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[EXEMPT FROM FILING FEES
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PEOPLE OF THE STATE OF CALIFORNIA and
PEOPLE OF THE CITY AND COUNTY OF SAN
FRANCISCO, acting by and through San Francisco City
Attorney DAVID CHIU

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-23-610794

UNLIMITED JURISDICTION

PEOPLE OF THE STATE OF CALIFORNIA
and PEOPLE OF THE CITY AND COUNTY
OF SAN FRANCISCO, acting by and through
San Francisco Attorney DAVID CHIU,

Plaintiffs,

vs.

MILLENNIAL ONE, INC. d/b/a The Finest E-
Liquid; GASHIRO TECHNOLOGY LLC
d/b/a The Vape Society CBD and The Vape
Society; DASMOKEY LLC d/b/a DaSmokey;
and DOES 1 through 50, inclusive;

Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES FOR VIOLATIONS
OF BUSINESS AND PROFESSIONS CODE
SECTION 17200 AND SAN FRANCISCO
HEALTH CODE SECTION 19S.2**

San Francisco City Attorney David Chiu brings this action on behalf of Plaintiff People of the
State of California and Plaintiff People of the City and County of San Francisco (collectively,
“Plaintiffs” or “the People”) against Defendants Millennial One, Inc. d/b/a The Finest E-Liquid,
Gashiro Technology LLC d/b/a The Vape Society CBD and The Vape Society, DaSmokey LLC d/b/a
DaSmokey, and Does through 50, inclusive (collectively, “Defendants”), and alleges:

INTRODUCTION

1. Flavored e-cigarettes are hooking a new generation on nicotine—putting millions of young people at risk and threatening decades of progress in reducing youth tobacco use. In 2023, 2.8 million U.S. middle and high school students, or 10% of high school students and 4.6% of middle school students, reported that they currently use electronic cigarettes (“e-cigarettes”), with the vast majority of them (89.4%) choosing flavored products.¹

2. The results of this youth vaping epidemic are devastating. E-cigarettes often contain high concentrations of nicotine. Nicotine exposure during adolescence can harm the developing brain—adversely impacting learning, memory, and attention—and can also increase risk for future addiction to other tobacco products and other drugs.² Indeed, according to the U.S. Centers for Disease Control and Prevention, if youth smoking continues at the current rate, “5.6 million of today’s Americans younger than 18 years of age are expected to die prematurely from a smoking-related illness. This represents about 1 of every 13 Americans aged 17 years or younger who are alive today.”³

3. In an attempt to curtail this public health crisis, advocates and regulators have undertaken tremendous efforts to reduce tobacco use by teens and young adults. Based on findings that e-cigarettes were “the most commonly used tobacco product among youth in the United States” as a result of tobacco companies marketing them “in a variety of flavors with obvious appeal to youth, such as gummy bear, cotton candy, and fruit punch,” the City and County of San Francisco enacted laws

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¹ Jan Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023*, U.S. Ctrs. for Disease Control & Prevention (Nov. 3, 2023), https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s_cid=mm7244a1_w.

² *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults*, U.S. Ctrs. for Disease Control & Prevention (Nov. 2, 2023), https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html.

³ *Diseases and Death*, U.S. Ctrs. for Disease Control & Prevention (July 29, 2022), https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/diseases-and-death.html.

1 prohibiting the sale or distribution of flavored tobacco products and electronic cigarettes⁴ to any
2 person in San Francisco.⁵

3 4. Defendants are flouting these laws by selling flavored tobacco products, including
4 flavored e-cigarettes, online to consumers in San Francisco.

5 5. As a result of violations like these, San Francisco’s youth continue to access and use
6 tobacco products. In 2021, 20.1% of San Francisco’s high school students had tried e-cigarettes, and
7 7.9% reported currently using e-cigarettes.⁶

8 6. The People bring this suit to protect the public—especially youth—from the health
9 risks created by tobacco products, stop Defendants’ unlawful conduct, and impose civil penalties for
10 Defendants’ past violations of law.

11 PARTIES

12 7. Plaintiff the People of the State of California, acting by and through San Francisco City
13 Attorney David Chiu, prosecutes this action pursuant to Business and Professions Code Sections
14 17204 and 17206.

15 8. Plaintiff the People of the City and County of San Francisco, acting by and through San
16 Francisco City Attorney David Chiu, prosecutes this action pursuant to San Francisco Health Code
17 Section 19S.4.

