

**IN THE DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA**

THE STATE OF)
NEBRASKA, ex rel.) **Case No. CI 24-**
MICHAEL T. HILGERS,)
Attorney General,)

Plaintiff,)

v.)

MIDWEST SMOKE SHOP,)
an Unincorporated)
Nebraska Association,)
ADAM STREET SMOKE)
SHOP, LLP, a Nebraska)
Limited Liability)
Partnership, APPLES)
WAY SMOKE SHOP, LLP,) **COMPLAINT**
a Nebraska Limited)
Liability Partnership,)
ALAHDAL SMOKE SHOP,)
LLC, a Nebraska Limited)
Liability Company,)
FARES SMOKE SHOP,)
LLP, a Nebraska Limited)
Liability Partnership,)
GRETNA SMOKE SHOP,)
LLC, a Nebraska Limited)
Liability Company,)
HAFDALLA ALAHDAL,)
KARIMA ELOUAHIDY,)
BALEEGH ALANNSI,)
ABDULMALEK NAGI,)
MOATEZ ALAHDAL,)
JOHN DOEs, real names)
unknown, and JANE)
DOEs, real names)
unknown,)
Defendants.)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW, the State of Nebraska, by and through its Attorney General Michael T. Hilgers, and brings this action against Defendants Midwest Smoke Shop, Adam Street Smoke Shop, LLP, Apples Way Smoke Shop, LLP, Alahdal Smoke Shop, LLC, Fares Smoke Shop, LLP, Gretna Smoke Shop, LLC, Hafdalla Alahdal, Karima Elouahidy, Ballegh Alannsi, Abdulmalek Nagi, Moatez Alahdal, John Does, real names unknown, and Jane Does, real names unknown (collectively, “Midwest Smoke”), to address ongoing deceptive, unfair, unconscionable, and unlawful business practices by Midwest Smoke that place Nebraska consumers at serious risk of harm. Meanwhile, Midwest Smoke profits from manipulatively marketing and selling harmful tetrahydrocannabinol (THC) containing products to Nebraskans, including vulnerable children. The State of Nebraska seeks to obtain injunctive relief, civil penalties, and other equitable relief to address Midwest Smoke’s violations of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (“CPA”), the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (“UDTPA”), and the Nebraska Pure Food Act, Neb. Rev. Stat. § 81-2,282 *et seq.*

INTRODUCTION

1. Nebraska consumers, including its children, are being misled to believe the THC-containing products distributed, promoted, displayed for sale, offered for sale, attempted to be sold, and sold by Midwest Smoke are properly labeled and safe to consume. They are not.

2. Midwest Smoke’s business model seeks to entice and ultimately ensnare Nebraska’s most vulnerable consumers: teenagers and children. Its motive is profit, and in seeking to maximize its financial gains, Midwest Smoke has repeatedly misled the public about the substantial dangers of its THC-containing products. It has ignored the sweeping damage these products may

cause to the health of Nebraska consumers. In doing so, Midwest Smoke engaged in, and continues to engage in, deceptive and harmful acts and practices which constitute unlawful conduct in violation of state law.

3. Nebraska’s consumer protection statutes ensure that when Nebraskans purchase food or other products intended for human consumption, what they buy is properly labeled and ultimately safe to consume.

4. As outlined in greater detail below, the distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling of Midwest Smoke’s THC-containing products violates Nebraska’s consumer protection laws.

5. The State, by and through its Attorney General, asks this Court to enjoin Midwest Smoke’s unlawful behavior, grant appropriate monetary relief for Midwest Smoke’s numerous and repeated violations, and award any and all other relief warranted by law.

BACKGROUND

6. “The public welfare outweighs the right to private gain . . . No man may poison the people for his private profit.” — President Theodore Roosevelt, Special Message to Congress, (Jan. 22, 1909) available at *The American Presidency Project*, University of California Santa Barbara, <https://www.presidency.ucsb.edu/documents/special-message-368>.

7. Tetrahydrocannabinol (THC) is a chemical compound found in the plant *cannabis sativa* L., more commonly known as “marijuana” or, under certain, limited circumstances, as “hemp.” THC is the chemical responsible for the intoxicating effect—the “high”—that is commonly associated with the consumption of marijuana. Consumption of THC can cause a variety of other, sometimes harmful, psychotropic and physiological effects.

8. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells a variety of THC-containing products including dried flower, distillates, edibles, and vapes, for example:



9. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products that mimic well-known, well-established, and generally safe-for-consumption food products.

10. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells look-alike THC-containing products “likely to be appealing to young children.” See Attachment

1, ¶ 1.

11. Look-alike THC-containing products particularly appealing to young children are doubly problematic.
 - a. They increase the risk that children will mistake look-alike THC-containing products for the snack food or candy its packaging mimics, substantially increasing the likelihood of accidental consumption of THC-containing products by vulnerable children. *See* Attachment 1, ¶¶ 2 & 3.
 - b. They evince Midwest Smoke’s intent to distribute, promote, display for sale, offer for sale, attempt to sell, and sell its unsafe, unregulated THC-containing products to children.

12. As the Federal Trade Commission (“FTC”) and the Food and Drug Administration (“FDA”) have indicated in a statement accompanying cease-and-desist letters jointly sent to companies that market and sell such look-alike branded THC products, “[m]arketing edible THC products that can be easily mistaken by children for regular foods is reckless and illegal.” Attachment 1, ¶ 4.

13. Look-alike THC-containing products also facilitate deception by children who may attempt to hide or misrepresent their consumption of intoxicating THC-containing products from their parents and other authority figures, such as school administrators or law enforcement officers.

14. Midwest Smoke does not require a display or proof of identification at any point in the process of ordering and purchasing THC-containing products or in the delivery of the same.

15. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products with inaccurate descriptions and other misrepresentations as to the existence, quantity, and/or potency of the THC contained within their products whereby:

- a. The labels omit the nature and identification of the correct THC (or its variants, equivalents, or analogues) the product contains.
- b. The labels fail to accurately disclose the quantity of the THC (or its variants, equivalents, or analogues) the

product contains.

- c. The labels do not reflect the likelihood of inducing intoxication or warn about potential psychotropic and physiological effects of consuming the product.

16. Nebraska consumers cannot predict, with any degree of certainty, the contents or potency of the THC-containing products manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to be sold, and sold by Midwest Smoke prior to consumption.

17. Midwest Smoke's failures here prevent Nebraska consumers from being able to accurately assess whether the THC-containing products are safe or what psychoactive, physiological, or intoxicating effect they will produce when consumed, as well as generally undermining Nebraska consumers' ability to make informed decisions regarding the consumption of these products.

18. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products involving synthetically-produced THC or a variant, equivalent, or analogue of THC.

19. These synthetically-produced THCs (or their variants, equivalents, and analogues) are unregulated, untested, and, most importantly, unsafe.

20. The danger posed by products containing synthetically-produced THC (and its variants, equivalents, and analogues) is deadly serious. Data from the FDA indicates that dozens of fatal overdoses and poisonings have been attributed directly to the consumption of products containing delta-8, a common form of synthetically produced THC. Attachment 1, ¶ 5.

21. "Between January 2021 and February 2022, U.S. poison control centers received 2,363 reports of negative exposures to [THC-containing] products. Many of these cases concerned unintentional ingestion . . . a disturbing 82% [of those unintentional ingestions] involved children." Attachment 1, ¶ 6.

22. Consuming as little as 2.5 milligrams of a THC-containing gummy can "exceed the toxicity threshold" for a 3-year-old child and send that child to the hospital. Attachment 1, ¶¶ 7 & 8.

23. Synthetically-produced THC is created via a complicated, unregulated manufacturing process that involves toxic, caustic, or otherwise dangerous chemical compounds and catalysts.

24. The process for manufacturing THC also produces many novel synthetic byproducts and compounds; many of these byproducts and compounds are so new that they do not even have formal scientific names. These byproducts and compounds have not been tested for safety or efficacy and it would be “irresponsible to recommend these products for human consumption.” Attachment 1, ¶ 9.

25. Synthetically-produced THC (or their variants, equivalents, and analogues) have not been deemed safe by any Nebraska or federal regulatory body, nor have they been subject to scientific or medical testing that establishes their suitability for human consumption.

26. Indeed, even many States that have legalized or decriminalized recreational marijuana have nevertheless chosen to wholly prohibit the sale of synthetically produced THC_s, including delta-8.

27. Midwest Smoke, by distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling their THC-containing products, has created an environment in which Nebraska consumers are engaged in a game of Russian Roulette: Midwest Smoke’s product may attract consumption by children resulting in a hospital visit or a fatal poisoning; Midwest Smoke’s products may be consumed by adults resulting in unintended or excessive intoxication, a hospital visit, or a poisoning; or, Midwest Smoke’s products may be consumed and have no effect whatsoever.

28. Midwest Smoke’s conduct creates a gravely serious threat of harm to Nebraska consumers, especially to Nebraska’s children.

29. For these reasons, and for the reasons outlined in greater detail below, Midwest Smoke’s distribution, promotion, display for sale, offer for sale, attempt to sell, and sales of THC-containing products violates Nebraska’s Consumer Protection Act, Neb. Rev. Stat. § 59-1601 *et seq.*, its codification of the Uniform Deceptive Trade Practices Act, § 87-301 *et. seq.*, and the Nebraska Pure Food Act, Neb. Rev. Stat. § 81-2,282 *et seq.*

PARTIES

30. The State of Nebraska, by and through its Attorney General and on behalf of all of Nebraska's citizens and consumers, is the Plaintiff in this action.

31. The Attorney General of Nebraska is Nebraska's Chief Law Enforcement Officer. The Attorney General is expressly authorized to enforce Nebraska's consumer protection laws, including both the Consumer Protection Act and the Uniform Deceptive Trade Practices Act. Neb. Rev. Stat. § 59-1608(1); 87-303.05(1). The Attorney General is also authorized, via exercise of the concurrent "powers and prerogatives" shared with Nebraska's County Attorneys, to initiate proceedings to remedy violations of the Pure Food Act. *See* Neb. Rev. Stat. § 84-204 (concurrent power); Neb. Rev. Stat. § 81-2,289(2) (Pure Food Act).

32. In addition to that express statutory authority, the Attorney General has standing to bring a legal action, in the name of the State, when the object of that action is a suit to vindicate the public interest. *See State ex rel. Meyer v. Peters*, 188 Neb. 817, 819-21, 199 N.W.2d 738, 739-41 (1972); *State v. Pacific Express Co.*, 80 Neb. 823, 115 N.W. 619, 620-23 (1908).

33. Defendant Midwest Smoke Shop is an unincorporated association organized under the laws of the State of Nebraska. Its principal place of business is located at 4718 O Street, Lincoln, Nebraska 68510.

34. Midwest Smoke Shop includes anyone acting on behalf of Midwest Smoke in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

35. Midwest Smoke was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Midwest Smoke operates numerous retail outlets throughout Nebraska, in addition to its storefront at 4718 O Street, Lincoln, Nebraska 68510. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells

THC-containing products at all its retail location, including its principal place of business.

36. Midwest Smoke maintains numerous other storefronts throughout Nebraska, including but not limited to:

- a. 2800 North 83rd Street, Lincoln, Nebraska 68507;
- b. 8600 Andermatt Drive, Suite 7, Lincoln Nebraska 68526;
- c. 6125 Apples Way, Suite 203, Lincoln, Nebraska 68516;
- d. 2101 North 120th Street, Unit C3, Omaha, Nebraska 68164;
- e. 14506 West Center Road, Omaha, Nebraska 68144;
- f. 7010 Dodge Street, Omaha, Nebraska 68132;
- g. 16919 Audrey Street, Suite 30, Omaha, Nebraska 68136;
- h. 11757 US-6, Unit 2, Gretna, Nebraska 68028.

37. Defendant Adam Street Smoke Shop, LLP, is a Nebraska limited liability partnership. Its office is located at 2800 N. 83rd Street, Lincoln, Nebraska 68507. Its Chief Executive Office is located at 4891 F Street, Omaha, Nebraska 68117.

38. Adam Street Smoke Shop, LLP, includes anyone acting on behalf of Adam Street Smoke Shop in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

39. Adam Street Smoke Shop, LLP, was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Adam Street Smoke Shop operates a retail storefront location under the brand name Midwest Smoke Shop at 2800 North 83rd Street, Suite B, Lincoln, Nebraska 68507.

40. Defendant Apples Way Smoke Shop, LLP, is a Nebraska limited liability partnership. Its office is located at 6125 Apples Way, Lincoln, Nebraska 68516. Its Chief Executive Office is located at 4891 F Street, Omaha, Nebraska 68117.

41. Apples Way Smoke Shop, LLP, includes anyone acting on behalf of Apples Way Smoke Shop in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

42. Apples Way Smoke Shop, LLP, was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Apples Way Smoke Shop operates a retail storefront location under the brand name Midwest Smoke Shop at 6125 Apples Way, Suite 203, Lincoln, Nebraska 68516.

