from Mi-One. *See id.* Guangdong Qisitech continues to sell for importation, import, or sell after importation the Accused Products.

356. Shenzhen Han sells for importation, imports, and/or sells after importation the Accused Products, including the Elf Bar brands. *See* Exhibit 24 at 14. In addition, on February 27, 2023, Lost Mary Disposable Vapes bearing Shenzhen Han's name and indicating "Made in China" were purchased online from Element Vape. *See id.* Shenzhen Han continues to sell for importation, import, or sell after importation the Accused Products.

Esco Bars Respondents

357. AVC sells for importation, imports, and/or sells after importation the Accused Products, including the Esco Bars brands. *See* Exhibit 55 at 2-3. The Esco Bars product packaging indicates that Esco Bars Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.,* Exhibit 48 at 16. AVC continues to sell for importation, import, or sell after importation the Accused Products.

358. Pastel Cartel sells for importation, imports, and/or sells after importation the Accused Products, including the Esco Bars brands. *See, e.g.,* Exhibit 48. In addition, on June 9, 2023, Esco Bars Disposable Vapes bearing Pastel Cartel's name and indicating "Made in China" were purchased online from Price Point. *See id.* at 16. Pastel Cartel continues to sell for importation, import, or sell after importation the Accused Products.

359. Affiliated Imports sells for importation, imports, and/or sells after importation the Accused Products, including the Esco Bars brands. *See* Exhibit 14 at 7; *see also* Exhibit 56. The Esco Bars product packaging indicates that Esco Bars Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.,* Exhibit 48 at 16. Affiliated Imports continues to sell for importation, import, or sell after importation the Accused Products.

360. Shenzhen Innokin sells for importation, imports, and/or sells after importation the Accused Products, including the Breeze brands. *See* Exhibit 25 at 2. The Esco Bars product packaging indicates that Esco Bars Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.,* Exhibit 48 at 16. Shenzhen Innokin continues to sell for importation, import, or sell after importation the Accused Products.

361. Funiyin Electronic sells for importation, imports, and/or sells after importation the Accused Products, including the Esco Bars brands. *See* Exhibit 14 at 6. The Esco Bars product

packaging indicates that Esco Bars Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.*, Exhibit 48 at 16. Funyin Electronic continues to sell for importation, import, or sell after importation the Accused Products.

362. Pingray sells for importation, imports, and/or sells after importation the Accused Products, including the Esco Bars brands. *See* Exhibit 14 at 6. The Esco Bars product packaging indicates that Esco Bars Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See, e.g.*, Exhibit 48 at 16. Pingray continues to sell for importation, import, or sell after importation the Accused Products.

Hyde Respondents

363. Magellan sells for importation, imports, and/or sells after importation the Accused Products, including the Hyde brands. *See* Exhibit 26 at 7. The Hyde product packaging indicates that Hyde Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See* Exhibit 29. Magellan continues to sell for importation, import, or sell after importation the Accused Products.

364. Shenzhen IVPS sells for importation, imports, and/or sells after importation the Accused Products, including the Hyde brands. *See* Exhibit 28 at 4. In addition, on February 20, 2023, a Hyde Disposable Vape bearing Shenzhen IVPS's name and indicating that the product was made in China was purchased online. *See id.* Shenzhen IVPS continues to sell for importation, import, or sell after importation the Accused Products.

365. Shenzhen Noriyang sells for importation, imports, and/or sells after importation the Accused Products, including the Hyde brands. *See* Exhibit 29. In addition, on February 28, 2023, a Hyde Disposable Vape bearing Shenzhen Noriyang's name and indicating that the product was made in China was purchased online. *See* Exhibit 43 at 9. Shenzhen Noriyang continues to sell for importation, import, or sell after importation the Accused Products.

Puff Bar Respondents

366. EVO Brands sells for importation, imports, and/or sells after importation the Accused Products, including the Puff Bar brands. *See* Exhibit 32 at 2. The Puff Bar product packaging indicates that Puff Bar Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See* Exhibit 3 at 5-6. EVO Brands continues to sell for importation, import, or sell after importation the Accused Products.