18 9. Defendant Millennial One, Inc., d/b/a The Finest E-Liquid (“Millennial One”), is a
19 California corporation headquartered in Canoga Park, California. It is licensed by the State of
20 California as a distributor of cigarette and tobacco products.

21 10. Defendant Gashiro Technology LLC, d/b/a The Vape Society CBD and The Vape

22 ⁴ San Francisco prohibits selling or distributing electronic cigarettes that require but have not
23 obtained a premarket review order from the U.S. Food and Drug Administration (“FDA”). S.F. Health
24 Code § 19S.2(b). As of November 22, 2023, the FDA has authorized marketing of only 23 e-cigarette
25 products and devices, all of which are tobacco-flavored. *Premarket Tobacco Product Marketing*
Granted Orders, U.S. Food & Drug Admin. (Nov. 22, 2023), [https://www.fda.gov/tobacco-](https://www.fda.gov/tobacco-products/premarket-tobacco-product-applications/premarket-tobacco-product-marketing-granted-orders)

26 ⁵ S.F. Ordinance 122-19, codified in Articles 19R and 19S of the San Francisco Health Code
27 (2019).

28 ⁶ *High School YRBS, San Francisco, CA 2021 and United States 2021 Results*, U.S. Ctrs. for
Disease Control & Prevention, archived at <https://perma.cc/5NR4-RUBY>.

1 Society (“Gashiro”), is a California limited liability company headquartered in Glendale, California. It
2 is licensed by the State of California as a wholesaler and retailer of cigarette and tobacco products.

3 11. Defendant Dasmokey, LLC, d/b/a DaSmokey (“DaSmokey”), is a California limited
4 liability company headquartered in West Hills, California. It is licensed by the State of California as a
5 wholesaler and retailer of cigarette and tobacco products.

6 12. The People are not aware of the true names and capacities of Defendants sued as Does
7 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Each fictitiously
8 named Defendant is responsible in some manner for the violations of law alleged. The People will
9 seek leave to amend this complaint to allege their true names and capacities when that information is
10 ascertained. Whenever this Complaint refers to “Defendants,” such reference shall include Does 1
11 through 50 as well as the named Defendants.

12 JURISDICTION AND VENUE

13 13. The San Francisco Superior Court has jurisdiction over this action. Defendants are
14 engaging in unlawful conduct in San Francisco, and the San Francisco City Attorney has statutory
15 authority to prosecute this case on behalf of the People of the State of California and the People of the
16 City and County of San Francisco.

17 14. Venue is proper in this Court because the unlawful conduct occurred in San Francisco
18 and elsewhere in California.

19 FACTUAL ALLEGATIONS

20 15. Each Defendant has a website through which it sells a variety of flavored tobacco
21 products, including flavored e-cigarettes, directly to consumers. The categories of products offered
22 include flavored e-liquids (or “vape juice”) with nicotine, as well as flavored disposable e-cigarettes
23 (“vapes”) with nicotine, among others. These products constitute “flavored tobacco products” and
24 “electronic cigarettes” under Article 19S of the San Francisco Health Code. It is therefore unlawful to
25 sell them to any person in San Francisco.

26 16. While some online sellers of flavored tobacco products and e-cigarettes indicate that
27 they will not ship products to certain states and cities, Defendants’ websites contain no indication that
28 they will not ship products to San Francisco.

1 17. As set forth below, each Defendant has sold flavored tobacco products and e-cigarettes
2 to one or more persons in San Francisco.

3 18. On information and belief, each Defendant continues to sell flavored tobacco products
4 and e-cigarettes to people in San Francisco.

5 19. The exact dates and quantities of products illegally sold to people in San Francisco will
6 be determined at trial.

7 20. Moreover, as set forth below, each Defendant failed to comply with certain
8 requirements of the Stop Tobacco Access to Kids Enforcement (STAKE) Act, which creates
9 safeguards intended to prevent sales of tobacco products to minors. For example, companies are
10 required to call the purchaser after 5 p.m. prior to shipping tobacco products and to use certain
11 required language in labeling the package. (Bus. & Prof. Code § 22963(b).)

12 **Millennial One**

13 21. Defendant Millennial One, doing business as The Finest E-Liquid, sells its own brand
14 of e-liquids on its website (<https://www.thefinesteliquid.com>), with product lines such as “The Fruit
15 Edition,” “Crème de la Crème” (custard flavors), “Candy Edition,” and others.

