

1
2
3
4
5
6
7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 ALCHEMY E-LIXIRS, LLC;
13 VAPEPLACE, INC.,

14 Defendants.

NO.

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF

15 **I. INTRODUCTION**

16 1.1. The State of Washington, by and through its attorneys Robert W. Ferguson,
17 Attorney General, and Leilani N. Fisher, Assistant Attorney General, brings this action against
18 Alchemy e-Lixirs, LLC and Vapeplace, Inc. (collectively "Defendants") for violating
19 Washington's Consumer Protection Act, RCW 19.86, in the course of marketing and selling e-
20 liquid to Washington consumers.

21 1.2. Electronic cigarettes ("e-cigs") have exploded in popularity since their
22 introduction to U.S. markets around 2007.¹ The e-cig market is burgeoning into a \$3.5 billion
23

24
25 ¹ See, Robert C. McMillen et al., *Trends in Electronic Cigarette Use Among U.S. Adults: Use is*
26 *Increasing in Both Smokers and Nonsmokers*, ntu213 NICOTINE & TOBACCOS RESEARCH (2014), available at
<http://ntr.oxfordjournals.org/content/early/2014/11/06/ntr.ntu213.abstract>.

1 industry, and thousands of e-cig companies have sprung up across the country.² As “vaping”
2 has become mainstream, e-cig-related businesses have developed creative ways to distinguish
3 their products.

4 1.3. It was in this context that, in 2013, Defendants began manufacturing and selling
5 the Alchemy e-Lixirs brand of e-liquid (“Alchemy e-liquid”) as organic. Defendants marketed
6 Alchemy e-liquid to Washington consumers as a unique, eco-friendly and organic line of e-
7 liquid that is “like picking fruit fresh off the tree.” Defendants claimed that their products are
8 “100% organic,” and they labelled bottles of Alchemy e-liquid as “organic.” They represented
9 that because Alchemy e-liquids are organic, Alchemy products are “safe,” “healthy,” and
10 “completely free from any potential harm.” Defendants’ retail websites and social media
11 accounts extolled the health benefits of choosing organic e-liquid over nonorganic e-liquid.

12 1.4. Although Alchemy e-liquids do contain some organic ingredients, Defendants
13 have failed to verify that their products are actually organic. Defendants have not verified
14 compliance with organic production standards – as required under Washington law – by
15 obtaining certification from an accredited organic certifier. Moreover, Alchemy e-liquids are
16 not actually 100% organic. They contain some ingredients that have not been organically-
17 produced.

18 1.5. Nor do Defendants have any scientific evidence that organic e-liquids are
19 healthier than nonorganic e-liquids or, as Defendants have claimed, “safe,” “healthy,” and
20 “completely free from any potential harm.” To the contrary, even literature in favor of vaping
21
22

23 ² See Whip Villareal & Raoul Ranoa, *Infographic Vape Industry Breakdown*, L.A. TIMES (Aug. 27,
24 2015, 1:27 PM), available at [http://www.latimes.com/visuals/graphics/la-fi-g-vaping-shops-20150807-
htmlstory.html](http://www.latimes.com/visuals/graphics/la-fi-g-vaping-shops-20150807-
htmlstory.html) (the US vape industry is expected to generate 3.5 billion dollars in revenue in 2015); Mike Esterl,
25 *Vaporizers’ Are the New Draw in E-Cigarettes*, N.Y. TIMES (May 29, 2014, 5:23 PM), available at
26 <http://www.wsj.com/articles/vaporizers-are-the-new-draw-in-e-cigarettes-1401378596> (estimating that there were
16,000 vape shops in the U.S. as of May 2014 and that this number is constantly rising).

acknowledges at least some risks associated with any e-liquid.³ The long term health effects of vaping are, at best, unknown.⁴ Defendants' sweeping representations about the health and safety benefits of organic VG e-liquid are thus false, misleading, and/or lack substantiation.

1.6. In marketing and selling Alchemy e-liquid to Washington consumers, Defendants have violated RCW 19.86.020 of the Consumer Protection Act by engaging in multiple unfair and deceptive acts and practices in trade or commerce that are contrary to the public interest and are not in reasonable relation to the development or preservation of business. Specifically, it is a *per se* violation of RCW 19.86.020 to manufacture, label, market, and sell a product as "organic" when it has not been certified as organic-compliant. It is also a *per se* violation of RCW 19.86.020 to represent that a product is "100% organic" when it contains nonorganic ingredients. Further, it is an unfair or deceptive act or practice to make marketing claims that are false, misleading, and/or cannot be substantiated by a reasonable basis. Consequently, as set forth in this complaint, Defendants should be held liable for civil penalties, injunctive relief, restitution, and other appropriate relief pursuant to RCW 19.86.

