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6 **STATE OF WASHINGTON**
7 **KING COUNTY SUPERIOR COURT**

8 STATE OF WASHINGTON,

9 Plaintiff,

10 v.

11 E-JUICE VAPOR, INC.,

12 Defendant.

NO. :

COMPLAINT

13 **I. NATURE OF ACTION**

14 Due to the health risks posed to minors and young people by e-cigarette use, Washington
15 prohibits the purchase of vapor products by an individual under the age of 18. RCW 70.345.140.
16 State law separately prohibits the sale of vapor products to individuals under the age of 21.
17 RCW 26.28.080. Because many sales of vapor products occur online, Washington specifically
18 regulates such sales to ensure that vapor products do not fall into the hands of minors. RCW
19 70.345.090. The regulatory requirements include possession of a delivery sale license and
20 adherence to procedures that ensure age and identity verification of buyers. Defendant E-Juice
21 Vapor, Inc. (E-Juice Vapor) is a vapor product seller based in California. In 2019 and 2020,
22 Defendant sold vapor products through the mail and internet in Washington without possession
23 of a delivery sale license and without adhering to other regulatory requirements. Defendant also
24 ignored a recent Civil Investigative Demand issued by the Office of the Attorney General. The
25 Attorney General therefore brings this suit to seek penalties for violation of the statute, to enjoin
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1 further sales of vapor products in Washington by E-Juice Vapor, and to seek other relief as
2 appropriate and authorized by law.

3 II. PARTIES

4 2.1 Plaintiff is the State of Washington (State) acting through the Washington State
5 Attorney General. The Attorney General is authorized by statute to enforce the legal
6 requirements for mail and internet sales by the Attorney General. RCW 70.345.090(10)-(13).
7 The Attorney General is also authorized to enforce unfair and deceptive commercial acts and
8 practices under the Washington Consumer Protection Act (CPA). *See id.* § (12); RCW 19.86.020.

9 2.2 Defendant E-Juice Vapor is a seller of vapor products based in Fullerton,
10 California. According to its website, the company was established in 2015 and “is a premium
11 online retailer for vape products including hardware, accessories and e-liquids.”¹ It sells vapor
12 products over the internet for delivery by mail in Washington, and is therefore subject to
13 RCW 70.345.090.

14 2.3 E-Juice Vapor is an active and registered California corporation (C3966894). Its
15 registered address, including for service of process, is at 16520 Harbor Boulevard, Fountain
16 Valley, CA 92708. Its Chief Executive Officer is listed as Ala Abufarie.

17 2.4 As of July 14, 2020, the State Liquor and Cannabis Board had no record that E-
18 Juice Vapor has had a valid delivery sale license for vapor products at any point.

19 2.5 In September 2018, E-Juice Vapor was issued a warning letter from the U.S. Food
20 and Drug Administration. The letter stated that some of the company’s e-liquid products imitated
21 candy that was marketed to or appealed to children.

22 III. JURISDICTION AND VENUE

23 3.1 This action is brought by the State to enforce the statutory requirements of
24 RCW 70.345.090 and the Consumer Protection Act’s (CPA) prohibition of unfair or deceptive
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26 ¹ *About Us*, E-Juice Vapor (accessed Aug. 6, 2020), <https://www.ejuicevapor.com/pages/about-us>.

1 acts or practices in the conduct of any trade or commerce. RCW 19.86.020. RCW 70.345.090
2 specifically authorizes the Attorney General to seek recovery of a civil penalty or an injunction
3 in superior court. RCW 70.345.090(9)-(10).

4 3.2 Venue is proper in King County under RCW 4.12.020 and RCW 4.12.025.

5 IV. FACTUAL ALLEGATIONS

6 A. E-Cigarettes

7 4.1 In recent years, vapor products, such as electronic or “e-” cigarettes, have
8 emerged as an alternative to tobacco cigarettes. These products allow the user to inhale vapor
9 that may contain nicotine. According to the Centers for Disease Control and Prevention and other
10 health authorities, vaping is unsafe for minors.² Vaping is particularly unsafe when the e-
11 cigarette contains nicotine, a highly addictive substance.³

12 4.2 According to a recent Surgeon General’s Report, the brains of young adults are
13 more susceptible to the negative consequences of nicotine, including addiction as well as deficits
14 in attention and cognition and mood disorders.⁴

15 4.3 Studies also suggest that minors who “vape” end up smoking more conventional
16 (“combustible”) cigarettes, for which the health risks are well known.⁵ In one study, 43 percent
17 of high school students who were using high-nicotine e-cigarettes were smokers of conventional
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22 ² *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*, CDC (accessed Jul. 16,
23 2020), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html.

