

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF HERKIMER

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PEOPLE OF THE STATE OF NEW YORK, by
LETITIA JAMES, Attorney General of the State of
New York,

VERIFIED PETITION

Petitioner, Index No.
-against-

G-SMOKE360 CORP. d/b/a G SMOKE; together with
GALAL KAID, Individually and as Principal of G-
SMOKE360 CORP.; LIBERTY SMOKELAND d/b/a
ALI N SHUGAA; together with ALI AL SHUGAA a/k/a
ALI N SHUGAA, Individually and as Principal of
LIBERTY SMOKELAND,

Respondents.

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Petitioner, the People of the State of New York, by their attorney, Letitia James,
Attorney General of the State of New York, alleges upon information and belief:

Preliminary Statement

1. Petitioner brings this special proceeding pursuant to New York Executive Law § 63(12) and New York Public Health Law (“PHL”) § 12 to preliminarily and permanently enjoin Respondents from continuing to sell and offering for sale illegal flavored vapor products, including to minors, and from continuing to sell and offer for sale any vapor products without a vapor products certificate of registration. Respondents include Respondent G-Smoke360 Corp., doing business as G Smoke (“G Smoke”), together with Respondent Galal Kaid (“Kaid”), individually and as principal of G Smoke (collectively “G Smoke Respondents”), and Respondent Liberty Smokeland, doing business as Ali N Shugaa (“Liberty”), together with Respondent Ali Al Shugaa a/k/a Ali N Shugaa (“Al Shugaa”), individually and as principal of

Liberty (collectively “Liberty Respondents”). Petitioner also seeks a judgment for penalties, and costs as authorized by law.

2. G Smoke, Kaid, Liberty, and Al Shugaa (collectively “Respondents”) have illegally sold flavored vapor products for years from one retail store located at 62 Central Avenue, Ilion, New York, 13357, in Herkimer County (the “Store”) that remains operational today. For years, Respondents have sold illegal products from their Store—including to minors—without reviewing proof of identification, without securing such products behind the counter or in a locked space as required by New York State law, and without the required vapor products certificate of registration from the Department of Taxation of Finance (“DTF”). Respondents continue to operate and sell vapor products to this day, endangering the health and safety of New Yorkers, especially its youth.

Jurisdiction and Parties

3. Petitioner is the People of the State of New York by their Attorney, Letitia James, Attorney General of the State of New York (“OAG”).

4. Petitioner brings this special proceeding pursuant to Executive Law § 63(12) and Public Health Law § 12(5) to obtain injunctive and equitable relief, penalties, and costs.

5. Petitioner is authorized to take action to enjoin repeated and persistent fraudulent or illegal conduct under New York Executive Law § 63(12).

6. Petitioner is, upon the request of the Commissioner of the New York State Department of Health (“DOH”), empowered pursuant to PHL § 12(5) to bring an action for an injunction against any person who violates, disobeys, or disregards any term or provision of Chapter 45 of the Consolidated Laws of New York or of any lawful notice, order, or regulation

pursuant thereto. PHL § 12 also authorizes DOH to bring an action in this Court to recover any civil penalty owed as a result of a violation of the PHL.

7. Respondent Liberty Smokeland is a business that was registered to sell vapor products with DTF in 2020. Respondent Liberty operated a store at 62 Central Avenue, Ilion, NY 13357, in Herkimer County. While their vapor products certificate of registration with DTF has lapsed and they are not licensed to sell vapor products, their sign remains in the window.

8. Respondent Al Shugaa is the owner and principal operator of Liberty. Respondent Al Shugaa is doing business in Herkimer County, New York.

9. Respondent G Smoke is a New York domestic business corporation, formed on April 22, 2022. It is incorporated in Herkimer County, and maintains its principal business address at 62 Central Avenue, Ilion, New York, 13357, in Herkimer County. Respondent G Smoke is registered with the Department of State, Division of Corporations, under DOS ID 6465270. It currently operates a retail shop at that address that specializes in the sale of tobacco and vapor products.

10. Respondent Kaid is the owner and principal operator of Respondent G Smoke. Kaid is doing business in Herkimer County, New York. Respondent Kaid registered G Smoke with DTF and, reporting himself as the owner, received a vapor products certificate of registration from DTF, ID Number 88-1971722.

11. Upon information and belief, the owners of Liberty and G Smoke – Respondents Al Shugaa and Kaid – respectively, are brothers.

12. Upon information and belief, during the relevant time period, Respondents Liberty and G Smoke used the names of their businesses interchangeably and operated out of the same address.