II. PARTIES

2.1 Plaintiff is the State of Washington.

³ See, e.g. A. McNeill et al., *E-cigarettes: An Evidence Update*, PUB. HEALTH ENGLAND (2015), <https://www.gov.uk/government/publications/e-cigarettes-an-evidence-update> (arguing that e-cigs are less hazardous than traditional cigarettes but admitting that the e-cigs are not "100% safe").

⁴ See, e.g. Thomas H. Brandon et al., *Electronic Nicotine Delivery Systems: A Policy Statement from the American Association for Cancer Research and the American Society of Clinical Oncology*, CLINICAL CANCER RES. (2015), available at <http://clincancerres.aacrjournals.org/content/early/2015/01/04/1078-0432.CCR-14-2544.full.pdf+html>; Hayley Born et al, *Electronic Cigarettes A Primer for Clinicians*, OTOLARYNGOLOGY—HEAD & NECK SURGERY (2015) <http://www.ncbi.nlm.nih.gov/pubmed/26002957>; Caroline Franck et al., *Electronic Cigarettes in North America History, Use, and Implications for Smoking Cessation*, CIRCULATION (2014), <http://circ.ahajournals.org/content/129/19/1945.long>; Dominic L. Palazzolo, *Electronic Cigarettes and Vaping: A New Challenge in Clinical Medicine and Public Health. A Literature Review*, 56 FRONT PUB. HEALTH (2013), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859972/>.

1 2.2 Defendant Vapeplace, Inc. is a California corporation with its principle place of
2 business in Redondo Beach, California. Vapeplace Inc. has marketed and sold Alchemy e-
3 liquid to consumers in King County and elsewhere in the State of Washington.

4 2.3 Defendant Alchemy e-Lixirs, LLC is a California limited liability company with
5 its principle place of business in Redondo Beach, California. Alchemy e-Lixirs, LLC has
6 marketed and sold Alchemy e-Liquid to consumers in King County and elsewhere in the State
7 of Washington.

8 2.4 Alchemy e-Lixirs, LLC and Vapeplace, Inc. ("Defendants") individually and
9 together participated in, controlled, had authority to control or participate in, and had
10 knowledge of the acts and practices set forth in this Complaint. Acts done by one Defendant
11 were done in furtherance of the business practices of the other and for the benefit of their
12 business enterprise in marketing and selling Alchemy e-Lixirs products.

13 **III. JURISDICTION AND VENUE**

14 3.1 The State files this complaint and institutes these proceedings under the
15 provisions of the Consumer Protection Act, RCW 19.86. The Attorney General has statutory
16 authority to commence this action pursuant to RCW 19.86.080 and RCW 19.86.140.

17 3.2 This Court has personal jurisdiction over Defendants pursuant to RCW
18 19.86.160 and RCW 4.28.185 because Defendants have purposely availed themselves of the
19 privilege of conducting business in Washington by engaging in the conduct set forth in this
20 Complaint, namely marketing and selling products in King County and elsewhere in
21 Washington. The Court's exercise of jurisdiction over Defendants is consistent with traditional
22 notions of fair play and substantial justice.

23 3.3 Venue is proper in King County pursuant to RCW 4.12.020 and 4.12.025
24 because Defendants have sold and delivered goods to business entities and persons located in
25 King County.
26

IV. FACTS

A. Background

4.1 “Vaping,” a term recently added to the Oxford Dictionary, refers to “inhal[ing] and exhal[ing] the vapor produced by an electronic cigarette or similar device.”⁵ Personal vaping devices such as e-cigs are designed to atomize “e-liquid,” which is propylene glycol or vegetable glycerin that usually contains added flavorings and nicotine. Both propylene glycol (“PG”) and vegetable glycerin (“VG”) are liquid solvents that can be found in various household items. PG is a synthetic liquid while VG is derived from plants.⁶

4.2 This case involves VG e-liquid that Defendants have marketed and sold as organic. Washington law prohibits anyone from labelling, selling, or advertising a product as “organic” unless they have complied with state and federal organic production requirements. See RCW 15.96.030. These production requirements, codified in Washington’s Organic Products Act (RCW 15.86) and in the National Organic Program (7 CFR 205), aim to protect natural products from exposure to synthetic substances. They require manufacturers to be audited and certified by a USDA-accredited certifying agency before selling products as organic. Notably, organic production requirements “do not address food safety or nutrition.”⁷ Rather, they are designed to protect natural resources and to conserve biodiversity.