43. Defendant Alahdal Smoke Shop, LLC, is a Nebraska limited liability company. Its principal place of business is located at 510 Galvin Road South, Bellevue, Nebraska 68005.

44. Alahdal Smoke Shop's registered agent is Moatez Alahdal; his registered address is 510 Galvin Road South, Bellevue, Nebraska 68005.

45. Alahdal Smoke Shop, LLC, includes anyone acting on behalf of Alahdal Smoke Shop in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

46. Alahdal Smoke Shop, LLC, was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Alahdal Smoke Shop operates a retail storefront location under the brand name Midwest Smoke Shop at 2101 North 120th Street, Suite C3, Omaha, Nebraska 68164.

47. Defendant Fares Smoke Shop, LLP, is a Nebraska limited liability partnership. Its office is located at 8600 Andermatt Drive, Lincoln, Nebraska 68526. Its Chief Executive Office is located at 4891 F Street, Omaha, Nebraska 68117.

48. Fares Smoke Shop, LLP, includes anyone acting on behalf of Fares Smoke Shop in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

49. Fares Smoke Shop, LLP, was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Fares Smoke Shop operates a retail storefront location under the brand name Midwest Smoke Shop at 8600 Andermatt Drive, Suite 7, Lincoln, Nebraska 68526.

50. Defendant Gretna Smoke Shop, LLC, is a Nebraska limited liability company. Its principal place of business is located at 430 Conner Grant Road, New Bern, North Carolina 28562. Its

designated address is located at 11757 South Highway 6, Suite 2, Gretna, Nebraska 68028.

51. Gretna Smoke Shop's registered agent is Hafdalla Alahdal; his registered address is 510 Galvin Road South, Bellevue, Nebraska 68005.

52. Gretna Smoke Shop, LLC, includes anyone acting on behalf of Gretna Smoke Shop in a representative capacity, including but not limited to directors, officers, members, employees, agents, staff, and other persons working for or on behalf of the foregoing.

53. Gretna Smoke Shop, LLC, was and continues to be, at all times relevant to this Complaint, engaged in retail trade and other commerce in Nebraska. Gretna Smoke Shop operates a retail storefront location under the brand name Midwest Smoke Shop at 11757 US-6, Suite 2, Gretna, Nebraska 68028.

54. Defendant Hafdalla Alahdal is the owner of Gretna Smoke Shop, LLC, and upon information and belief, is a partner in Fares Smoke Shop, LLP, Apples Way Smoke Shop, LLP, Adam Street Smoke Shop, LLP, and member of Alahdal Smoke Shop, LLC. As owner of Gretna Smoke Shop, Hafdalla, or agents under Hafdalla's direction and control, has engaged in trade and commerce in the State of Nebraska directly and indirectly affecting the people of the State of Nebraska. Upon information and belief, Hafdalla resides at 430 Conner Grant Road, New Bern, North Carolina 28562.

55. Defendant Karima Elouahidy is the manager for Adam Street Smoke Shop, LLP, and Apples Way Smoke Shop, LLP. As manager, Elouahidy, or agents under Elouahidy's direction and control, has engaged in trade and commerce in the State of Nebraska directly and indirectly affecting the people of the State of Nebraska. Upon information and belief, Elouahidy resides at 430 Conner Grant Road, New Bern, North Carolina 28562.

56. Defendant Baleegh Alannsi is a partner in Adam Street Smoke Shop, LLP, and Apples Way Smoke Shop, LLP. As partner, Alannsi, or agents under Alannsi's direction and control, has engaged in trade and commerce in the State of Nebraska directly and indirectly affecting the people of the State of Nebraska. Upon

information and belief, Alannsi resides at 510 Galvin Road South, Bellevue, Nebraska 68005.

57. Defendant Abdulmalek Nagi is a partner in Apples Way Smoke Shop, LLP. As partner Nagi, or agents under Nagi's direction and control, has engaged in trade and commerce in the State of Nebraska directly or indirectly affecting the people of the State of Nebraska. Upon information and belief, Nagi resides at 7435 Nina Street, Omaha, Nebraska 68124.

58. Defendant Moatez Alahdal is the owner of Alahdal Smoke Shop, LLC. As owner, Moatez, or agents under Moatez's direction and control, has engaged in trade and commerce in the State of Nebraska directly or indirectly affecting the people of the State of Nebraska. Upon information and belief, Moatez resides at 430 Conner Grant Road, New Bern, North Carolina 28562.

59. Defendants John Does, real names unknown, and Jane Does, real names unknown: Defendants use various business entities to operate its Midwest Smoke Shop retail locations. The Attorney General has reason to believe that other entities and individuals have played a role in Midwest Smoke Shop, and that the identities and the extent to which these potential parties are liable will be revealed through discovery.

JURISDICTION & VENUE

60. The District Court of Lancaster County has subject-matter jurisdiction pursuant to Neb. Rev. Stat. § 59-1608(1), Neb. Rev. Stat. § 87-303.05(1), and Neb. Rev. Stat. § 81-2,289(2).

61. This Court has personal jurisdiction over Midwest Smoke because, at all times relevant to this Complaint, Midwest Smoke is an unincorporated Nebraska Association operating under the laws of Nebraska. Moreover, Midwest Smoke has conducted and continues to conduct retail operations in Nebraska, including at its Lincoln storefronts in Lancaster County, where it has distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

62. This Court has personal jurisdiction over Adam Street Smoke Shop, LLP, because, at all times relevant to this Complaint,

Adam Street Smoke Shop is a Nebraska limited liability partnership registered under the laws of Nebraska. Moreover, Adam Street Smoke Shop has conducted and continues to conduct retail operations in Nebraska, including at its Lincoln storefront in Lancaster County, where it operates under the brand name Midwest Smoke Shop, and where it has manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

63. This Court has personal jurisdiction over Apples Way Smoke Shop LLP, because, at all times relevant to this Complaint, Apples Way Smoke Shop is a Nebraska limited liability partnership registered under the laws of Nebraska. Moreover, Apples Way Smoke Shop has conducted and continues to conduct retail operations in Nebraska, including at its Lincoln storefront in Lancaster County, where it operates under the brand name Midwest Smoke Shop, and where it has manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

64. This Court has personal jurisdiction over Alahdal Smoke Shop, LLC, because, at all times relevant to this Complaint, Alahdal Smoke Shop is a domestic limited liability company registered under the laws of Nebraska. Moreover, Alahdal Smoke Shop has conducted and continues to conduct retail operations in Nebraska, including at its Omaha storefront in Douglas County, where it operates under the brand name Midwest Smoke Shop, and where it has manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