Statutory Framework

13. Vapor products pose serious consequences to public health. According to DOH and data from the U.S. Centers for Disease Control and Prevention (“CDC”), youth and young adults are the primary users of e-cigarettes, and e-cigarettes are the most commonly used tobacco product by high school students in New York State.¹

14. Data from the 2022 New York Youth Tobacco Survey showed that 18.7% of high school youth use e-cigarettes.²

15. Flavorings in tobacco products make them even more appealing to youth.³ In 2024, 87.6% of youth who used e-cigarettes used flavored e-cigarettes, with fruit flavors being the most popular followed by candy, desserts, or other sweets.⁴ According to the CDC, youth use of tobacco products in any form is unsafe.⁵

16. New York State has enacted laws to protect youth from the dangers of nicotine addiction by reducing access to vaping products. New York’s Public Health Law provides a regulatory framework for the sale of vapor products in New York State. Enforcement of the PHL is crucial to protecting the public health and safety of all New Yorkers, especially its youth.

Prohibitions on the Sale and Offer to Sell Vapor Products

¹ See https://www.health.ny.gov/prevention/tobacco_control/campaign/e-cigarettes/.

² See https://www.health.ny.gov/prevention/tobacco_control/reports/statshots/volume15/n1_youth_tobacco_use.pdf.

³ See <https://www.cdc.gov/tobacco/php/data-statistics/youth-data-tobacco/index.html#:~:text=Flavorings%20in%20tobacco%20products%20can>.

⁴ See <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>.

⁵ See https://www.cdc.gov/tobacco/php/data-statistics/youth-data-tobacco/?CDC_AAref_Val=https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/.

17. PHL § 1399-cc(2) prohibits any person operating a place of business wherein tobacco products, liquid nicotine (also referred to as e-liquid), or e-cigarettes are sold or offered for sale from selling such products to individuals under the age of twenty-one (21) years of age. *See* PHL § 1399-cc(1)(e). An e-cigarette is defined as an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such device. PHL § 1399-aa(13).

18. The sale of tobacco products, liquid nicotine, or e-cigarettes shall be made only to an individual who demonstrates, through a government issued identification, that the individual is at least twenty-one years of age. PHL § 1399-cc(3).

19. Any person operating a business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes, are sold or offered for sale is required to post in a conspicuous place a sign with the following statement: "SALE OF CIGARETTES, CIGARS, CHEWING TOBACCO, POWERED TOBACCO, SHISHA OR OTHER TOBACCO PRODUCTS, HERBAL CIGARETTES, LIQUID NICOTINE, ELECTRONIC CIGARETTES, ROLLING PAPERS OR SMOKING PARAPHERNALIA, TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW." PHL § 1399-cc(2).

20. Except in limited circumstances not herein applicable, any person operating a business wherein tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes, are sold or offered for sale is prohibited from selling, permitting to be sold, offering for sale, or displaying for sale such products in any manner unless such products are stored for sale "(a) behind a counter in an area accessible only to the personnel of such business, or (b) in a locked container." PHL § 1399-cc(7).

21. PHL § 1399-mm-1(2) prohibits the sale at retail of any flavored vapor product intended or reasonably expected to be used with or for the consumption of nicotine. A vapor product is defined as any noncombustible liquid or gel, regardless of the presence of nicotine therein, that is manufactured into a finished product for use in an electronic cigarette, including any device that contains such noncombustible liquid or gel. PHL § 1399-aa(17). Under this statute, a flavored vapor product (“Flavored Vapor Product”) means “any vapor product intended or reasonably expected to be used with or for the consumption of nicotine, with a distinguishable taste or aroma, other than the taste or aroma of tobacco.” PHL § 1399-mm-1(1). The prohibition does not extend to any vapor products that the U.S. Food and Drug Administration (“FDA”) has authorized to legally market, and that have received a premarket review approval order. PHL § 1399-mm-1(4) (citing 21 U.S.C. § 387j). To date, the FDA has authorized only 34 tobacco and menthol flavored e-cigarette products and devices to be marketed and sold in the U.S.⁶

22. In relevant part, PHL § 1399-bb prohibits any retail dealer, or any agent or employee of such retail dealer, from knowingly selling or offering to sell Flavored Vapor Products to a consumer through any multipackage discount or to provide such products for less than the listed price or non-discounted price in exchange for the purchase of any other tobacco products, herbal cigarettes, or vapor product.

Licensing and Registration Requirements for the Retail Sale of Vapor Products

23. Every person who intends to sell vapor products must receive a certificate of registration (i.e., license) from the Commissioner of DTF prior to engaging in business. N.Y.

⁶ See <https://www.fda.gov/tobacco-products/products-ingredients-components/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends>; see also https://digitalmedia.hhs.gov/tobacco/print_materials/CTP-250?locale=en.

Tax Law § 1183. A certificate of registration is valid for the calendar year for which it is issued unless suspended or revoked. N.Y. Tax Law § 1183(b). The certificate of registration shall be null and void upon the expiration of its term. *Id.* A certificate of registration is neither assignable nor transferable, and must be destroyed immediately upon the vapor products dealer ceasing to do business. *Id.*

24. Every vapor products dealer is required to publicly display their vapor products certificate of registration in each place of business where vapor products are sold at retail. N.Y. Tax Law § 1183(c).