367. PVG2 sells for importation, imports, and/or sells after importation the Accused Products, including the Puff Bar brands. *See* Exhibit 32 at 2. The Puff Bar product packaging indicates that Puff Bar Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See* Exhibit 3 at 5-6. PVG2 continues to sell for importation, import, or sell after importation the Accused Products.

368. Shenzhen Daosen sells for importation, imports, and/or sells after importation the Accused Products, including the Puff Bar brands. *See* Exhibit 26 at 3. The Puff Bar product packaging indicates that Puff Bar Disposable Vapes are made in China, demonstrating that they are sold for importation into the United States. *See* Exhibit 3 at 5-6. Shenzhen Daosen continues to sell for importation, import, or sell after importation the Accused Products.

R and M Respondent

369. Shenzhen Fumot sells for importation, imports, and/or sells after importation the Accused Products, including the R and M brands. *See* Exhibit 49 at 7; Exhibit 14 at 5. In addition, on June 21, 2023, an R and M Disposable Vape bearing Shenzhen Fumot's name and indicating that the product was made in China was purchased online. *See* Exhibit 49 at 7. Shenzhen Fumot continues to sell for importation, import, or sell after importation the Accused Products.

B. Distributor Respondents

370. The Distributor Respondents sell the Accused Products after importation, including

via Internet sales.

371. Element Vape sold the Accused Products after importation on September 23, 2023. *See* Exhibit 36. Element Vape continues to sell the Accused Products.

372. Flawless Vape Shop sold the Accused Products after importation on June 15, 2023. *See* Exhibit 46. Flawless Vape continues to sell the Accused Products.

373. Mi-One sold the Accused Products after importation on February 27, 2023 and June 9, 2023. *See* Exhibit 47; Exhibit 38. Mi-One continues to sell the Accused Products.

374. Price Point sold the Accused Products after importation on September 20, 2023. *See* Exhibit 21; Exhibit 48. Price Point continues to sell the Accused Products.

375. Vape Sourcing sold the Accused Products after importation on June 21, 2023. *See* Exhibit 49. Vape Sourcing continues to sell the Accused Products.

VI. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS

376. The HTS tariff provisions under which the Accused Products may be imported into the United States include the following: 8543.40.00; 8543.40.00.30; 8543.40.00.40. These HTS provisions are not intended to restrict the scope of this investigation or the scope of relief Complainants are seeking.

VII. THE DOMESTIC INDUSTRY

A. Complainants' Domestic Industry

377. Reynolds has a long history of researching, designing, developing, testing, and manufacturing alternative smoking articles. Reynolds manufactures, markets, and sells Vuse-brand e-cigarettes, which are alternatives to combustible cigarettes for adults who currently smoke. In 2013, Reynolds launched Vuse Solo—the first truly digital e-cigarette. Four lines of Vuse products—Solo, Vibe, Ciro, and Alto (collectively, “Vuse Products”) have been marketed and sold in the United States. The Vuse Products are the cornerstone of RJRV’s future and a key

embodiment of Reynolds' commitment to its guiding principles regarding tobacco harm reduction.

378. Complainants engage in a variety of activities related to their Vuse Products in the United States and have made substantial investments related to these activities. Specifically, Complainants have produced critical product components, engaged in quality control activities, carried out regulatory compliance work for government regulation purposes, including product integrity and safety assessments, and conducted product research and development.

379. These activities are carried out by Reynolds employees located in various facilities in the United States. For example, Reynolds' production-related activities related to Vuse Products, including the manufacture of cartridges and blending of proprietary e-liquid, take place at Reynolds' Tobaccoville facility located in Tobaccoville, North Carolina. Quality control, including performing incoming material inspections, quality sampling and testing, laboratory equipment calibration and validation, document control, and various types of reporting, are performed out of the Reynolds Operation Center facility in Tobaccoville. PMTA and other regulatory-related activities for the Vuse Products are carried out by Reynolds' regulatory compliance and product integrity and submissions groups located in the Bowman Gray Technical Center also located in Winston-Salem, North Carolina. Reynolds R&D activities for Vuse Products are conducted at facilities in Winston-Salem, North Carolina.