4.3 It is possible for VG e-liquid, but not PG e-liquid, to satisfy the organic production requirements and to lawfully be certified and sold as “organic.” But not all products lawfully certified and sold as “organic” qualify as or may be sold as “100% organic” under

⁵ Oxford Dictionaries, *The Oxford Dictionaries Word of the Year is...vape* (Nov. 17, 2014), <http://blog.oxforddictionaries.com/2014/11/oxford-dictionaries-word-year-vape/>.

⁶ See National Center for Biotechnology Information. PubChem Compound Database, *Compound Summary for Propanediol*, <http://pubchem.ncbi.nlm.nih.gov/compound/1030>; *Compound Summary for Glycerol*, <http://pubchem.ncbi.nlm.nih.gov/compound/753> (last visited Oct. 15, 2015).

⁷ USDA.gov, *USDA Oversight of Organic Content* (Nov. 2012), <http://www.ams.usda.gov/publications/content/usda-oversight-organic-content>

1 Washington law. For a multi-ingredient product to be sold as “100% organic,” it cannot
2 contain *any* nonorganic ingredients. Common sense and the National Organic Program
3 requirements adopted by Washington dictate that each ingredient in the product must be
4 organic. E-liquid that contains VG, nicotine, and flavorings can only be sold as “100%
5 organic” if its constituent VG, nicotine, and flavorings are all organic – meaning that each of
6 these ingredients must be produced in accordance with the requirements of Washington’s
7 Organic Products Act and the National Organic Program.

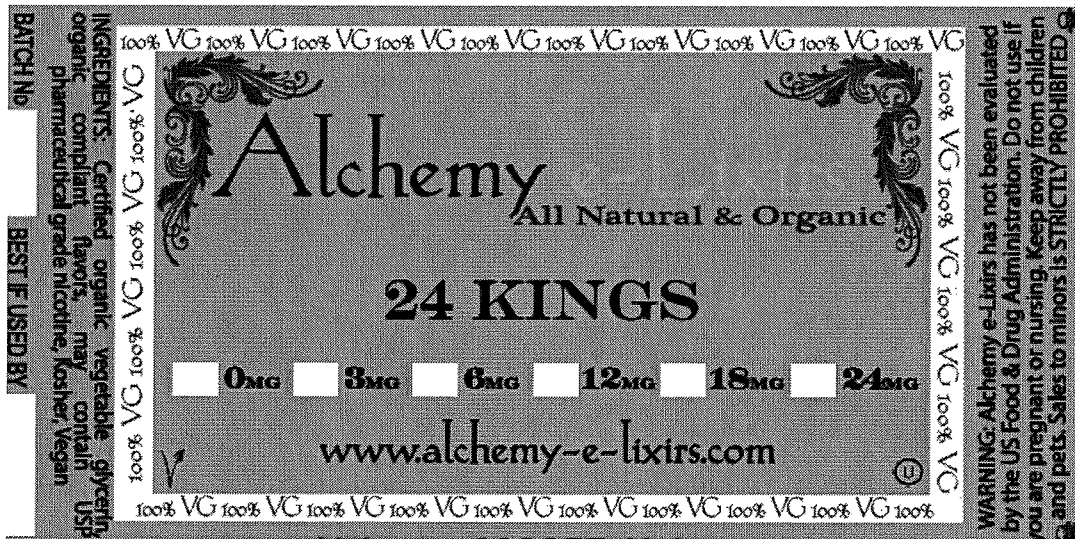
8 **B. Defendants represent that Alchemy e-liquids are organic and 100% organic**

9 4.4 Defendants manufacture and sell e-liquid under the Alchemy e-Lixirs brand that
10 they claim is organic. Since 2014, upon information and belief, they have sold at least \$26,000
11 worth of e-liquid as organic to Washington retailers and consumers.