25. A “retail dealer” is defined as a person licensed by the Commissioner of DTF to sell cigarettes, tobacco products, or vapor products. PHL § 1399-aa(16). A “person” means a person, firm, company, corporation, partnership, sole proprietor, limited partnership or association. PHL § 1399-aa(3).

26. A “vapor products dealer” is defined as a person, firm, company, corporation, partnership, sole proprietor, limited partnership or association licensed by DTF to sell vapor products in New York State. PHL §§ 1399-aa(3) and (18).

27. The Commissioner of DTF shall refuse to issue a vapor products certificate of registration to any applicant who does not possess a valid certificate of authority under Section 1134 of the Tax Law. N.Y. Tax Law § 1183.⁷ The certificate of authority gives the vapor products dealer the right to collect tax on vapor product sales. The certificate of authority must be promptly displayed at the place of business. N.Y. Tax Law § 1134.

Enforcement

⁷ See also https://www.tax.ny.gov/pubs_and_bulls/tg_bulletins/st/how_to_register_for_nys_sales_tax.htm.

28. The Commissioner of the New York State Department of Health enforces the Public Health Law. PHL § 206(1)(f).

29. DOH, local county health departments, and the New York City Department of Consumer and Worker Protection (“DCWP”) conduct inspections of businesses that sell vapor products to determine if they are in compliance with the PHL.

30. Violations of the PHL will result in the issuance of a finding of violation which contains, *inter alia*, a short and plain statement of facts which are alleged to constitute a violation; reference to the provisions of the PHL alleged to have been violated; information to calculate the maximum penalty assessable if the facts are found to be as alleged; notification of the date and place of a hearing; and further notice that failure to appear at the hearing will constitute a default. 10 NYCRR 76.5.

Penalties

31. Penalties for a violation of Article 13-F of PHL §§ 1399, *et seq.*, shall result in:

a civil penalty of a minimum of three hundred dollars, but not to exceed one thousand five hundred dollars for a first violation, and a minimum of one thousand dollars, but not to exceed two thousand five hundred dollars for each subsequent violation, unless a different penalty is otherwise provided in this article.

PHL § 1399-ee(2).

32. Any vapor products dealer, or agent or employee of a vapor products dealer, who violates the prohibition on the sale of Flavored Vapor Products shall be subject to a civil penalty of not more than one hundred dollars (\$100.00) for each individual package of Flavored Vapor Product sold or offered for sale. PHL § 1399-mm-1(2).

33. The sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to a minor⁸ shall result, in addition to the imposition of any other penalty required or permitted pursuant to PHL § 1399-ee, the assigning of two points to the retail dealer's record where the individual who committed the violation did not hold a certificate of completion from a state certified tobacco sales training program, and one point where the retail dealer demonstrates that the person who committed the violation held a certificate of completion from a state certified tobacco sales training program. PHL § 1399-ee(3).

34. Four violations of Article 13-F of the PHL within a three-year time frame shall result in the revocation of the dealer's registration for one year, in addition to the imposition of any other penalty required or permitted by PHL § 1399-ee. PHL § 1399-ee(3)(b).

35. If a retail dealer has accumulated three points or more, the dealer's registration shall be suspended for one year. PHL § 1399-ee(3)(e).

36. A two hundred fifty-dollar surcharge to be assessed for every violation will be made available to enforcement officers and shall be used solely for compliance checks to be conducted to determine compliance with PHL § 1399-ee. PHL § 1399-ee(3)(f).

37. Violations of Article 13-F of the PHL while a retail dealer's registration is suspended shall, in addition to the imposition of any other penalty required or permitted by § 1399-ee, result in permanent revocation of the dealer's registration and the retail dealer will not be permitted to obtain a new registration while suspended. PHL § 1399-ee(4)(a).

Facts

38. During the relevant time period, Respondents operated, and continue to operate, a retail shop located at 62 Central Avenue, in Ilion, New York, that specializes in the

⁸A minor is as an individual under the age of 21. PHL § 1399-cc.

retail sale of tobacco and vapor products, including Flavored Vapor Products, to consumers for consumption.

Respondents' Criminal Law Violations

39. In October 2020, Respondent Al Shugaa was arrested and charged with possession of untaxed cigarettes, unlawful sale of fireworks, and criminal possession and unlawful possession of marijuana following a joint investigation by New York State Police Troop D Violent Gang and Narcotics Enforcement Team and the Ilion Police Department. A search of Respondent Liberty pursuant to a warrant resulted in the seizure of over 30,000 untaxed cigarettes, marijuana and fireworks.⁹

40. Additionally, Respondent Liberty was the subject of "Operation Vaporizer," an initiative launched by the New York State Police Violent Gangs and Narcotics Unit in 2022 that targeted the sale of flavored nicotine vapes to minors.¹⁰ An individual associated with Liberty was arrested and charged with endangering the welfare of a child as a result.

