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8 Attorneys for Plaintiff,  
9 The People of the State of California

Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

10 **SUPERIOR COURT OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SAN DIEGO**

13 The People of the State of California,

Case No. 24CU024276C

14 *Plaintiff,*

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES  
UNDER THE UNFAIR COMPETITION  
LAW (Bus. & Prof. Code § 17200, Et Seq.)**

15 v.

16 Gokhan Ali Kucuk dba California Vape Shop;  
Brad Fernbaugh dba California Vape Shop;  
17 California Accessories LLC; and Does 1-20  
inclusive,

*(UNLIMITED MATTER Amount Demanded  
Exceeds \$35,000)*

18 *Defendants*  
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20  
21 The People of the State of California (the People), acting by and through San Diego City  
22 Attorney Mara W. Elliott, allege the following based on information and belief:

23 1. Youth e-cigarette use is a serious public health concern nationwide. The nicotine  
24 from e-cigarettes is highly addictive and is particularly problematic for youth due to its effects on  
25 brain development. Flavored tobacco products are especially dangerous as an easy “on ramp” to  
26 nicotine addiction; the overwhelming majority of young smokers use flavored e-cigarettes.  
27 Nicotine addiction can prime youth to use other addictive substances, like traditional cigarettes,  
28 alcohol, and drugs. Nicotine use can also cause reduced impulse control, deficits in attention and

1 cognition, and mood disorders.<sup>1</sup>

2           2.       The growth of e-cigarette use by youth has been fueled by the manufacturing and  
3 advertisement of kid-friendly flavors, like cotton candy, bubblegum, and a wide range of fruits.  
4 In 2024, approximately 10.1% of high school students and 5.4% of middle school students were  
5 using tobacco products – putting millions of teens at risk of nicotine addictions and its associated  
6 harms. E-cigarettes remain the most commonly used tobacco product by teens, and most teen, e-  
7 cigarette users (87.6%) used flavored tobacco products.<sup>2</sup>

8           3.       To combat this public health concern, both California and the City of San Diego  
9 prohibit the sale of flavored tobacco products to any person, including adults. Health & Safety  
10 Code § 104559.5; San Diego Municipal Code §42.1603.

11           4.       Despite these prohibitions – effective in the City of San Diego on December 21,  
12 2022, and effective in California on January 1, 2023 – Gokhan Ali Kucuk and Brad Fernbaugh  
13 dba California Vape Shop and California Accessories LLC (collectively “Defendants”) have  
14 continued selling flavored tobacco products both in store and online. These violations of state  
15 and local law constitute an unlawful business practice and violate California’s Unfair  
16 Competition Law (“UCL”) Bus. & Prof. Code §§ 17200-17210.

17           5.       Defendants’ conduct is also an unfair business practice under the UCL because  
18 Defendants maintain an advantage over their law-abiding competitors by profiting from the sale  
19 of prohibited products.

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23 <sup>1</sup> U.S. Department of Health and Human Services. *E-Cigarette Use Among Youth and*  
24 *Young Adults. A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and  
Human Services, Centers for Disease Control and Prevention, National Center for Chronic  
Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

25 <sup>2</sup> Jamal A, Park-Lee E, Birdsey J, et al. Tobacco Product Use Among Middle and High  
26 School Students — National Youth Tobacco Survey, United States, 2024. MMWR Morb Mortal  
Wkly Rep 2024;73:917–924. DOI: <http://dx.doi.org/10.15585/mmwr.mm7341a2>

27 Results from the Annual National Youth Tobacco Survey, Content current as of October  
28 17, 2024. DOI: <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey#2024%20Findings%20on%20Youth%20Tobacco%20Use>

1 **Jurisdiction and Venue**

2 6. The Superior Court has original jurisdiction over this action pursuant to Article  
3 VI, Section 10 of the California Constitution, which grants the Superior Court original  
4 jurisdiction in all causes other than those specifically enumerated therein.