16 22. The website contains no indication that Millennial One does not ship flavored tobacco
17 or e-cigarettes to people in San Francisco.

18 23. On October 16, 2023, Plaintiffs’ investigator purchased two products that are flavored
19 tobacco products and e-cigarettes: a package of two containers of Apple Pearadise e-liquid, and a
20 package of two containers of Straw Melon Sour Belts e-liquid.

21 24. Millennial One did not call the purchaser after 5 p.m. prior to shipping the products.

22 25. Millennial One describes the Apple Pearadise e-juice as follows: “A cornucopia of
23 mouthwatering fruits, Apple Pearadise embodies the perfect balance of sweet and fruity. Expect an
24 exquisite blend of crisply ripe apples on the inhale, with a tinge of pear on the exhale that is every bit
25 subtle as it is prevailing. A signature juice truly worthy of our namesake.” It describes Straw Melon
26 Sour Belts e-juice as “[a] perfect reimagining of your favorite treats. Straw Melon Sour Belts
27 thoughtfully marries the sweetness of strawberries and watermelon, with a discrete tarty and sour note
28 all wrapped into one tasty flavored e-liquid package.”

26. The products were received on October 18, 2023 at an address in San Francisco, California. The package was not labeled to indicate that it contained tobacco products or that the signature of a person 21 or older was required for delivery.

Gashiro

27. Defendant Gashiro, doing business as The Vape Society CBD and The Vape Society, states on its website (<https://thevapesocietycbd.com>) that it's the "longest running vape shop in Glendale, CA." It claims to sell "50+ brands" and offers flavored e-liquids and disposable vapes, among other products. The website has a banner at the top of the landing page stating "Free Shipping available now in all 50 States!"

28. Gashiro's website contains no indication that it does not ship flavored tobacco products or e-cigarettes to people in San Francisco.

29. On September 11, 2023, Plaintiffs' investigator purchased from Gashiro's website two products that are both flavored tobacco products and e-cigarettes: a container of The Finest Vanilla Almond Custard e-liquid, 6 mg nicotine, and a disposable vape called a Flum Pebble 6000 Puff, Matcha flavor.

30. Gashiro did not call the purchaser after 5 p.m. prior to shipping the products.

31. Gashiro describes The Finest Vanilla Almond Custard e-liquid as "fus[ing] the flawless pairing of luscious vanilla beans, creamy custard, and a slight hint of almonds," and it sells this product in other flavors such as Green Apple Citrus, Blue Berries Lemon Swirl Ice, and Lychee Dragon. Gashiro describes the Flum Pebble as providing "an extra smooth and flavorful vaping experience" with approximately 6000 puffs per device, and it sells more than thirty flavors, including Peach Icy, Vanilla Ice Cream, Passion Kiwi, and Apple Grapefruit.

32. The products were delivered on September 16, 2023 to an address in San Francisco, California. The package was not labeled to indicate that it contained tobacco products or that the signature of a person 21 or older was required for delivery.

DaSmokey

33. Defendant DaSmokey markets itself on its website (<https://dasmokey.com>) as the "best online vape shop." It sells popular vape brands, such as Fume and Elf Bar, in a variety of flavors.

34. DaSmokey's website contains no indication that DaSmokey does not ship flavored tobacco or e-cigarettes to people in San Francisco.

35. On September 11, 2023, Plaintiffs' investigator purchased two Fume Mini Strawberry Watermelon Disposable Vapes, a flavored tobacco product and e-cigarette, from DaSmokey's website. DaSmokey sells this product in additional flavors such as watermelon lemonade, rainbow candy, tropical fruit, pina colada, and strawberry mango.

36. DaSmokey did not call the purchaser after 5 p.m. prior to shipping the products.

37. The product was delivered to an address in San Francisco, California on October 16, 2023. The package was not labeled to indicate that it contained tobacco products or that the signature of a person 21 or older was required for delivery.

**FIRST CAUSE OF ACTION
VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
AGAINST ALL DEFENDANTS
(Unlawful Business Practices)**

38. The People of the State of California incorporate by reference the allegations contained in each paragraph above, as if those allegations were fully set forth in this cause of action.

39. Plaintiff People of the State of California brings this claim against all Defendants.

40. Business and Professions Code Section 17200 prohibits any person from engaging in "any unlawful, unfair or fraudulent business act or practice."