41. Respondent Liberty was last issued a vapor products certificate of registration on December 27, 2019, which was valid for tax year 2020. Despite this criminal history, and knowledge that the sale of e-cigarettes to minors is illegal under New York law, and despite the expiration of its vapor products certificate of registration in December 2020, Liberty continued to sell and offer for sale vapor products to minors, including Flavored Vapor Products.

⁹ See Catie O'Toole, *Upstate NY smoke shop owner charged with having 3,000-plus untaxed cigarettes, marijuana, fireworks* (Oct. 19, 2020, 9:24 PM), <https://wibx950.com/owner-of-liberty-smokeland-shop-in-ilion-arrested/>; <https://www.syracuse.com/crime/2020/10/upstate-ny-smoke-shop-owner-charged-with-having-30000-plus-untaxed-cigarettes-marijuana-fireworks.html>.

¹⁰ See <https://cnycentral.com/news/local/nys-police-underage-vaping-operation-in-oneida-herkimer-counties-led-to-10-arrests#>.

42. Respondent G Smoke sold and offered for sale vapor products, including Flavored Vapor Products, prior to receiving a vapor products certificate of registration in October 2023, and continued to sell and offer for sale vapor products, including Flavored Vapor Products after its certificate of registration expired in December 2023. G Smoke did not apply for a certificate of registration in 2024.

43. In April of 2023, DOH received an anonymous complaint regarding Respondent Liberty. The complaint alleged that Liberty was selling vapes to minors. DOH scheduled an underage compliance check.

Respondents' First Set of Stipulated PHL Violations from July 13 and July 21, 2023

44. On July 13, 2023, the Herkimer District Office of the DOH conducted an underage compliance Retail Tobacco and Vapor Product Inspection of the Store.

45. "SG," an individual under the age of 21, acting for the DOH as an underage buyer, entered the Store and requested a peach mango watermelon vapor product. The Store's operator offered a discount of three for \$50.00 or one for \$20.00. "SG" purchased a peach mango watermelon vapor product from the operator for \$20.00 in cash. At no time during the transaction did the Store clerk performing the sale request proof of age or identification, or ask "SG's" age. SG was not provided with a receipt. The sale of the Flavored Vapor Product was observed and documented by a DOH inspector.

46. The sign required under PHL § 1399-cc(2) prohibiting the sale of tobacco and other restricted products to persons less than 21 years-of-age was not on display during the July 13, 2023 inspection.

47. Respondents did not have a valid vapor products certificate of registration at the time of the July 13, 2023 inspection, and were not authorized to sell or offer for sale any vapor products.

48. On July 21, 2023, the Herkimer District Office of the DOH conducted an adult compliance Retail Tobacco and Vapor Product Inspection of the Store during which the DOH inspector observed the following violations of the PHL: (a) approximately 2,500 Flavored Vapor Products available for sale; (b) Flavored Vapor Products not kept behind the counter in an area accessible only to employees or in a locked container; (c) no DTF vapor products certificate of registration; and (d) failure to post the sign regarding the prohibition on sales of tobacco and vapor products to persons under the age of 21, as required under PHL § 1399-cc(2).

49. Respondents did not have a valid vapor products certificate of registration at the time of the July 21, 2023 inspection, and were not authorized to sell or offer for sale any vapor products.

50. A copy of an expired certificate of authority, issued to G Smoke and Galal Kaid was made available during the July 21, 2023 inspection. A valid certificate of authority was neither made available to the DOH inspector nor posted at the time of the July 21, 2023 inspection.

51. DOH contacted the owner of the building where the Store was located. The owner told DOH there was no lease with the occupant, that the tenant pays in cash, month-to-month, and a different person drops the money off each month.

52. Pursuant to Title 10 NYCRR Part 76.5, on August 17, 2023, DOH issued a Notice of Hearing, Offer of Settlement, and Finding of Violations ("8/17/23 DOH Notice") against G Smoke Respondents regarding the following alleged violations found during the July

13, 2023 and July 21, 2023 inspections: (a) the sale of a Flavored Vapor Product to an individual under the age of 21 in violation of PHL § 1399-cc(2); (b) the offer for sale of approximately 2,500 prohibited Flavored Vapor Products in violation of PHL § 1399-mm-1(2) with a maximum fine amount of \$100 per package; and (c) failing to display Flavored Vapor Products behind a counter in an area accessible only to store employees or in a locked container in violation of PHL § 1399-cc(7). A hearing was scheduled for September 20, 2023.

53. The 8/17/23 DOH Notice stated: “For a sale to a minor, two points are assigned (or one point, if the retailer proves the seller is certified as a result of successfully completing a state certified tobacco sales training program). The department shall direct the Commissioner of the Department of Taxation and Finance to suspend your tobacco and/or vapor product registration for one year if you accumulate three or more points.”