5 7. The Superior Court has personal jurisdiction over Defendants because:  
6 (i) Defendants’ principal places of business are in the State of California, (ii) Defendants are  
7 authorized to and conduct business in and across this state, and (iii) Defendants otherwise have  
8 sufficient minimum contacts with and purposefully avail themselves of the markets of this state,  
9 thus rendering the Superior Court’s exercise of jurisdiction consistent with traditional notions of  
10 fair play and substantial justice.

11 8. Venue is proper under Code of Civil Procedure section 393(a), because the illegal  
12 acts described below occurred in the City and County of San Diego.

13 **Parties**

14 9. The People of the State of California bring this civil enforcement action by and  
15 through San Diego City Attorney Mara W. Elliott pursuant to California Business and  
16 Professions Code sections 17204 and 17206(a).

17 10. Defendant Gokhan Kucuk is an individual doing business as California Vape  
18 Shop with his principal place of business in the City of San Diego – 4919 Newport Avenue, San  
19 Diego, CA 92107.

20 11. Defendant Brad Fernbaugh is an individual doing business as California Vape  
21 Shop with his principal place of business in the City of San Diego – 4919 Newport Avenue, San  
22 Diego, CA 92107.

23 12. Defendant California Accessories LLC is a California corporation with its  
24 principal place of business in the City of San Diego – 13780 Paseo Zaldivar, San Diego, CA  
25 92129.

26 13. On information and belief, Defendant Gokhan Kucuk is, and was at all relevant  
27 times, the Chief Executive Officer (CEO) and an owner of California Accessories LLC. On  
28 information and belief, Defendant Kucuk is a Responsible Corporate Officer for California

1 Accessories LLC. On information and belief, as the CEO and owner of California Accessories  
2 LLC, Defendant Kucuk is in a position of responsibility, allowing him to influence corporate  
3 policies and activities. On information and belief, there is a nexus between Defendant Kucuk’s  
4 position as CEO and owner of California Accessories LLC, which sells flavored tobacco  
5 products, and the violation in question – unlawfully selling flavored tobacco products in  
6 violation of the UCL. Upon information and belief, Defendant Kucuk’s actions and inactions  
7 facilitated the UCL violations.

8 14. The true names or capacities of Defendants sued as Doe Defendants 1 through 20  
9 are unknown to the People. The People are informed and believe, and on this basis, allege that  
10 each of the Doe Defendants are legally responsible for the conduct alleged herein. The People  
11 will amend its complaint to set forth the true names and capacities of the Doe Defendants and the  
12 allegations against them as soon as they are ascertained.

13 15. On information and belief, at all relevant times, each Defendant, including Doe  
14 Defendants, was the owner, agent, principal employee, employer, master, servant, partner,  
15 franchiser, joint-venturer, co-conspirator, aider, and abettor of each of its co-Defendants, and  
16 engages (and continues to engage) in the wrongful actions and inaction alleged herein and acted  
17 within the scope of its authority in such relationships with the permission and consent of each co-  
18 Defendant.

19 **Facts**

20 16. California Vape Shop is an online retailer – located in the City of San Diego and  
21 owned by Gokhan Kucuk and Brad Fernbaugh – that sells vape products, including flavored  
22 tobacco products. California Accessories LLC operates two stores in the City of San Diego<sup>3</sup> that  
23 sell a variety of products, including sunglasses, jewelry, socks, and flavored tobacco products  
24 (collectively “Defendants”).

25 17. Effective December 21, 2022, in the State of California, “[a] tobacco retailer, or  
26 any of the tobacco retailer’s agents or employees, shall not sell, offer for sale, or possess with the  
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28 <sup>3</sup> California Accessories, 957 Garnet Ave, San Diego, CA 92109  
California Accessories, 4919 Newport Ave, San Diego, CA 92107

1 intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.”  
2 Health & Safety Code § 104559.5(b)(1).

3 18. “Characterizing flavor means a distinguishable taste or aroma, or both, other than  
4 the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the  
5 tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating  
6 to any fruit, vanilla, chocolate, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint,  
7 wintergreen, herb, or spice.” Health & Safety Code § 104559.5(a)(1) [internal quotations  
8 omitted].