41. Defendants, and each of them, have engaged in unlawful business acts and practices in violation of Section 17200. Such acts and practices include, but are not limited to:

- a. The unlawful sale of flavored tobacco products to people in San Francisco in violation of Section 19S.2 of the San Francisco Health Code, as alleged in the Second Cause of Action;
- b. The unlawful sale of e-cigarettes to people in San Francisco in violation of Section 19S.2 of the San Francisco Health Code, as alleged in the Second Cause of Action; and
- c. Failure to comply with the mandatory procedures in Section 22963(b) of the Business and Professions Code, a provision of the Stop Tobacco Access to Kids

Enforcement (STAKE) Act, including but not limited to the requirements to call the purchaser after 5 p.m. prior to shipping tobacco products and to deliver the tobacco product in a container “conspicuously labeled with the words: ‘CONTAINS TOBACCO PRODUCTS: SIGNATURE OF PERSON 21 YEARS OF AGE OR OLDER REQUIRED FOR DELIVERY.’” Defendants are “sellers” or “distributors” within the meaning of Business & Professions Code Section 22963(e).

42. Defendants continue to engage in the unlawful acts and practices described above. Unless the People of the State of California are granted the remedies sought below, including injunctive relief by order of this Court, Defendants will continue to cause injury and irreparable harm to consumers and the general public.

**SECOND CAUSE OF ACTION
VIOLATION OF SAN FRANCISCO HEALTH CODE SECTION 19S.2
AGAINST ALL DEFENDANTS
(Unlawful Sale of Flavored Tobacco Products and E-Cigarettes)**

43. The People of the City and County of San Francisco incorporate by reference the allegations contained in each paragraph above, as if those allegations were fully set forth in this cause of action.

44. Plaintiff People of the City and County of San Francisco brings this claim against all Defendants.

45. Section 19S.2(a) of the San Francisco Health Code provides in relevant part, “No Person shall Sell or Distribute any Flavored Tobacco Product to a Person in San Francisco.”

46. Defendants’ products described above are “Flavored Tobacco Product[s]” within the meaning of Sections 19S.1, 19Q.2, and 19H.2 of the San Francisco Health Code.

47. Section 19S.2(b) of the San Francisco Health Code provides that: “No Person shall Sell or Distribute an Electronic Cigarette to a Person in San Francisco where the Electronic Cigarette: (1) Is a New Tobacco Product; (2) Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and (3) Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.”

48. Defendants’ products described above are also “Electronic Cigarettes” within the meaning of Section 19S.1 of the San Francisco Health Code and Section 30121 of the Revenue and Taxation Code.

49. Defendants' products satisfy the criteria in Section 19S.2(b) and therefore may not be sold to any person in San Francisco.

50. Defendants, and each of them, have unlawfully sold, and on information and belief, continue to unlawfully sell, flavored tobacco products and electronic cigarettes to people in San Francisco.

51. Unless the People of the City and County of San Francisco are granted the remedies sought below, including injunctive relief by order of this Court, Defendants will continue to cause injury and irreparable harm to consumers and the general public.

PRAYER FOR RELIEF

The People respectfully request that the Court enter judgment in favor of the People and against Defendants and grant the following relief:

1. Enjoin Defendants, their successors, agents, representatives, employees, and any and all other persons who act in concert or participation with Defendants by permanently restraining them from performing or proposing to perform any acts in violation of Business and Professions Code Section 17200 and San Francisco Health Code Section 19S.2;

2. Order each Defendant to pay a civil penalty of \$2,500 for each violation of Business and Professions Code Section 17200, under the authority of Business and Professions Code section 17206;

3. Order each Defendant to pay an additional civil penalty of \$1,000 for each violation of San Francisco Health Code Section 19S.2, under the authority of San Francisco Health Code Section 19S.4(d);

4. Order Defendants to pay Plaintiffs' attorneys' fees and costs, under the authority of San Francisco Health Code Section 19S.4; and

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1 5. Provide such further and additional relief as the Court deems just, proper, and
2 equitable.

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4 Dated: December 4, 2023

5 DAVID CHIU

6 City Attorney

7 YVONNE R. MERÉ

8 Chief Deputy City Attorney

9 SARA J. EISENBERG

10 Chief of Complex and Affirmative Litigation

11 JULIE WILENSKY

12 Deputy City Attorney

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15 Attorneys for Plaintiffs

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18 FRANCISCO, acting by and through San Francisco City

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