12 4.5 The term “organic” has permeated Defendants’ marketing and advertising
13 materials such as social media pages and retail websites owned by Defendants, including
14 <http://alchemy-e-lixirs.com> and <http://vapeplace.com>. As illustrated by the following examples,
15 both the Alchemy e-Lixirs logo and the front display labels of Alchemy e-Lixirs products have
16 borne the phrase “All Natural and & Organic”:

17
18
19
20
21
22
23
24
25
26





Attached hereto as **Exhibit A** are copies of all Alchemy e-liquid labels that Defendants provided to the State.

4.6 In addition to labelling and describing their products as “organic,” Defendants have expressly claimed that Alchemy e-liquids are 100% organic. The phrase “100% organic” has appeared repeatedly in Defendant’s marketing and advertising materials, including websites and social media pages. For example, Defendants’ retail website <http://vapeplace.com> advertises 100% organic e-liquid:

\\
 \\
 \\
 \\
 \\
 \\
 \\
 \\
 \\
 \\

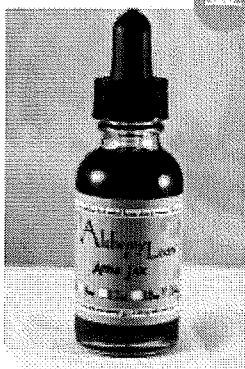
Home / E-liquid

E-liquid

100% Organic & Natural VG E-liquid

Showing 1-12 of 54
results

Default sorting



Apple Jax 100% VG E-liquid

~~*** \$7.00 - \$58.00~~

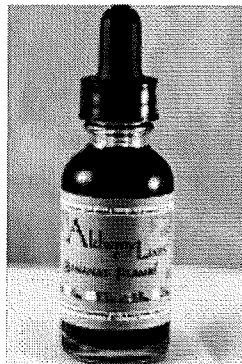
Select options



Apple Juice 100% VG E-Liquid

\$8.94-\$65.00

Select options



Bananas Flambe 100% VG E-liquid

\$8.94-\$65.00

Select options



Blue Hawaii 100% VG E-liquid

~~*** \$7.00 - \$58.00~~

Select options

<http://vapeplace.com/eliquid/> [7/13/2015 10:05:35 AM]

<https://vapeplace.com> (visited July 13, 2015).

4.7 Despite their marketing claims, Defendants have failed to verify that their products are actually organic. Alchemy e-liquids are mixed and packaged by Defendants at their manufacturing facility in California. Yet no facility owned or operated by Defendants has ever been certified as organic-compliant, and Alchemy e-liquids are not certified in any way as organic. Defendants have never applied for or obtained the certification necessary to verify their compliance with organic production standards and protocols.

1 4.8 Further, Alchemy e-liquids are not 100% organic because they contain
2 nonorganic ingredients. Alchemy e e-liquids contain three ingredients: VG, flavorings, and
3 nicotine. The VG contained in Alchemy e-Lixirs e-liquids is certified organic and sourced from
4 a certified organic supplier. However, not all of the flavorings contained in Alchemy e-liquids
5 are organic; Alchemy e-liquid is available in more than 60 different flavors, and some of these
6 flavors contain nonorganic flavorings. None of the nicotine found in Alchemy e-liquids is
7 verified as organic either. The nicotine is not obtained from a certified organic facility and has
8 not been verifiably protected from prohibited synthetic chemicals. Even if the nicotine found in
9 Alchemy e-liquid is derived from tobacco plants, Defendants cannot provide any evidence that
10 it was organically-produced in compliance with Washington's Organic Products Act and the
11 National Organic Program.

12 **C. Defendants represent that Alchemy e-liquids are healthy, safe, and healthier than**
13 **nonorganic e-liquid**

14 4.9 In the course of selling e-liquid as organic, Defendants have made health and
15 safety claims that are false and/or lack a reasonable basis. Despite a lack of evidence, as
16 discussed below, Defendants' marketing materials claim that Alchemy e-liquids are healthy
17 and safe because they are VG-based and organic. Defendants have conveyed to consumers that
18 vaping an organic, plant-derived solvent (VG) is healthy whereas vaping a synthetic solvent
19 (PG) is dangerous.