24 ³ *Id.*

25 ⁴ *E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General*, USDHHS (2016)
at 7, https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.

26 ⁵ *See id.*; Leigh Hopper, *Using certain e-cigarette devices can lead to smoking more cigarettes*, Univ. S. Calif. (Apr. 10, 2020), <https://news.usc.edu/168364/vaping-combustive-cigarettes-smoking-usc-research/#:~:text=A%20new%20USC%20study%20finds,had%20never%20used%20e%2Dcigarettes.>

1 cigarettes six months later.⁶ As one researcher put it, e-cigarettes “increase the likelihood that
2 vaping teens will start smoking.”⁷

3 4.4 Nearly 28 percent of high-school students now vape, and over 10 percent of
4 middle-school students.⁸ According to the Surgeon General’s Office, vaping use among youth
5 has reached “epidemic proportions.”⁹

6 **B. Legal Framework for Online and Mail Vapor Product Sales**

7 4.5 To protect public health and youth health in particular, the legislature has enacted
8 statutory regulations of vapor sales. *See* RCW 70.345. Given that many sales of vapor products
9 occur online and through the mail, such sales are regulated specifically under RCW 70.345.090.

10 4.6 “‘Vapor product’ means any noncombustible product containing a solution or
11 other consumable substance, regardless of whether it contains nicotine, which employs a
12 mechanical heating element, battery, or electronic circuit regardless of shape or size that can be
13 used to produce vapor from the solution or other substance, including an electronic cigarette,
14 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term also
15 includes any cartridge or other container of liquid nicotine, solution, or other consumable
16 substance, regardless of whether it contains nicotine, that is intended to be used with or in a
17 device that can be used to deliver aerosolized or vaporized nicotine to a person inhaling from the
18 device and is sold for such purpose.” RCW 82.25.005. *See* RCW 70.345.090(8).

19 4.7 Under RCW 70.345.090(1): “No person may conduct a delivery sale or otherwise
20 ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased

21 ⁶ Zen Vuong, *Teens who vape higher doses of nicotine are more likely to become regular smokers*, Univ.
22 S. Calif. (Oct. 23, 2017), [https://news.usc.edu/130102/teens-who-vape-higher-doses-of-nicotine-are-more-likely-
to-become-regular-smokers/](https://news.usc.edu/130102/teens-who-vape-higher-doses-of-nicotine-are-more-likely-to-become-regular-smokers/).

23 ⁷ Leigh Hopper, *New e-cig study shows vaping is no deterrent to teen smoking*, Univ. S. Calif. (Nov. 5,
2018), <https://news.usc.edu/151332/e-cig-study-shows-vaping-is-no-deterrent-to-teen-smoking/>.

24 ⁸ *Youth Tobacco Use: Results from the National Youth Tobacco Survey*, USDA (data as of Nov. 6, 2019),
25 [https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-
survey](https://www.fda.gov/tobacco-products/youth-and-tobacco/youth-tobacco-use-results-national-youth-tobacco-survey).

26 ⁹ *Surgeon General releases advisory on E-cigarette epidemic among youth*, USDHHS (Dec. 18, 2018),
[https://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-
youth.html](https://www.hhs.gov/about/news/2018/12/18/surgeon-general-releases-advisory-e-cigarette-epidemic-among-youth.html).

1 by mail or through the internet to any person unless such seller has a valid delivery sale
2 license[.]”

3 4.8 A delivery sale license must be obtained through application to the Liquor and
4 Cannabis Board. *See* RCW 70.345.020¹⁰

5 4.9 Under RCW 70.345.090(2): “No person may conduct a delivery sale or otherwise
6 ship or transport, or cause to be shipped or transported, any vapor product ordered or purchased
7 by mail or through the internet to any person” under the age of 18. *See* RCW 70.345.140.

8 4.10 Under RCW 70.345.090(3): “A delivery sale licensee must provide notice on its
9 mail order or internet sales forms of the minimum age required for the legal sale of vapor
10 products in Washington state as provided by RCW 70.345.140.”

11 4.11 Under RCW 70.345.090(4): “A delivery sale licensee must not accept a purchase
12 or order from any person without first obtaining the full name, birthdate, and residential address
13 of that person and verifying this information through an independently operated third-party
14 database or aggregate of databases, which includes data from government sources, that are
15 regularly used by government and businesses for the purpose of age and identity verification and
16 authentication.”

17 4.12 Under RCW 70.345.090(5): “A delivery sale licensee must accept payment only
18 through a credit or debit card issued in the purchaser’s own name. The licensee must verify that
19 the card is issued to the same person identified through identity and age verification procedures
20 in subsection (4) of this section.”