54. A copy of the 8/17/23 DOH Finding was served on G Smoke Respondents by certified mail, return receipt requested, on August 17, 2023 pursuant to PHL § 12-a, and Title 10 NYCRR Part 76.5(a).

55. G Smoke Respondents, represented by counsel, responded on September 7, 2023, and waived their right to a hearing on the alleged violations. Galal Kaid accepted the stipulation of allegations and signed, as the owner/operator, a DOH Administrative Tribunal Stipulation (“9/7/2023 Stipulation”) in which G Smoke Respondents admitted the following: (a) selling a Flavored Vapor Product to an individual under the age of twenty-one in violation of PHL § 1399-cc(2); (b) offering for sale approximately 2,500 prohibited Flavored Vapor Products in violation of PHL § 1399-mm-1(2); and (c) failing to display Flavored Vapor Products behind a counter in an area accessible only to store employees or in a locked container in violation of PHL § 1399-cc(7). Respondents stipulated to pay the following: (a) \$300.00 fine and \$250.00

surcharge for the PHL § 1399-c(2) violation; (b) \$250.00 fine and \$250.00 surcharge for the PHL § 1399-mm-1(2) violation; and (c) \$100.00 fine and \$250.00 surcharge for the PHL § 1399-cc(7) violation.

56. On September 12, 2023, District Director of the Herkimer District Office and Administrative Tribunal Representative Kathryn Morse (“District Director Morse”) issued an Administrative Tribunal Decision (“9/12/2023 Decision”) based on the 9/7/2023 Stipulation entered into by G Smoke Respondents.

57. By entering into the Stipulation, G Smoke Respondents waived their right to challenge the Stipulation and the Administrative Tribunal Decision.

Respondents’ Second Set of Stipulated PHL Violations from January 8, 2024

58. On January 8, 2024, the Herkimer District Office of the DOH conducted an Adult Compliance Retail Tobacco and Vapor Product Inspection at the Store. During the January 8, 2024—just four months after the previous Administrative Tribunal Decision—the DOH inspector observed the following violations of the Public Health Law: (a) approximately 5,700 packages of Flavored Vapor Products available for sale; (b) Flavored Vapor Products displayed on top of service counter, in unlocked buckets in the center of the store, and in a self-service capacity; (c) no valid DTF issued vapor products certificate of registration; (d) failure to post the sign regarding the prohibition on sales of tobacco and vapor products to persons under the age of 21; and (e) numerous cannabinoid products available for sale without an OCM license on site.

59. The DOH inspector was provided an expired vapor products certificate of registration. The vapor products certificate of registration was issued to G Smoke and Kaid on September 25, 2023, but had expired on December 31, 2023. A search of the DTF registry found

no valid vapor products certificate of registration.¹¹ Thus, Respondents did not have a required, valid vapor products certificate of registration at the time of the January 8, 2024 inspection.

60. The Flavored Vapor Products were placed in boxes and bags, and the Store's employee was instructed to remove said products from the retail store. Under 21 sales signage was provided during the inspection, and the employee posted the sign at the time of the compliance check. The DOH inspector also discussed proper and acceptable forms of identification with the employee during the inspection.

61. On January 18, 2024, DOH issued a Notice of Hearing, Offer of Settlement, and Finding of Violations ("1/18/24 DOH Notice") against G Smoke Respondents pursuant to Title 10 NYCRR Part 76.5, alleging the following violations of the Public Health Law: (a) presence of approximately 5,700 packages of Flavored Vapor Products available for sale in violation of PHL § 1399-mm-1(2) with a maximum fine amount of \$100 per package; and (b) displaying Flavored Vapor Products on top of service counter and in baskets in the center of the store in a self-service capacity in violation of PHL § 1399-c(7). The 1/18/24 DOH Notice offered to settle the Finding of Violations with payment of a fine in the amount of \$285,700.00.

62. DOH served a copy of the 1/18/24 DOH Notice on Respondent G Smoke via personal service on February 7, 2024, and again by personal service on February 27, 2024, pursuant to PHL § 12-a, and Title 10 NYCRR Part 76.5(a).

63. A hearing was initially scheduled for February 21, 2024, and then rescheduled to April 17, 2024.

¹¹ DTF maintains an online database of current Registered Retail Dealers of Cigarettes and Tobacco Products and Vapor Products, which is updated regularly, and is available at https://data.ny.gov/Government-Finance/Registered-Retail-Dealers-of-Cigarettes-and-Tobacc/55xf-9jat/about_data.

64. DOH contacted Mohammed Ali, the Store's manager. Mr. Ali requested a reduction in the amount of the fine on behalf of G Smoke Respondents. On April 4, 2024, G Smoke Respondents accepted DOH's offer of a reduced fine in the amount of \$8,000.00 to be paid in 12 monthly installments.