20 4.10 Examples of Defendants' health and safety claims include the following
21 statements:

- 22 a. "[Y]ou can be sure that whatever you take from us is completely safe,
23 organic, healthy, and also environment friendly";
24 b. "[W]e can guarantee whatever we produce is the safest product for your
25 health as well as safe for the environment";
26

- 1 c. "[W]e are proud to be a manufacturer of e-liquids that are completely
2 free from any potential harm";
- 3 d. "We leave no stone unturned making sure you get the right and
4 healthiest products for your body";
- 5 e. "[T]hese e-liquids are free from... things that have been termed harmful
6 time and again";
- 7 f. "[Alchemy e-Lixirs is the] healthiest collection of e-liquids";
- 8 g. "[A]ll our e-liquids are SAFE";
- 9 h. "[All our e-liquids are] nontoxic";
- 10 i. "[M]any studies have shown the risk factor associated with heating and
11 inhaling PG... 100% VG is the healthier option";
- 12 j. "If your choice to vape was for health reasons then it is worth taking it a
13 step further and considering whether you can make the choice even
14 healthier by picking an organic or natural product," and;
- 15 k. "[PG] is the same ingredient that is used in anti-freeze and brake fluid.
16 So why would you want to be ingesting this toxin?... At Alchemy e-
17 Lixirs, we strive to serve you the best blend of healthy ingredients. We
18 use 100% Vegetable Glycerin which makes us stand out from the rest."
19 <https://alchemye-lixirs.com> (visited June 5, 2015).
- 20

21 4.11 There is no reliable evidence to support Defendants' health and safety claims.
22 There is no scientific evidence that vaping any type of e-liquid is completely safe, healthy,
23 nontoxic, or free from any potential harm. Nor are there any studies or other scientific
24 evidence to substantiate claims that VG is healthier and safer to vape than PG.

25

26

1 4.12 In fact, scientific evidence indicates that there are at least some risks associated
2 with vaping any e-liquid and that the long-term effects of vaping are, at best, largely
3 unknown.⁸ It is well-established, for example, that nicotine can be poisonous in certain
4 quantities.⁹ Evidence offers no basis for distinguishing VG from PG.

5 4.13 Defendants also had actual notice that vaping organic VG e-liquid is not
6 completely safe and risk-free. The material safety data sheet for the VG contained in Alchemy
7 e-liquids, which Defendants produced to the State, cautions “[d]o not breathe
8 gas/fumes/vapor/spray” and repeatedly warns that VG can cause respiratory irritation if
9 inhaled.

10 4.14 When asked by the State for evidence to substantiate their health and safety
11 claims, Defendants failed to produce any evidence. Instead, they edited their websites and
12 denied ever having made such claims.

13 \\\

14 \\\

15 \\\

16 \\\

17 \\\

18 ⁸ See, e.g. Thomas H. Brandon et al., *Electronic Nicotine Delivery Systems: A Policy Statement from the*
19 *American Association for Cancer Research and the American Society of Clinical Oncology*, CLINICAL CANCER
20 RES. (2015), available at [http://clincancerres.aacrjournals.org/content/early/2015/01/04/1078-0432.CCR-14-](http://clincancerres.aacrjournals.org/content/early/2015/01/04/1078-0432.CCR-14-2544.full.pdf+html)
21 [2544.full.pdf+html](http://clincancerres.aacrjournals.org/content/early/2015/01/04/1078-0432.CCR-14-2544.full.pdf+html); Hayley Born et al, *Electronic Cigarettes A Primer for Clinicians*, OTOLARYNGOLOGY—HEAD
& NECK SURGERY (2015) <http://www.ncbi.nlm.nih.gov/pubmed/26002957>; Caroline Franck et al., *Electronic*
22 *Cigarettes in North America History, Use, and Implications for Smoking Cessation*, CIRCULATION (2014),
<http://circ.ahajournals.org/content/129/19/1945.long>; Dominic L. Palazzolo, *Electronic Cigarettes and Vaping: A*
23 *New Challenge in Clinical Medicine and Public Health. A Literature Review*, 56 FRONT PUB. HEALTH (2013),
<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3859972/>; Lindsay McCauley et al., *An Unexpected Consequence*
24 *of Electronic Cigarette Use*, 141 CHEST (2012),
<http://journal.publications.chestnet.org/article.aspx?articleid=1206478>; .

25 ⁹ See, e.g. US Dept. of Health & Hum. Services, *The Health Consequences of Smoke – 50 Years of*
26 *Progress: A Report of the Surgeon General* at 107 (2014), [http://www.surgeongeneral.gov/library/reports/50-](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/50-years-of-progress-by-section.html)
[years-of-progress/50-years-of-progress-by-section.html](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/50-years-of-progress-by-section.html).