21 4.13 Under RCW 70.345.090(6): “Before a delivery sale licensee delivers an initial
22 purchase to any person, the licensee must verify the identity and delivery address of the purchaser
23 by mailing or shipping to the purchaser a notice of sale and certification form confirming that
24 the addressee is in fact the person placing the order. The purchaser must return the signed

25 ¹⁰ *State Endorsements: Cigarette, Tobacco, and Vapor*, Wa. State Dep’t of Revenue (accessed Jul. 16,
26 2020), <https://dor.wa.gov/manage-business/state-endorsements/cigarette-tobacco-and-vapor>.

1 certification form to the licensee before the initial shipment of product. Certification forms are
2 not required for repeat customers. In the alternative, before a seller delivers an initial purchase
3 to any person, the seller must first obtain from the prospective customer an electronic
4 certification, such as by email, that includes a declaration that, at a minimum, the prospective
5 customer is over the minimum age required for the legal sale of a vapor product, and the credit
6 or debit card used for payment has been issued in the purchaser's name."

7 4.14 Under RCW 70.345.090(7): "A delivery sale licensee must include on shipping
8 documents a clear and conspicuous statement which includes, at a minimum, that the package
9 contains vapor products, Washington law prohibits sales to those under the minimum age
10 established by this chapter, and violations may result in sanctions to both the licensee and the
11 purchaser."

12 4.15 The attorney general is authorized to seek a civil penalty of up to \$5,000 per
13 violation, an injunction to restrain a threatened or actual violation of RCW 70.345.090 and to
14 compel compliance with RCW 70.345.090, "the costs of investigation, expert witness fees, costs
15 of the action, and reasonable attorneys' fees," and the disgorgement of "any profits, gain, gross
16 receipts, or other benefit from the violation." *Id.* §§ 10, 11, 13.

17 4.16 In addition, violation of RCW 70.345.090 is considered a *per se* violation of the
18 CPA. *Id.* § 12.

19 **C. E-Juice Vapor Unlawfully Sells Vapor Products in Washington**

20 4.17 The Defendant sold vapor products via its website, ejuicevapor.com. This website
21 could and was accessed by Washingtonians during the relevant times alleged in this Complaint.

22 4.18 The website initially sought confirmation that the person visiting the site was of
23 legal smoking age: "Adults Only—By entering eJuicevapor.com, you certify that you are of legal
24 smoking age in your state." The site did not specify the legal smoking age in Washington or any
25 other state, and did not seek the day, month, or year of the visitor's birth. The site allowed only
26 two responses to this request for verification of legal smoking age: "Yes I am" and "No I am

1 not.” The site did not seek documentation of the visitor’s age, for example by requiring an
2 uploaded image of government-issued photo identification.

3 4.19 The website listed E-Juice Vapor’s address as 16520 Harbor Boulevard, Unit D,
4 Fountain Valley, California 92708.

5 4.20 The website included an image link to display vapor products in the “Candy
6 King” brand category. The resulting page described the “Candy King” vapor product line as
7 “profiled to suggest a flavor like Sour Patch Kids, Strawberry Sour Belts, Swedish Fish, and
8 Strawberry Watermelon Bubbalicious.” The description continued, “take a gander...you will see
9 they look precisely like sacks of your most loved candy.”

10 4.21 For instance, the image link to display the vapor product “Blue Razz by Candy
11 King Bubblegum” in a 120 ml size bottle. The page listed the product price as \$19.99. The
12 product description stated that the vapor product was “An out of this world tart and tangy blue
13 raspberry bubblegum!”

14 4.22 The website ejuicevapor.com allowed Washingtonians to complete purchases
15 without establishing a user account.

16 4.23 Washingtonians could purchase products from the E-Juice Vapor website via a
17 commercial mailbox as the website did not seek a residential address before completing the sale
18 initiated.

19 4.24 After payment information was processed by the website, the website then
20 displayed a pop-up window for the Blue Check age verification service. The window showed
21 the message, “To complete your order, please verify your age.” However, the E-Juice Vapor
22 website did not require a purchaser to supply documentation of the purchaser’s age, for example,
23 by uploading an image of government-issued photo identification.

24 4.25 Even if the E-Juice Vapor website indicated that the company was unable to
25 confirm the legal smoking age of the State’s undercover purchasing identity, E-Juice Vapor
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1 would send an email confirming the sale to the purchasing identity's email address. E-Juice
2 Vapor would then deliver the ordered product to the listed address.

3 4.26 The packaging delivered to Washingtonians did not contain a clear and
4 conspicuous statement indicating that the shipment contained vapor products, that Washington
5 law prohibits sales to those under the minimum age established the relevant legal authority, or
6 that violations might result in sanctions to both the licensee and the purchaser.

7 4.27 At all relevant times in the complaint, E-Juice Vapor did not possess a valid
8 license for delivery sale of vapor products under RCW 70.345.090(1), and no license was
9 pending.