65. Respondent Kaid, as owner and operator of G Smoke, executed the DOH Administrative Tribunal Stipulation ("4/17/2024 Stipulation"). By agreeing to the 4/17/2024 Stipulation, G Smoke Respondents waived their right to a hearing on the violations and stipulated to: (a) having approximately 5,700 packages of Flavored Vapor Products available for sale in violation of PHL § 1399-mm-1(2); and (b) displaying the prohibited Flavored Vapor Products on top of the service counter and in baskets in the center of the store in a self-service capacity in violation of PHL § 1399-cc(7). Respondents agreed to pay (a) \$7,300.00 in fines and a \$250.00 surcharge for the PHL § 1399-mm-1(2) violation; and (b) a \$200.00 fine and a \$250.00 surcharge for the PHL § 1399-cc(7) violation.

66. On April 18, 2024, District Director Morse issued an Administrative Tribunal Decision ("4/18/2024 Decision") based on the 4/17/2024 Stipulation entered into by G Smoke Respondents.

67. To date, G Smoke Respondents have made eight payments.

68. By entering into the Stipulation, Respondents waived their right to challenge the Stipulation and the Administrative Tribunal Decision.

Respondents Failed Inspection from May 9, 2024

69. On May 9, 2024 at approximately 11:00 a.m., just one month after the 4/18/24 Decision, Respondents sold DOH Investigator Marliscia McCargo a Flavored Vapor Product in violation of PHL § 1399-mm-1(2). Investigator McCargo entered the Store and

requested a Flavored Vapor Product, preferably pineapple flavored. The Store clerk led Investigator McCargo to a locked back room to select a vapor product. Investigator McCargo selected a VIHO Turbo Strawberry Cheesecake disposable vape with 5% nicotine. The clerk requested \$20.00. Investigator McCargo gave the clerk \$20.00 in cash and requested a receipt, and was told that the Store does not provide receipts for cash sales. There was no sign displayed prohibiting the sale of tobacco and vapor products to persons under the age of 21 as required by PHL 1399-cc(2). Further, Respondents did not have a vapor products certificate of registration at the time of the sale.

70. At approximately 11:15 a.m. that same day, Respondents sold Director of DOH's Bureau of Investigations Joseph Giovannetti a Flavored Vapor Product in violation of PHL § 1399-mm-1(2). Director Giovannetti entered the Store and requested a Flavored Vapor Product. The Store clerk led Director Giovannetti to the same locked back room to select a vapor product. Director Giovannetti selected Bad Drip Labs Farley's Gnarly Sauce e-juice with 0 mg nicotine and Luto Salt Strawberry Apple Ice with 25 mg nicotine. The clerk requested \$35.00 for both products. Director Giovannetti gave the clerk \$35.00 in cash and was not provided with a receipt.

71. Respondents did not have a vapor products certificate of registration at the time of the May 9, 2024 sales.

72. At approximately 12:15 p.m. that same day, the Herkimer District Office of the DOH, accompanied by Investigator McCargo and Director Giovannetti, attempted an Adult Compliance Retail Tobacco and Vapor Product Inspection at the Store. The Store clerk denied DOH access to the locked back room where he had led Investigator McCargo and

Director Giovannetti earlier that day. DOH observed various age restricted products located on the sales floor shelving units.

Respondents' Third Set of Stipulated Violations from August 21, 2024

73. On August 21, 2024, the Herkimer District Office of the DOH conducted an underage compliance Retail Tobacco and Vapor Product Inspection of the Store.

74. "JH", an individual under the age of 21, acting for the DOH as an underage buyer, was sold a Flavored Vapor Product in the Store in violation of PHL § 1399-mm-1(2) and PHL § 1399-cc(2). "JH" entered the Store and requested a "blue raspberry flavored vape." The Store clerk led "JH" to the locked back room, but "JH" refused to enter. "JH" requested a mango flavored vape and the clerk retrieved a "Geek Bar Pulse" mango Flavored Vapor Product from the back room. The clerk requested proof of identification, but after "JH" said she did not have proof of identification, the clerk asked for \$20 and completed the sale. "JH" paid the clerk \$20.00 and left the Store. "JH" was not provided a receipt. The sale was observed and documented by the DOH inspector.

75. Respondents did not have a valid vapor products certificate of registration at the time of the August 21, 2024 inspection, and were not authorized to sell or offer for sale any vapor products.

76. On September 19, 2024, DOH issued a Notice of Hearing, Offer of Settlement, and Finding of Violations ("9/19/24 DOH Notice") against G Smoke Respondents based on evidence collected during the August 21, 2024 inspection. The 9/19/24 DOH Notice alleged two violations of the Public Health Law: (i) presence of Flavored Vapor Products available for sale in violation of PHL § 1399-mm-1(2); and (ii) selling vapor products without asking for identification in violation of PHL § 1399-cc(3). The DOH offered to settle the 9/19/24

DOH Notice with payment of a fine in the amount of \$3,000.00. A hearing was scheduled for October 16, 2024.

