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

13 The People of the State of California,

Case No. 24CU024532C

14 *Plaintiff,*

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

15 v.

16 Giselle Sophia Brambila dba Vape & Smoke
Universe, Vape Smoke Universe, and Vape
17 Smoke Universe Mega Store; 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.¹

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.²

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 – Giselle Sophia Brambila dba Vape &
13 Smoke Universe, Vape Smoke Universe, and Vape Smoke Universe Mega Store has continued
14 selling flavored tobacco products at several stores throughout the City of San Diego. These
15 violations of state and local law constitute an unlawful business practice and violate California’s
16 Unfair 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 ¹ 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 ² 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 Giselle Sophia Brambila is an individual doing business as Vape &
18 Smoke Universe, Vape Smoke Universe, and Vape Smoke Universe Mega Store with her
19 principal place of business in the City of San Diego – 3312 University Avenue, Suite B, San
20 Diego, CA 92104.

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

26 12. On information and belief, at all relevant times, each Defendant, including Doe
27 Defendants, was the owner, agent, principal employee, employer, master, servant, partner,
28 franchiser, joint-venturer, co-conspirator, aider, and abettor of each of its co-Defendants, and

1 engages (and continues to engage) in the wrongful actions and inaction alleged herein and acted
2 within the scope of its authority in such relationships with the permission and consent of each co-
3 Defendant.

4 **Facts**

5 13. Defendant Giselle Sophia Brambila owns and operates a chain of stores
6 throughout the City of San Diego that sells a variety of vape products, including flavored tobacco
7 products. Defendant Brambila does business as Vape & Smoke Universe, Vape Smoke Universe,
8 and Vape Smoke Universe Mega Store. Defendant Brambila owns and operates five retail stores
9 in the City of San Diego and one store in Chula Vista.³

10 14. Effective December 21, 2022, in the State of California, “[a] tobacco retailer, or
11 any of the tobacco retailer’s agents or employees, shall not sell, offer for sale, or possess with the
12 intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer.”
13 Health & Safety Code § 104559.5(b)(1).

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

20 16. Effective January 1, 2023, in the City of San Diego, “[i]t is unlawful for any
21 person, business, tobacco retailer, or electronic cigarette retailer to sell or distribute flavored
22 tobacco products.” San Diego Municipal Code §42.1603(a) [emphasis omitted].
23

24 ³ Vape Smoke Universe #1, located at 7190 Miramar Road, Suite 111, San Diego, CA
25 92121

26 Vape Smoke Universe #2, located at 2525 Morena Blvd, San Diego, CA 92110

27 Vape Smoke Universe Megastore, located at 4411 Mercury Street, Suite 106, San Diego,
28 CA 92111

Vape Smoke Universe #4, located at 4360 Main Street, Unit 206, Chula Vista, CA 91911

Vape Smoke Universe Express, located at 3312 University Ave, San Diego, CA 92104

Vape Smoke Universe #6, located at 4853 Convoy Street, San Diego, CA 92111

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

5 18. Despite the state and local bans on selling tobacco flavored products, Defendant
6 Brambila has sold, and continues to sell, flavored tobacco products throughout the City of San
7 Diego at her five locations, and in Chula Vista.

8 19. In October 2024, City investigators, acting undercover, visited all six of
9 Defendant Brambila’s stores. City investigators were offered and sold flavored tobacco products
10 at all six locations. At all six locations, after the City investigator inquired about flavored
11 tobacco products, they were directed to a “Staff Only” room where flavored tobacco products
12 were displayed. All six stores then sold the City investigator a flavored tobacco product.

13 20. Defendant Brambila’s repeated, intentional, ongoing violations of the California
14 and City of San Diego ban on the sale of flavored tobacco products constitute unlawful and
15 unfair business practices under the UCL. The People seek injunctive relief ordering Defendant to
16 cease selling flavored tobacco products and to pay appropriate civil penalties.

17 **Cause of Action**

18 **Violation of Unfair Competition Law**

19 (Cal. Bus. & Prof. Code §§ 17200-17210.)

20 21. All preceding factual statements and allegations are incorporated by reference.

21 22. The UCL, Business and Professions Code section 17200 prohibits “any unlawful,
22 unfair or fraudulent business act or practice.”

23 23. “Any person who engages, has engaged, or proposes to engage in unfair
24 competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars
25 (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the
26 name of the people of the State of California ... by any city attorney of a city having a
27 population in excess of 750,000 ... in any court of competent jurisdiction.” Bus. & Prof. Code
28 § 17206(a).

1 24. The Business and Professions Code section 17206.1(a) also provides: “In addition
2 to any liability for a civil penalty pursuant to Section 17206, a person who violates this chapter,
3 and the act or acts of unfair competition are perpetrated against one or more senior citizens or
4 disabled persons, may be liable for a civil penalty not to exceed two thousand five hundred
5 dollars (\$2,500) for each violation, which may be assessed and recovered in a civil action as
6 prescribed in Section 17206.”

7 25. Defendants are “person(s)” as defined by the Business and Professions Code
8 section 17201, which includes “natural persons, corporations, firms, partnerships, joint stock
9 companies, associations and other organizations of persons.”

10 26. Defendants’ sale of flavored tobacco products is unlawful under California and
11 City of San Diego law and, therefore, constitutes an unlawful business practice under the UCL.
12 Defendants have been selling flavored tobacco products from December 21, 2022 (the effective
13 date of the statewide ban) to at least the date of this Complaint. Defendants have been selling
14 flavored tobacco products at their locations in the City of San Diego from January 1, 2023 (the
15 effective date of the City of San Diego ban) to at least the date of this Complaint. Each sale of a
16 flavored tobacco product, at each location, is a separate violation of state and local law and, as
17 such, constitutes a separate violation of the UCL.

18 27. Defendants’ ongoing sale of flavored tobacco products also constitutes an unfair
19 business practice under the UCL. Defendants stock, sell, and profit from banned flavored
20 tobacco products, which leaves Defendants with an unfair advantage over its law-abiding retail
21 store competitors.

22 28. The People seek an appropriate civil penalty under Business and Professions
23 Code section 17206(a), up to \$2,500 for each violation to hold Defendants accountable for their
24 unlawful business acts or practices and to deter further violations of the law. The People also
25 seek an additional appropriate civil penalty under Business and Professions Code
26 section 17206.1(a)(1), up to \$2,500 for each violation perpetrated against a senior citizen or
27 disabled person.

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