65. This Court has personal jurisdiction over Fares Smoke Shop, LLP, because, at all times relevant to this Complaint, Fares Smoke Shop is a Nebraska limited liability partnership registered under the laws of Nebraska. Moreover, Fares Smoke Shop has conducted and continues to conduct retail operations in Nebraska, including at its Lincoln storefront in Lancaster County, where it operates under the brand name Midwest Smoke Shop, and where it

has manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

66. This Court has personal jurisdiction over Gretna Smoke Shop, LLC, because, at all times relevant to this Complaint, Gretna Smoke Shop is a domestic limited liability company registered under the laws of Nebraska. Moreover, Gretna Smoke Shop has conducted and continues to conduct retail operations in Nebraska, including at its Gretna storefront in Sarpy County, where it operates under the brand name Midwest Smoke Shop, and where it has manufactured, produced, imported, distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

67. This Court has personal jurisdiction over Hafdalla Alahdal because, at all times relevant to this Complaint, Hafdalla transacted business in the State of Nebraska, Hafdalla's business activities specifically targeted Nebraska and Nebraskan consumers, and this action arose from those activities.

68. This Court has personal jurisdiction over Karima Elouahidy because, at all times relevant to this Complaint, Elouahidy transacted business in the State of Nebraska, Elouahidy's business activities specifically targeted Nebraska and Nebraskan consumers, and this action arose from those activities.

69. This Court has personal jurisdiction over Baleegh Alannsi because, at all times relevant to this Complaint, Alannsi transacted business in the State of Nebraska, Alannsi's business activities specifically targeted Nebraska and Nebraskan consumers, and this action arose from those activities.

70. This Court has personal jurisdiction over Abdulmalek Nagi because, at all times relevant to this Complaint, Nagi transacted business in the State of Nebraska, Nagi's business activities specifically targeted Nebraska and Nebraskan consumers, and this action arose from those activities.

71. This Court has personal jurisdiction over Moatez Alahdal because, at all times relevant to this Complaint, Moatez transacted business in the State of Nebraska, Moatez's business activities

specifically targeted Nebraska and Nebraskan consumers, and this action arose from those activities.

72. Venue for this action lies in this Court because Midwest Smoke transacts business in Lancaster County via its retail outlets located in Lincoln.

FACTS

73. The State of Nebraska re-alleges and expressly incorporates by reference all facts set forth in the preceding paragraphs as though fully set forth herein.

A. Background Regarding Cannabis & Cannabinoids

74. The cannabis plant contains hundreds of naturally occurring chemical compounds. Compounds that are uniquely found within cannabis are called cannabinoids. Attachment 1, ¶ 10.

75. Tetrahydrocannabinol (THC) and cannabidiol (CBD) are the two most well-known cannabinoids.

76. Live cannabis plants produce cannabinoids in a native acid form, most commonly tetrahydrocannabinolic acid (THCA) and cannabidiolic acid (CBDA). These acids naturally react to heat, light, and other natural phenomena, causing them to degrade into other cannabinoids, such as the various expressions of THC. Attachment 1, ¶ 11.

77. Adding additional heat—such as the fire used to ignite a marijuana cigarette or the heat of an oven used to produce a baked good—will accelerate the chemical degradation of THCA contained in cannabis plant material into the most well-known expression of THC, delta-9.

78. Delta-9 THC (also Δ9-THC) is the expression of THC that is most commonly responsible for the intoxicating “high” associated with consumption, inhalation, or other ingestion of marijuana variants of the cannabis plant.

79. When THCA degrades into THC via application of heat, delta-9 THC is by far the most abundant expression of THC that is produced. Attachment 1, ¶ 12.

80. Another expression of THC, delta-8 (also Δ 8-THC), has been observed to exist in cannabis as the product of natural degradation of THCA, but only as a trace element in minuscule amounts and concentrations. Attachment 1, ¶¶ 13 & 14.

81. Producing commercially-viable quantities of delta-8 THC requires producers to engage in chemical synthesis involving caustic chemicals, reagents, and catalysts.

82. As the FDA has explained, “[t]he natural amount of delta-8 THC in hemp is very low, and additional chemicals are needed to convert other cannabinoids in hemp, like CBD, into delta-8 THC (i.e., synthetic conversion).” Attachment 1, ¶ 13.

83. The quantities of naturally-occurring THC found in hemp are so low that extraction of commercially viable quantities is virtually impossible.

84. CBD and THC have related chemical structures but materially different pharmacological effects when ingested.

85. When consumed, inhaled, or otherwise ingested, CBD does not induce an intoxicating effect.

86. When consumed, inhaled, or otherwise ingested, THC induces intoxicating effects, including, in some individuals, delusions and hallucinations.

87. Because of the intoxicating effects of THC, both the federal government and Nebraska have long deemed cannabis a controlled substance and listed it, by its colloquial name “marihuana” or “marijuana,” on each of their respective Schedule I. Neb. Rev. Stat. § 28-405, sch. I (c)(8); 21 U.S.C. § 812, sch. I (c)(10); 21 C.F.R. § 1308.11(d)(23).

88. In recent years, both the federal government and Nebraska have legalized low-THC & THCA containing cannabis, colloquially referred to as “hemp.” *See* Pub. L. 115-334, 132 Stat 4490 *codified at* 7 U.S.C. §1639o (“Agriculture Improvement Act of 2018”); Neb. Rev. Stat. § 2-501 *et seq.* (“Nebraska Hemp Farming Act”).

89. The passage of the Agriculture Improvement Act of 2018 and Nebraska Hemp Farming Act permits the cultivation of and, at least in some circumstances, the extraction of cannabinoids from qualifying low-THC cannabis plants, aka “hemp.”

B. Synthetically Produced THC—Its Manner of Production & Dangerous Properties

90. Prior to the passage of the Agriculture Improvement Act of 2018 and Nebraska Hemp Farming Act, black market chemists began creating purely synthetically-produced THC variants, equivalents, and analogues that mimicked the intoxicating effects of THC. Attachment 1, ¶ 15.

91. When consumed, inhaled, or otherwise ingested, these synthetically-produced variants, equivalents, and analogues of THC often produce “serious side effects” including “rapid heart rate, vomiting, agitation, confusion, and hallucinations.” Attachment 1, ¶ 16.

92. Similarly serious side effects, such as “dyspnea, respiratory disorder[s], and seizure” have been linked to the consumption of products containing synthetically-produced THC, such as delta-8 THC. Attachment 1, ¶ 5.