1 **V. FIRST CAUSE OF ACTION**
2 **(Violations of the Consumer Protection Act)**

3 5.1 The State realleges and incorporates Paragraphs 1.1 through 4.14 herein as if set
4 forth in their entirety.

5 5.2 Defendants are engaged in trade or commerce within the meaning of RCW
6 19.86.010, and their activities impact the public interest.

7 5.3 It is a *per se* violation of RCW 19.86.020 to label, sell, or represent a product as
8 organic if the requirements of the Organic Products Act and the National Organic Program
9 adopted by Washington are not met. RCW 19.86.023; RCW 15.86.030. The Organic Products
10 Act and the National Organic Program require any company that processes and sells annually
11 more than \$5,000 worth of products as “organic” to be certified by an accredited organic
12 certifying agent. *See* RCW 15.86.090; 7 CFR 205.100, 101. The National Organic Program
13 also requires any product labelled, sold, or represented as 100% organic to contain only
14 organic ingredients. 7 CFR 205.301(a).

15 5.4 Defendants violated RCW 19.86.020 by labelling, selling, and representing to
16 Washington consumers that Alchemy e-Liquids are organic when the requirements of the
17 Organic Products Act and the National Organic Program were not met. Specifically,
18 Defendants have knowingly produced, processed, handled, labelled, marketed, represented and
19 sold annually more than \$5,000 worth of Alchemy e-liquid as “organic” but have never been
20 certified by any organic certifying agent. Defendants have also falsely represented to
21 consumers that Alchemy e-liquids, which contain nonorganic ingredients, are 100% organic.

22 5.5 Additionally, notwithstanding that Defendants’ conduct violates the Organic
23 Products Act and is therefore a *per se* violation of the CPA, Defendants violated RCW
24 19.86.020 by selling Alchemy e-liquid as 100% organic. Alchemy e-liquid is not 100% organic
25 because it contains nonorganic ingredients. Marketing a product as 100% organic when it
26

1 contains nonorganic ingredients is an unfair or deceptive act or practice because it has the
2 tendency or capacity to mislead consumers and/or is unethical, oppressive, or unscrupulous.

3 5.6 Defendants also violated RCW 19.86.020 by making representations that are
4 false, misleading, and/or cannot be substantiated by a reasonable basis. Such representations
5 include, but are not limited to, claims that Alchemy e-Lixirs e-liquids are safe, healthy, and
6 safer and healthier than PG e-liquids. Making false, misleading, and/or unsubstantiated
7 representations is an unfair or deceptive act or practice because it has the tendency or capacity
8 to mislead consumers and/or is unethical, oppressive, or unscrupulous.

9 **VI. PRAYER FOR RELIEF**

10 Wherefore, the State prays for the following relief:

11 6.1 A declaration that Defendants violated the Organic Products Act (RCW 15.86) by
12 labelling, selling, and representing products as organic when the requirements of the Organic
13 Products Act and the National Organic Program were not met;

14 6.2 A declaration that Defendants' violations of the Organic Products Act and of the
15 National Organic Program violate RCW 19.86.020 of the Consumer Protection Act;

16 6.3 A declaration that Defendants' acts and practices described in this Complaint are
17 unfair or deceptive acts or practices in trade or commerce, affecting the public interest in violation
18 of RCW 19.82.020 of the Consumer Protection Act;

19 6.4 An injunction preventing Defendants or anyone acting in concert with the from
20 further violating Washington's Organic Products Act, the National Organic Program, or the
21 Consumer Protection Act;

22 6.5 An award of civil penalties in the amount of \$2,000 for each and every violation of
23 Washington's Consumer Protection Act, pursuant to RCW 19.86.140;

24 6.6 An order necessary to restore to any person an interest any moneys or property,
25 real or person, which may have been acquired by means of an act prohibited by the Consumer
26

1 Protection Act, pursuant to RCW 19.86.080(2);

2 6.7 An award of the State's reasonable costs and attorney's fees incurred in this action,
3 pursuant to RCW 19.86.080; and

4 6.8 Any other award the Court determines is just and equitable.

5
6 Dated this 26 day of October, 2015.

7
8 ROBERT W. FERGUSON
9 Attorney General

10
11 

12 LEILANI N. FISHER, WSBA #48233
13 Assistant Attorney General
14 Attorneys for Plaintiff
15 State of Washington
16
17
18
19
20
21
22
23
24
25
26