9 19. Effective January 1, 2023, in the City of San Diego, “[i]t is unlawful for any  
10 person, business, tobacco retailer, or electronic cigarette retailer to sell or distribute flavored  
11 tobacco products.” San Diego Municipal Code §42.1603(a) [emphasis omitted].

12 20. “Flavored tobacco products means a tobacco product that emits a taste or smell,  
13 other than the taste or smell of tobacco, including but not limited to, any taste or smell relating to  
14 fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic  
15 beverage, herb, or spice.” San Diego Municipal Code §42.1602 [emphasis omitted].

16 21. Despite the state and local bans on selling tobacco flavored products, Defendants  
17 have sold, and continue to sell, flavored tobacco products in the City of San Diego both in store  
18 and online.

19 22. In October 2024, City investigators, acting undercover, visited both California  
20 Accessories stores. Flavored tobacco products were openly displayed for sale at both stores. Both  
21 stores sold City investigators flavored tobacco products. Defendant Kucuk personally sold a City  
22 investigator a flavored vape at the California Accessories store located at 4919 Newport Ave,  
23 San Diego, CA 92107.

24 23. In October 2024, City investigators visited California Vape Shop’s website,  
25 observed flavored tobacco products offered for sale, and purchased flavored tobacco products.  
26 California Vape Shop shipped the flavored tobacco products to the address provided by the City  
27 investigator and they were delivered. No signature or personal identification was required for  
28 delivery.



1 date of the statewide ban) to at least the date of this Complaint. Defendants have been selling  
2 flavored tobacco products at their locations in the City of San Diego from January 1, 2023 (the  
3 effective date of the City of San Diego ban) to at least the date of this Complaint. Additionally,  
4 Defendants have been selling flavored tobacco products to City of San Diego residents via online  
5 retail from January 1, 2023 to at least the date of this Complaint. Each sale of a flavored tobacco  
6 product, at each location and online, is a separate violation of state and local law and, as such,  
7 constitutes a separate violation of the UCL.

8 31. Defendants' ongoing sale of flavored tobacco products also constitutes an unfair  
9 business practice under the UCL. Defendants stock, sell, and profit from banned flavored  
10 tobacco products, which leaves Defendants with an unfair advantage over its law-abiding retail  
11 store competitors.

12 32. The People seek an appropriate civil penalty under Business and Professions  
13 Code section 17206(a), up to \$2,500 for each violation to hold Defendants accountable for their  
14 unlawful business acts or practices and to deter further violations of the law. The People also  
15 seek an additional appropriate civil penalty under Business and Professions Code  
16 section 17206.1(a)(1), up to \$2,500 for each violation perpetrated against a senior citizen or  
17 disabled person.

18 33. Pursuant to California Business and Professions Code section 17203, the People  
19 are entitled to an injunctive order requiring Defendants to cease selling flavored tobacco  
20 products.

21 **Prayer for Relief**

22 Based on the above, the People request the following remedies:

23 34. Pursuant to Business and Professions Code section 17203, an order requiring  
24 Defendants to cease selling flavored tobacco products in compliance with California Health and  
25 Safety Code section 104559.5 and San Diego Municipal Code section 42.1603.

26 35. Pursuant to Business and Professions Code section 17206, Defendants be assessed a  
27 civil penalty in an amount, up to \$2,500 for each violation of the UCL, as proven at trial;

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1           36. Pursuant to Business and Professions Code section 17206.1, Defendants be assessed  
2 an additional civil penalty in an amount, up to \$2,500 for each violation of the UCL perpetrated  
3 against a senior citizen or disabled person, as proven at trial;


4           37. The People recover such costs of this action, including costs of investigation; and

5           38. The People be granted such other and further relief as this Court may deem to be  
6 just and proper.

7           Dated: November 20, 2024

MARA W. ELLIOTT, City Attorney

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By:   
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Kevin B. King  
Deputy City Attorney  
Attorneys for Plaintiff,  
The People of the State of California