93. “The effects of synthetic cannabinoids can be unpredictable and severe or even life-threatening.” Attachment 1, ¶ 17.

94. “Because the chemical composition of many synthetic cannabinoid products is unknown and may change from batch to batch, these products are likely to contain substances that cause dramatically different effects than the user might expect.” Attachment 1, ¶ 18.

95. “[N]o known cannabis variety produces significant amounts of delta-8 THC, making extraction from plant material infeasible. [Therefore] delta-8 THC cannot be economically extracted from plant material.” Attachment 1, ¶¶ 19 & 20.

96. “[I]n order to produce one kilogram of natural Delta-8 extract, it would take approximately 55,000 kilograms of hemp and cost somewhere in the neighborhood of about \$500 million.” Attachment 1, ¶ 21.

97. Hemp, by definition, contains very low levels of THC and THCA (the precursor to THC). By contrast, hemp contains relatively abundant amounts of CBD and CBDA (the precursor to

CBD).

98. CBD can be transformed, via various synthetic processes involving industrial grade-solvents, acids, and other caustic and toxic chemicals, into expressions of THC such as delta-8 THC. Attachment 1, ¶¶ 13 & 22.

99. For example, one common conversion process involves “refluxing CBD in an organic solvent, such as toluene or heptane, with p-toluenesulfonic acid or another acid that serves as a catalyst.” Attachment 1, ¶ 23.

100. Done haphazardly or improperly, the transformation of CBD into THC can leave behind residual byproducts that remain mixed in with the synthetically produced THC. Attachment 1, ¶¶ 9 & 24.

101. Thus, the process for manufacturing synthetically-produced THC, including delta-8 THC, can—and often does—leave behind “residuals of . . . toxic reagents” including “residual solvents, neutralizing bases, and heavy metals.” Attachment 1, ¶ 23.

102. These residual byproducts of the manufacturing process are unsafe for human consumption.

103. Even when these reagents, catalysts, and other toxic chemicals are successfully removed by manufacturers who utilize proper quality controls, synthetically-produced THC itself raises safety concerns.

104. Most synthetically-produced THC compounds “are not found in nature and have not been tested for safety or efficacy;” their “toxicity [is] unknown.” Attachment 1, ¶ 9.

105. Products containing synthetically-produced THC, such as delta-8 THC, have “not been evaluated or approved by the FDA for safe use in any context.” Attachment 1, ¶ 13.

106. From January 2021 through February 2022, consumption of or exposure to products containing delta-8 THC resulted in thousands of adverse health events reported to national poison control centers; 70% of those exposures required the affected individual to be evaluated at a health care facility. Attachment 1, ¶ 13.

107. Over a similar time period (beginning in June 2021), the Food and Drug Administration’s (FDA) Adverse Event Reporting

System (FAERS) database had logged 183 reports for adverse events—including 33 fatalities—that were directly attributed to the consumption of products containing delta-8 THC or similar synthetically-produced forms of THC. Attachment 1, ¶ 5.

108. Although the exact toxicity threshold for any individual varies—some people have higher tolerances than others—the dangers posed by the consumption of THC-containing products is particularly acute with respect to children. Attachment 1, ¶ 27.

109. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing edibles that are labeled as containing nearly 500 milligrams of THC, approximately 200 times the amount needed to send children to the hospital.

110. Thus, consumption of even a tiny fraction of a gummy marketed and sold by Midwest Smoke could send a Nebraska child to the hospital.

111. Vaping devices, also known as electronic nicotine delivery systems, ENDS, e-cigarettes, or vapes, have supplanted cigarettes as the most common way American teenagers smoke or otherwise inhale substances with an intoxicating effect. Attachment 1, ¶ 28.

112. “Vaping products [have] emerg[ed] as the tool of choice for teenagers both nationally and in Nebraska.” Attachment 1, ¶ 29.

113. Data from the CDC indicates that as many as 14% of American high school age teenagers and 3.3% of middle school aged children and teens—more than 2.5 million kids—routinely use vaping devices. Nearly half of the high school aged teens who reported vaping device use reported that their use was “frequent,” while 30% indicated their use was “daily.” Attachment 1, ¶ 30.

114. Vaping is a dangerous, unhealthy activity and is especially harmful to children. Attachment 1, ¶ 31.

115. Although originally designed as a nicotine delivery system, vaping devices can contain synthetically produced THC such as delta-8 THC or another synthetic variant, equivalent, or analogue of THC. Attachment 1, ¶¶ 30 & 32.

116. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells vapes containing or purporting to contain synthetically-produced THC or a synthetic

variant, equivalent, or analogue of THC.

**C. THC-Containing Products
Marketed and Sold by Midwest Smoke**

117. Midwest Smoke is an unincorporated association organized under the laws of Nebraska.

118. Midwest Smoke maintains its principal place of business at 4718 O Street, Lincoln, Nebraska 68510.

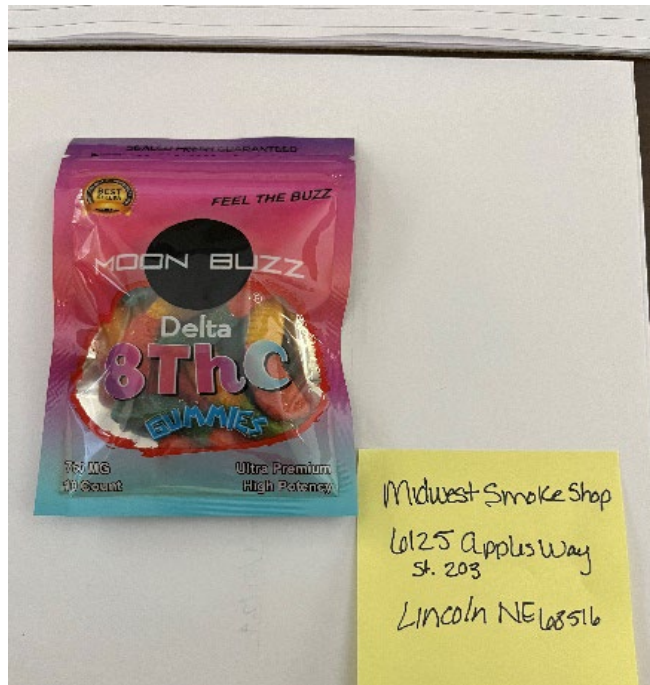
119. Midwest Smoke maintains a retail storefront at its principal place of business, in addition to storefronts in Lincoln, Omaha, and Gretna, Nebraska.