10 **D. E-Juice Vapor Ignored a Civil Investigative Demand**

11 4.28 RCW 19.86.110 authorizes the Attorney General to issue a civil investigative
12 demand (CID) to seek information relevant to an investigation of violations of the CPA.

13 4.29 As explained above, violation of RCW 70.345.090 is a *per se* violation of the
14 CPA.

15 4.30 On March 23, 2020, the Attorney General's Office issued a CID to E-Juice Vapor,
16 seeking information about its vapor sales in Washington. The CID was sent via certified mail to
17 E-Juice Vapor at 16520 Harbor Boulevard, Suite D, Fountain Valley, CA, 92708.

18 4.31 The CID sought documentary materials and answers to written interrogatories.

19 4.32 The CID was received and signed for, and the Attorney General's Office received
20 a return receipt on or about April 7, 2020.

21 4.33 A response to the CID was required within 30 days of service. As of the filing of
22 this Complaint, the Attorney General has not received a compliant response from E-Juice Vapor.

23 4.34 The company has implied that it has continued to sell vapor products into
24 Washington, apparently without a license, until very recently. Specifically, on June 23, 2020, in
25 response to an e-mail inquiry to E-Juice Vapor by the Attorney General's Office concerning the
26 company's non-compliance with the CID, an individual named "Al A" using the e-mail address

1 al@ejucevapor.com replied: “We have stopped selling to Washington state. Until we respond
2 to your email.” “Al A” is presumed to be Ala Abufarie, the company’s CEO.

3 V. CLAIMS

4 5.1 The State re-alleges and incorporates by reference all the factual allegations
5 contained in the preceding paragraphs, and based on those allegations, makes the following
6 claims:

7 5.2 First Claim: The State reasserts the factual allegations made above and further
8 asserts that Defendant E-Juice Vapor violated RCW 70.345.090 by:

9 5.2.1 conducting delivery sales of vapor products without a valid delivery sale license,
10 *see* RCW 70.345.090(1);

11 5.2.2 failing to provide notice on its mail orders or internet sales forms of the minimum
12 age required for the legal sale of vapor products in Washington state as provided by
13 RCW 70.345.140, *see* RCW 70.345.090(3);

14 5.2.3 accepting purchases or orders from a person without first obtaining the full name,
15 birthdate, and residential address of that person and verifying this information through an
16 independently operated third-party database or aggregate of databases, which includes data from
17 government sources, that are regularly used by government and businesses for the purpose of
18 age and identity verification and authentication, *see* RCW 70.345.090(4);

19 5.2.4 failing to verify that payment was through a credit or debit card issued in the
20 purchaser’s own name, *see* RCW 70.345.090(5);

21 5.2.5 failing to verify the identity and delivery address of the purchaser by mailing or
22 shipping to the purchaser a notice of sale and certification form confirming that the addressee is
23 in fact the person placing the order, *see* RCW 70.345.090(6);

24 5.2.6 failing to include on shipping documents a clear and conspicuous statement which
25 includes, at a minimum, that the package contains vapor products, that Washington law prohibits
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1 sales to those under the minimum age established by this chapter, and that violations may result
2 in sanctions to both the licensee and the purchaser, *see* RCW 70.345.090(7).

3 5.3 Second Claim: The State reasserts the factual allegations made above and further
4 asserts that Defendant E-Juice Vapor violated RCW 19.86.020 by engaging in an unfair and
5 deceptive act or practice and an unfair method of competition in the conduct of trade or
6 commerce in Washington, e.g., violation of RCW 70.345.090, *see* RCW 70.345.090(12).

7 **VI. REQUEST FOR RELIEF**

8 WHEREFORE, the State requests the following relief as provided by law:

9 6.1 For a civil penalty of \$5,000 per violation of RCW 70.345.090, *see*
10 RCW 70.345.090(11);

11 6.2 For a civil penalty of \$2,000 per violation of RCW 19.86.140.

12 6.3 For the State to recover the costs of investigation, expert witness fees, costs of
13 the action, and reasonable attorneys' fees, *see* RCW 70.345.090(12)(a); RCW 19.86.080(1);

14 6.4 For any profits, gain, gross receipts, or other benefit from the violation of
15 RCW 70.345.090 to be disgorged and paid to the state treasurer for deposit in the general fund,
16 *see* RCW 70.345.090(12)(b).

17 6.5 For an order enforcing compliance with RCW 19.86.110.

18 6.6 For such other legal and equitable relief as this Court deems appropriate.

19 DATED this 13th day of August, 2020.

20 ROBERT W. FERGUSON
21 Attorney General

22 /s/ Brendan Selby
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