77. Respondent Al Shugaa accepted the Stipulation on behalf of Respondent G Smoke. Respondent Al Shugaa signed, as the owner/operator of G Smoke, a DOH Administrative Tribunal Stipulation ("10/9/2024 Stipulation") in which G Smoke Respondents admitted the following: (a) having Flavored Vapor Products available for sale in violation of PHL § 1399-mm-1(2); and (b) selling vapor products without asking for identification in violation of PHL § 1399-cc(3). Respondents stipulated to pay the following: (a) \$1,500.00 in fines and a \$250.00 surcharge for the PHL § 1399-mm-1(2) violation and (b) a \$1,000.00 fine and a \$250.00 surcharge for the PHL § 1399-cc(3) violation.

78. On October 9, 2024, Respondent Al Shugaa agreed to DOH's Stipulation Offer and committed to pay (i) \$1,500.00 in fines and a \$250.00 surcharge for the PHL § 1399-mm-1(2) violation; and (b) a \$1,000.00 fine and a \$250.00 surcharge for the PHL § 1399-cc(3) violation.

79. On October 10, 2024, District Director Morse issued an Administrative Tribunal Decision ("10/210/2024 Decision") based on the 10/9/2024 Stipulation entered into by Respondents.

80. By entering into the 10/10/24 Stipulation, G Smoke Respondents waived their right to challenge the Stipulation and the Administrative Tribunal Decision.

81. As a result of the September 12, 2023 Stipulated Decision between DOH and Respondents G Smoke and Kaid (Docket No. 20230683), G Smoke and Kaid were assessed two points and three violations. As a result of the October 10, 2024 Stipulated Decision between DOH and Respondents G Smoke and Kaid (Docket No. 20240852), G Smoke and Kaid were

assessed an additional two points and two violations. As of today, G Smoke and Kaid have been assessed four points and five violations. Furthermore, once G Smoke and Kaid finish paying their fine related to the April 18, 2024 Stipulated Decision (Docket No. 20240033), they will be assessed an additional two violations, making a total of seven violations and four points.

Respondents' Additional Failed Compliance Inspection

82. On January 9, 2025, the Herkimer District Office of the DOH conducted an adult compliance Retail Tobacco and Vapor Product Inspection of the Store.

83. DOH Inspector Ryan Hulchanski requested a Flavored Vapor Product from the Store employee, and he was directed to the back room which was already open. Inspector Hulchanski inspected the room and chose a Geek Bar Pulse Lemon Heads Flavored Vapor Product with 50 mg/mL nicotine. Inspector Hulchanski brought the product to the front counter and was quoted a price of \$25.00. Inspector Hulchanski paid the \$25.00 in cash and requested a receipt. The Store employee said the Store does not provide receipts for cash sales. Inspector Hulchanski was not provided a receipt, and left the Store with the Flavored Vapor Product.

84. Despite repeated enforcement activity, Respondents continue to operate without a vapor products license and flagrantly sell illegal Flavored Vapor Products, including to minors, and thus posing a risk to the public health of New Yorkers, in particular its youth.

**FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12): REPEATED ILLEGALITY
VIOLATIONS OF ARTICLE 13-F OF THE PUBLIC HEALTH LAW**

85. Petitioner reaffirms and re-alleges all allegations contained in paragraphs 1-84 herein.

86. New York Executive Law § 63(12) empowers the Attorney General to seek restitution and injunctive relief when any person or business entity has engaged in repeated illegal acts or otherwise demonstrates illegality in the carrying on, conducting, or transaction of business.

87. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling and/or offering for sale Flavored Vapor Products. PHL § 1399-mm-1(2).

88. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling vapor products to an individual under the age of twenty-one. PHL § 1399-cc(2).

89. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling vapor products to an individual without first requiring government issued identification for proof of age. PHL § 1399-cc(3).

90. Respondents have repeatedly violated Article 13-F of the Public Health Law, by failing to display and store electronic cigarettes offered for sale behind the counter in an area accessible only to store personnel or in a locked container. PHL § 1399-cc(7).

91. Respondents have repeatedly violated Article 13-F of the Public Health Law, by failing to display a sign prohibiting the sale of tobacco and vapor products to persons under the age of twenty-one. PHL § 1399-cc(2).

92. Respondents have repeatedly violated Article 13-F of the Public Health Law by selling or offering to sell Flavored Vapor Products through a multi-package discount or otherwise provided to a consumer Flavored Vapor Products for less than the listed price or non-discounted price in exchange for the Flavored Vapor Products. PHL § 1399-bb.

93. Respondents have therefore engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12): REPEATED ILLEGALITY VIOLATIONS
OF THE TAX LAW
VIOLATIONS OF SECTION 1183 OF THE TAX LAW

94. Petitioner reaffirms and re-alleges all allegations contained in paragraphs 1-93 herein.

95. New York Executive Law § 63(12) empowers the Attorney General to seek restitution and injunctive relief when any person or business entity has engaged in repeated illegal acts or otherwise demonstrates illegality in the carrying on, conducting, or transaction of business.