120. The retail locations operating under the brand name, trade name, and/or trademark Midwest Smoke Shop lack common ownership or an operating agreement.

121. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells a variety of THC-containing products including, but not limited to, dried flower, distillates, edibles, pre-rolls, and vapes.

122. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells certain THC-containing products mimicking candy, snack foods, or other food products popular with, and commonly marketed to children, such as:

- a. **Moon Buzz Gummies**, a candy product that mimics typical candy gummy worms, such as those sold by the Trolli Brand.



- b. **Dazed Sour Nerds Gummies**, a candy product that contains Nerds candies, such as those sold by Ferrara Candy Company.



- c. **Funky Monkey Maui Mango Gummies**, a candy peach ring gummy product that mimics Peachie O's commonly sold by Trolli.



123. Midwest Smoke distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products, the labels and packaging of which inaccurately describe or otherwise misrepresent the existence, quantity, or potency of THC contained within the product such as:

- a. **Zombie Extrax – Toffee Cookie**, a candy product labeled as containing 500mg Live Resin Δ 9-THC, PHC, Δ 10-THC, THC-X, THC-B, and THC-P, which in addition to not containing PHC, Δ 10-THC, THC-X, THC-B, or THC-P, actually contains a little over 24mg of Δ 9-THC and 26mg of Δ 8-THC.
- b. **Dazed – Sour Nerds Gummies**, a candy product labeled as containing 500mg Δ 8-THC, which in addition to only containing 33mg of Δ 8-THC, also contains Δ 9-THC, exo-THC and Δ 4(8)-iso-THC.

- c. **Extrax – Dark Chocolate**, a candy product labeled as containing 150mg Live Resin Δ 9-THC, which in addition to only containing 8mg of Δ 9-THC, also contains Δ 8-THC and exo-THC.
- d. **Half Bak’d – Sumo – Wild Watermelon**, a candy product labeled as containing 420mg of THC-A, THC-P, and Δ 9-THC, which in addition to not containing THC-A or THC-P, contains 12mg of Δ 9-THC, plus Δ 8-THC, Δ 8-THCV, exo-THC, Δ 8-iso-THC, and Δ 4(8)-iso-THC.
- e. **Funky Monkey – Maui Mango**, a candy product labeled as containing 600mg per gummy of Δ 8-THC and THC-A, which, in actuality, does not contain Δ 8-THC or THC-A.
- f. **Extrax – Wrecked Purple Mayhem**, a vape oil product labeled as containing 4.5 grams of THC-A, THC-P, and THC-JD, which in addition to not containing THC-P or THC-JD, contains only 1.42mg of THCA, plus Δ 9-THC, Δ 8-THC, Δ 8-THCV, exo-THC, Δ 8-iso-THC, and Δ 4(8)-iso-THC.

124. Midwest Smoke distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products containing synthetically-produced THC (or its variants, equivalents, or analogues) without disclosing to the consumer that the THC in the THC-containing product was synthetically produced.

125. Midwest Smoke does not display any noted requirement near the register of the necessity of any minimum age or proof of identification for the purchase of any THC-containing products.

126. Midwest Smoke does not require a display or identification in order to complete a purchase transaction.

127. Midwest Smoke has distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products with a reckless disregard for the safety of Nebraskans, especially children.

128. Midwest Smoke has a customer loyalty program that utilizes a punch-card to entice consumers, including minor children, to become repeat customers, all in the hopes of receiving a 30% discount after making 8 purchases from its stores.

129. Midwest Smoke's punch-card rewards program has the effect of creating habitual users who repeatedly purchase its products, leading consumers, specifically minor children, to increasingly frequent its stores seeking a discount on its products.

130. Upon information and belief, Midwest Smoke distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold vaping products and edibles containing or purporting to contain synthetically produced THC, or a synthetic variant, equivalent, or analogue of THC, to minor children in the State of Nebraska.

131. Upon information and belief, the vaping products and edibles containing or purporting to contain synthetically produced THC, or a synthetic variant, equivalent, or analogue of THC, that Midwest Smoke sold to minor children has caused serious harm and hospitalization.

132. Upon information and belief, Midwest Smoke continues to distribute, promote, display for sale, offer for sale, attempt to sell, and sell products containing synthetically produced THC, or a synthetic variant, equivalent, or analogue of THC, to minor children within the State of Nebraska.

133. Midwest Smoke has engaged in other specific marketing and promotional behavior that evinces its intent to make its THC-containing products attractive to, and thereby solicit purchases from, minor children.

134. Midwest Smoke has marketed and offered for sale THC-containing products with a reckless disregard for the safety of the customers, including minor children, to whom it sells its products.

135. Midwest Smoke has marketed and offered for sale THC-containing products with a reckless disregard for the safety of Nebraskans, including minor children, for whom it is foreseeable that, due to the look-alike nature of those products branding and packaging, will accidentally consume those THC-containing products.

136. Midwest Smoke's conduct creates a gravely serious threat of harm to Nebraska consumers, especially to Nebraska's children. This conduct must stop.

**COUNTS I THROUGH VII:
VIOLATIONS OF THE
CONSUMER PROTECTION ACT
NEB. REV. STAT. §§ 59-1601 *et seq.*
(UNFAIRNESS)**

137. The State of Nebraska re-alleges and expressly incorporates by reference all facts set forth in the preceding paragraphs as though fully set forth herein.

138. The Consumer Protection Act, Neb. Rev. Stat. § 59-1602, prohibits “unfair ... acts or practices in the conduct of any trade or commerce.”

139. An act or a practice is unfair if that act or practice is offensive to public policy, immoral, unethical, oppressive, unscrupulous, or causes substantial injury to consumers.

140. Midwest Smoke is a “person” within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(1).

141. Midwest Smoke conducts “trade and commerce” within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(2).

142. Midwest Smoke engaged in unfair acts or practices in the conduct of trade or commerce in violation of Neb. Rev. Stat. § 59-1602 by, without limitation:

- a. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products in retail sale without consideration for age restriction or youth buyers.
- b. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale in consumable products that are similar to food products that are regularly marketed towards children.
- c. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that are likely to attract consumption by children.
- d. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing

products at retail sale that contain THC (or its variants, equivalents, or analogues) that are not disclosed on the packaging.

- e. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that contain THC (or its variants, equivalents, or analogues) at concentrations that are not disclosed on the packaging.
- f. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that do not contain THC (or its variants, equivalents, or analogues) at concentrations that are disclosed on the packaging.
- g. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that contain extremely high THC concentrations that are likely to be consumed at levels that are harmful to consumers, particularly to children.