380. The details related to the aforementioned activities, as well as the associated expenditures, are set forth in the Confidential Declaration of Valerie Mras, attached as Exhibit 40.

B. Substantial Injury to Complainants' Domestic Industry

381. The Proposed Respondents' unfair acts have caused and threaten to cause substantial injury to Complainants' domestic industry.

382. The Accused Products have flooded the U.S. market, with sales increasing drastically both in absolute and relative terms, resulting in loss of sales and market share for

Complainants' Vuse Products and further threaten future sales by Complainants.

383. Upon information and belief, all (or virtually all) Disposable Vapes sold in the U.S. market are imported and consist of Accused Products.

384. According to a report published in March 2023 by the CDC Foundation,⁸ between February 2, 2020, to March 26, 2023, sales of Disposable Vapes, (including the Accused Products), increased by 196.2%, from 4.0 million units to 11.9 million units. During the same period, the market share of Disposable Vapes increased by 27.6 percentage points, increasing from 25.8% to 53.4% of total e-cigarette sales. As of March 2023, 80% of Disposable Vape sales consisted of flavors other than tobacco, mint, and menthol. *See Exhibit 2 at 1.*

385. Because the CDC Foundation's report does not account for unit size variations, the increase in sales volume and market share of Disposable Vapes are, in fact, understated. Numerous Disposable Vapes are becoming available in larger format, containing more e-liquid and allowing increased usage per unit. *See id.*

386. In terms of milliliters of liquid, the share of Disposable Vapes of the U.S. market for all e-cigarettes increased from 74.9% in December 2021 to 88.9% in March 2023. During the same period, the market share of Complainants' Vuse Products declined from 12.2% of the market to 9.8%. *See Exhibit 40 at ¶ 23.*

387. Proposed Respondents' unfair acts have caused lost sales, as well as lost profits flowing from those lost sales, due to a substantial number of existing users of Vuse Products switching to the Accused Products. *See Exhibit 40 at ¶¶ 24-26.*

388. Because the Accused Products are sold at lower prices than Complainants' Vuse

⁸ The CDC Foundation is an independent nonprofit and the sole entity created by Congress to mobilize philanthropic and private-sector resources to support the Centers for Disease Control and Prevention's critical health protection work. *See* <https://www.cdcfoundation.org/our-story>.

Products, they also suppress market pricing for all e-cigarette products, and result in diminished potential for profits. *See* Exhibit 40 at ¶¶ 24-26.

389. Proposed Respondents' unfair acts also prevent the further establishment of Complainants' domestic industry because users of traditional tobacco products, such as traditional cigarettes or oral products such as chewing tobacco, have been switching to e-cigarettes at significant rates and would have selected Vuse Products in the absence of the widespread availability of the Accused Products. *See* Exhibit 40 at ¶ 26.

390. Proposed Respondents' unfair acts that operate to target and promote youth smoking further cause injury to Complainants' brand goodwill and reputation because Proposed Respondents' harmful actions are often incorrectly imputed to *all* e-cigarettes, including Complainants' e-cigarettes that are marketed responsibly.

VIII. RELATED LITIGATION

391. On information and belief, there is no current or past court or agency litigation involving the Accused Products or parties that are related to the subject matter of this Complaint.

IX. GENERAL EXCLUSION ORDER

392. Complainants are seeking as relief a permanent general exclusion order prohibiting entry of the Accused Products into the United States from whatever source. The Accused Products are sold for importation and imported by various foreign companies and sold in the United States by various means, including via Internet sales. A general exclusion order is warranted in these circumstances both to prevent circumvention of any limited exclusion order and also because there is a widespread pattern of Section 337 violations and it is difficult to identify the source of the Accused Products.