96. Respondents have repeatedly violated Section 1183 of the Tax Law by engaging in the business of selling vapor products without a vapor products certificate of registration from the Commissioner of DTF.

97. Respondents have therefore engaged in repeated and persistent illegality in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION
PURSUANT TO PUBLIC HEALTH LAW § 12

98. Petitioner reaffirms and re-alleges all allegations contained in paragraphs 1-97 herein.

99. PHL § 12 provides for the imposition of civil penalties and for issuance of injunctive relief when any person violates any provision of the Public Health Law or the regulations issued pursuant thereto, or disobeys or disregards any lawful notice or order of DOH issued pursuant thereto.

100. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling and/or offering for sale Flavored Vapor Products. PHL § 1399-mm-1(2).

101. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling vapor products to an individual under the age of twenty-one. PHL § 1399-cc(2).

102. Respondents have repeatedly violated Article 13-F of the Public Health Law, by selling vapor products to an individual without first requiring government issued identification for proof of age. PHL § 1399-cc(3).

103. Respondents have repeatedly violated Article 13-F of the Public Health Law, by failing to display and store electronic cigarettes offered for sale behind the counter in an area accessible only to store personnel or in a locked container. PHL § 1399-cc(7).

104. Respondents have repeatedly violated Article 13-F of the Public Health Law, by failing to display a sign prohibiting the sale of tobacco and vapor products to persons under the age of twenty-one. PHL § 1399-cc(2).

105. Respondents have repeatedly violated Article 13-F of the Public Health Law by selling or offering to sell Flavored Vapor Products through a multi-package discount or otherwise provided to a consumer Flavored Vapor Products for less than the listed price or non-discounted price in exchange for the Flavored Vapor Products. PHL § 1399-bb.

106. Petitioner now seeks the imposition of civil penalties, and the issuance of injunctive relief for Respondents' violations of the Public Health Law, and the regulations issued pursuant thereto.

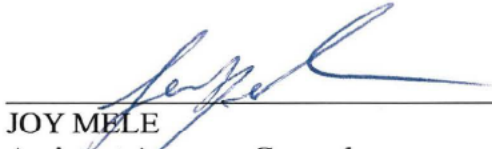
WHEREFORE, Petitioner requests the Court issue an Order and Judgment against Respondents, their agents, trustees, servants, employees, successors, heirs and assigns, or any other person under their direction and control, whether acting individually or in concert with others, or through any corporate or other entity or device through which they may now or hereafter act or conduct business, as follows:

- a) preliminarily and permanently enjoining Respondents from engaging in the business of selling, marketing, or otherwise distributing vapor products;
- b) permanently enjoining each Respondent from applying for or receiving a certificate of authority or a certificate of registration from DTF;
- c) permanently enjoining Respondents from violating Article 13-F of the Public Health Law;
- d) permanently enjoining Respondents from violating Section 1183 of the Tax Law;
- e) requiring that Respondents prepare an accounting of all Flavored Vapor Products sold or offered for sale, from January 1, 2020 to present including the (i) name of the product, (ii) the manufacturer and/or distributor of the product, (iii) a description of the product, (iv) the retail price of the product, (v) the sale price of the product; (vi) the number units of the product sold, and (vii) profits earned from each product;
- f) requiring that Respondents disgorge all profits resulting from the illegal practices alleged herein;
- g) issuing fines and granting penalties pursuant to Public Health Law § 12;
- h) issuance of a civil fine pursuant to Tax Law § 1183;
- i) granting costs to the State of New York against Respondents pursuant to CPLR § 8303(a)(6);
- j) directing Respondents to remove all vapor products from the Store located at 62 Central Avenue, Ilion, New York, and to provide proof of their removal;
- k) directing the closure of Respondents' Store located at 62 Central Avenue, Ilion, NY; and

- 1) for such other and further relief as the Court deems just and proper.

Dated: January 16, 2025
New York, New York

LETITIA JAMES
Attorney General of the State of New York
Attorney for Petitioner



JOY MELE
Assistant Attorney General
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New York, NY 10005
(212) 416-8542
joy.mele@ag.ny.gov

VERIFICATION

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

JOY MELE, being duly sworn, deposes and says: She is an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, and is duly authorized to make this verification.

She has read the foregoing petition and knows the contents thereof, and the same is true to her own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters, she believes them to be true.

The reason this verification is not made by Petitioner is that Petitioner is a body politic. The Attorney General is Petitioner's statutory representative.

JOY MELE

Sworn to before me this
 16th day of January, 2025.


 Notary Public

KARIN KUNSTLER GOLDMAN
 Notary Public, State of New York
 No. 02GO4646418
 Qualified in Kings County

Commission Expires September 30, 2025