143. Midwest Smoke knows that its THC-containing products should not be consumed by children, yet it openly distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells its THC-containing products in a manner that is likely to encourage children to purchase, consume, or acquire those products, in flagrant disregard of the immoral, unethical, and unscrupulous implications of its behavior and the injury to its customers.

144. Midwest Smoke has caused injury to Nebraska consumers, especially to Nebraska's children.

145. Midwest Smoke's actions constitute unfair acts or practices in the conduct of trade or commerce in violation of Neb. Rev. Stat. § 59-1602. Each and every distribution, promotion, display for sale, offer for sale, attempt to sell, and sale of applicable THC-containing product constitutes a separate and independent violation of the Consumer Protection Act which should be enjoined and for which the State of Nebraska is entitled to recover civil penalties pursuant to Neb. Rev. Stat. § 59-1614.

**COUNT VIII THROUGH XV:
VIOLATION OF THE
CONSUMER PROTECTION ACT
NEB. REV. STAT. §§ 59-1601 *et seq.*
(DECEPTION)**

146. The State of Nebraska re-alleges and expressly incorporates by reference all facts set forth in the preceding paragraphs as though fully set forth herein.

147. The Consumer Protection Act, Neb. Rev. Stat. § 59-1602, prohibits “deceptive acts or practices in the conduct of any trade or commerce.”

148. An act or a practice is deceptive if the act or practice possessed the tendency or capacity to mislead or created the likelihood of deception.

149. Midwest Smoke is a “person” within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(1).

150. Midwest Smoke conducts “trade and commerce” within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(2).

151. Midwest Smoke engaged in deceptive acts or practices in the conduct of trade or commerce in violation of Neb. Rev. Stat. § 59-1602 by, without limitation:

- a. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale in consumable products that are similar to food products that are regularly marketed towards children.
- b. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that contain THC (or its variants, equivalents, or analogues) that are not disclosed on the packaging.
- c. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that contain THC (or its variants, equivalents, or analogues) at concentrations that are not

disclosed on the packaging

- d. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that do not contain THC (or its variants, equivalents, or analogues) at concentrations that are disclosed on the packaging.

152. Midwest Smoke's actions constitute deceptive acts or practices in the conduct of any trade or commerce in violation of Neb. Rev. Stat. § 59-1602. Each and every distribution, promotion, display for sale, offer for sale, attempt to sell, and sale of applicable THC-containing product constitutes a separate and independent violation of the Consumer Protection Act which should be enjoined and for which the State of Nebraska is entitled to recover civil penalties pursuant to Neb. Rev. Stat. § 59-1614.

**COUNTS XVI THROUGH XX
VIOLATION OF THE
UNIFORM DECEPTIVE TRADE PRACTICES ACT
NEB. REV. STAT. §§ 87-302(a)(3), (5), (6)**

153. The State of Nebraska re-alleges and expressly incorporates by reference all facts set forth in the preceding paragraphs as though fully set forth herein.

154. Section 87-302(a) of the Uniform Deceptive Trade Practices Act specifies multiple practices that, when conducted in the course of business, constitute prohibited deceptive trade practices, including but not limited to:

- a. Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another. Neb. Rev. Stat. § 87-302(a)(3).
- b. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have. Neb. Rev. Stat. § 87-302(a)(5).
- c. Representing that goods or services do not have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they have. Neb. Rev. Stat. §

87-302(a)(6).

155. Midwest Smoke is a “person” within the meaning of the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301(19).

156. Midwest Smoke is acting “in the course of [its] business” within the meaning of the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-302(a).

157. In the course of its business, Midwest Smoke engaged in deceptive acts or practices in the conduct of their business in violation of Neb. Rev. Stat. § 87-302(a)(3) by, without limitation:

- a. distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale in consumable products that are similar to food products that are regularly marketed towards children.
- b. Causing likelihood of confusion or of misunderstanding as to the affiliation, connection, or association of the Midwest Smoke retail locations operating under the same brand name, trade name and/or trademark despite having no common ownership or agreement between the locations.

158. In the course of its business, Midwest Smoke engaged in deceptive acts or practices in the conduct of their business in violation of Neb. Rev. Stat. § 87-302(a)(5) by, without limitation:

- a. distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that do not contain THC (or its variants, equivalents, or analogues) at concentrations that are disclosed on the packaging.

159. In the course of its business, Midwest Smoke engaged in deceptive acts or practices in the conduct of their business in violation of Neb. Rev. Stat. § 87-302(a)(6) by, without limitation:

- a. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale that contain THC (or its variants, equivalents, or analogues) that are not disclosed on the packaging.
- b. Distributing, promoting, displaying for sale, offering for

sale, attempting to sell, and selling THC-containing products at retail sale that contain THC (or its variants, equivalents, or analogues) at concentrations that are not disclosed on the packaging.

160. As described above and without limitation, Midwest Smoke's actions in this Complaint constitute deceptive trade practices pursuant to Neb. Rev. Stat. §§ 87-302(a)(3), (5), (6). Each and every distribution, promotion, display for sale, offer for sale, attempt to sell, and sale of applicable THC-containing product constitutes a separate and independent violation of the Uniform Deceptive Trade Practices Act which should be enjoined and for which the State of Nebraska is entitled to recover civil penalties pursuant to Neb. Rev. Stat. § 87-303.11.

**COUNT XVI:
VIOLATION OF THE
NEBRASKA PURE FOOD ACT
NEB. REV. STAT. §§ 81-2,282 *et seq.***

161. The State of Nebraska re-alleges and expressly incorporates by reference all facts set forth in the preceding paragraphs as though fully set forth herein.

162. The Nebraska Pure Food Act, Neb. Rev. Stat. § 81-2,282, makes it unlawful for “any person to adulterate any food or for any person to manufacture, distribute, offer for sale, or sell any adulterated food.”

163. Food is considered adulterated if, *inter alia*, it “bears or contains any substance which may render it injurious to health, considering the quantity of such substance in or on the food.” Neb. Rev. Stat. § 81-2,282(2)(a).

164. The Nebraska Pure Food Act, Neb. Rev. Stat. § 81-2,283, makes it unlawful for “any person to misbrand any food or distribute, offer for sale, or sell any misbranded food.”

165. Food is considered misbranded if “[i]t does not bear labeling clearly stating (i) the identity of the food in terms likely to be easily and accurately understood by the consumer, (ii) the net quantity of contents of the food in terms authorized under the Weights and Measures Act, and (iii) the name and address of the

manufacturer, distributor, or seller of the food” or “[i]t’s labeling is false or misleading in any manner.” Neb. Rev. Stat. § 81-2,283(2)(a) & (b).