393. First, there is a high likelihood of circumvention of any limited exclusion orders given current business conditions. With respect to the Accused Products, there are low barriers to

enter the U.S. market, a large number of potential entrants, an extensive and well-established distribution system, including via Internet sales. In addition, there is evidence of interchangeability of foreign manufacturers, substantial foreign capacity to produce devices with ease and at low cost, evidence that domestic or foreign entities may change product or company names in an attempt to evade enforcement efforts, and high demand for the Accused Products in the United States. In particular, by concealing and misrepresenting their products to avoid proper importation classification, the Chinese disposable vaping industry makes it difficult to identify the source and content of the unfairly traded Disposable Vapes. Details related to these conditions are set forth in the Confidential Declaration of Eric Flagg, attached as Confidential Exhibit 18.

394. Second, there is a widespread pattern of violation and it is difficult to determine the source of the imported Accused Products. The Accused Products are being sold for importation, imported, and sold by numerous entities. The number of Proposed Respondents and Accused Products reflects the magnitude and scope of the pattern of violation. Foreign manufacturers of the devices appear to do business under multiple names and through various subsidiaries, import devices into the United States through different importers, and have shown that they are capable of quickly changing their own company names or their products' names. *See* Exhibit 18 at ¶¶ 18, 30, 31; Exhibit 15 at 6. The Accused Products are also widely available for sale on the Internet. Additional details regarding the pattern of violation and difficulty of determining the source of imported Accused Products are set forth in Exhibit 18 at ¶¶ 10-42.

395. Accordingly, the issuance of a general exclusion order is necessary to prevent circumvention of limited exclusion orders directed only to the Proposed Respondents and also to address a widespread pattern of violation, which is coupled with the difficulty in identifying the sources of the Accused Products.

X. RELIEF REQUESTED

WHEREFORE, by reason of the foregoing, Complainants respectfully request that the United States International Trade Commission:

- (a) Institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to Proposed Respondents' violations of Section 337 based on the importation into the United States, sale for importation, and/or sale within the United States after importation of Proposed Respondents' Accused Products;
- (b) Schedule and conduct a hearing on permanent relief pursuant to 19 U.S.C. § 1337(c) for the purposes of receiving evidence and hearing argument concerning whether there has been a violation of Section 337, and following the hearing to determine that there has been such a violation;
- (c) Issue a permanent general exclusion order pursuant to 19 U.S.C. § 1337(d) barring from entry into the United States all Accused Products from any source absent adequate certification from the importer;
- (d) Issue a permanent limited exclusion order pursuant to 19 U.S.C. § 1337(d) specifically directed to each of the Proposed Respondents and their subsidiaries and affiliates;
- (e) Issue a permanent cease and desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting each of the Proposed Respondents and any affiliated companies or divisions from conducting any of the following activities in the United States: importing, selling, offering for sale, marketing, advertising, demonstrating, distributing, transferring (except for exportation), testing, licensing, or soliciting U.S. agents or distributors with respect to the Accused Products;
- (f) Impose a bond during the Presidential Review Period, pursuant to 19 U.S.C. § 1337(j), on the importation of any Accused Products; and

(g) Issue such other and further relief as the Commission deems just and proper under the law based on the facts determined by the investigation and the authority of the Commission.

October 13, 2023

Respectfully submitted,



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Tobacco Company and R.J. Reynolds Vapor
Company*

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN DISPOSABLE VAPORIZER
DEVICES AND COMPONENTS AND
PACKAGING THEREOF**

Investigation No. 337-TA-_____

VERIFICATION OF COMPLAINT

I, Valerie Mras, am the Vice President of Consumer Marketing at R.J. Reynolds Vapor Company, LLC, and I am authorized to execute this verification on behalf of R.J. Reynolds Tobacco Company and R.J. Reynolds Vapor Company, LLC. I have read the Complaint and am aware of its contents. To the best of my knowledge, information, and belief, and based upon a reasonable inquiry under the circumstances, I hereby certify that:

1. The allegations contained in the Complaint are well grounded in fact and have evidentiary support, or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
2. The claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law; and
3. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Dated: October 13, 2023



Valerie Mras