166. Midwest Smoke is a “person” within the meaning of the Nebraska Pure Food Act.

167. In the course of its business, Midwest Smoke distributed, offered for sale, and sold adulterated food products within the meaning of the Nebraska Pure Food Act by, without limitation:

- a. Distributing, offering for sale, and selling food products that were adulterated with THC (or its variants, equivalents, or analogues) in quantities known to be injurious to human health.

168. In the course of its business, Midwest Smoke misbranded food products and distributed, offered for sale and sold misbranded food products within the meaning of the Nebraska Pure Food Act by, without limitation:

- a. Misbranding food products, and distributing, offering for sale, and selling food products at retail sale that contain THC (or its variants, equivalents, or analogues) at concentrations that are not disclosed on the packaging.
- b. Misbranding food products, and distributing, offering for sale, and selling food products at retail sale that contain THC (or its variants, equivalents, or analogues) at different concentrations than are listed on the packaging or include THC variants, equivalents, or analogues that are not disclosed on the packaging at all.

169. As described above and without limitation, Midwest Smoke’s actions in this Complaint constitute violations of the Nebraska Pure Food Act which should be enjoined.

COUNTS XVII:

**VIOLATIONS OF THE UNIFORM
DECEPTIVE TRADE PRACTICES ACT
UNCONSCIONABLE
(Neb. Rev. Stat. § 87-303.01)**

170. The State of Nebraska re-alleges the facts above and incorporates them herein by reference.

171. An unconscionable act or practice by a supplier in connection with a consumer transaction is a violation of UDPTA. Neb. Rev. Stat. § 87-303.01(1).

172. The unconscionability of an act or practice is a question of law for the court. Neb. Rev. Stat. § 87-303.01(2).

173. Midwest Smoke engaged in unconscionable acts and practices in violation of the UDTPA, Neb. Rev. Stat. § 87-303.01 by, without limitation:

- a. Employing a purchase rewards program designed to increase sale frequency of addictive and psychoactive products, including to children and others not fully capable of understanding the risks associated with their purchases;
- b. Employing a purchase rewards program designed to create repeat customers of addictive and psychoactive products, including to children and others not fully capable of understanding the risks associated with their purchases.
- c. Employing a purchase rewards program designed to create habitual users who repeatedly purchase its products, including children and others not fully capable of understanding the risks associated with their purchases.

174. Midwest Smoke's actions constitute unconscionable acts and practices in violation of Neb. Rev. Stat. § 87-303.01. Each and every punch card reward program offered by Midwest Smoke constitutes a separate and independent violation of the UDTPA. Neb. Rev. Stat. § 87-303.01(1).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff State of Nebraska respectfully requests that this Court:

- A. Find that Midwest Smoke engaged in unfair acts or practices in the conduct of trade or commerce, in violation of Neb. Rev. Stat. § 59-1602;
- B. Find that Midwest Smoke engaged in deceptive acts or practices in the conduct of trade or commerce, in violation of Neb. Rev. Stat. § 59-1602;
- C. Order Midwest Smoke to pay civil penalties of not more than two thousand dollars (\$2,000.00) per each separate and individual violation of the Consumer Protection Act, pursuant to Neb. Rev. Stat. § 59-1614.
- D. Find that Midwest Smoke engaged in unlawful deceptive trade practices and unconscionable acts in the course of doing business in violation of Neb. Rev. Stat. § 87-302(a)(3), (5), and (6) and § 87-303.01;
- E. Order Midwest Smoke to pay civil penalties of not more than two thousand dollars (\$2,000.00) for each separate and individual violation of the Uniform Deceptive Trade Practices Act, pursuant to Neb. Rev. Stat. § 87-303.11;
- F. Find that Midwest Smoke engaged in deceptive and unlawful acts, practices, or other behaviors in violation of Neb. Rev. Stat. §§ 81-2,282 to 81-2,290;
- G. Permanently enjoin and restrain Midwest Smoke and its agents, employees, and all other persons and entities, corporate or otherwise, including any person in active concert or participation with any of the foregoing, from engaging in the unfair, deceptive, misleading, and unconscionable conduct, acts, and practices alleged in this Complaint to be in violation of the Consumer Protection Act, the Uniform Deceptive Trade Practices Act, and Pure Food Act pursuant to Neb. Rev. Stat. §§ 59-1608(1), § 87-303.05(1), 81-2,290(2);
- H. Permanently enjoin and restrain Midwest Smoke, and its agents, employees, and all other persons and entities, corporate or otherwise, including any person in active concert or

participation with any of the foregoing, from violating the Consumer Protection Act, the Uniform Deceptive Trade Practices Act, the Pure Food Act, and any amendments thereto;

- I. Permanently enjoin and restrain Midwest Smoke, and its agents, employees, and all other persons and entities, corporate or otherwise, including any person in active concert or participation with any of the foregoing, from engaging in any other business conducted in the State of Nebraska until Midwest Smoke, and any parties subject to the injunction, hereby ordered has complied with any and all orders resulting from this action.
- J. Permanently enjoin and restrain Midwest Smoke, its agents, employees, and all other persons and entities, corporate or otherwise, in active concert or participation with any of them, from engaging in unconscionable acts or practices, in violation of the Uniform Deceptive Trade Practices Act, pursuant to Neb. Rev. Stat. § 87-303.05.
- K. Order Midwest Smoke to pay all costs and reasonable attorneys' fees for the investigation and prosecution of this action, pursuant to Neb. Rev. Stat. §§ 59-1608 and 87-303(b); and,
- L. Grant any such further relief as this Court may deem equitable, just, and appropriate under the law.

Respectfully submitted this 22nd day of April, 2024.

**STATE OF NEBRASKA ex rel.
MICHAEL T. HILGERS, Attorney
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ATTACHMENT 1

1. See Colleen Tressler, *Government warns sellers of edible cannabis: Stop using packaging that mimics food popular with kids*, Federal Trade Commission (Consumer Advice) (July 5, 2023), <https://perma.cc/TQC7-GBKF>.
2. See Berkeley Lovelace Jr, *Reports of young children accidentally eating marijuana edibles soar*, NBC News (Jan. 3 2023), <https://perma.cc/R9V6-DPQ5>.
3. See D. Ompad, K. Synder, et al, *Copycat and lookalike edible cannabis product packaging in the United States*, National Library of Medicine (Mar. 15, 2022), <https://perma.cc/5ALX-Z6A8>.
4. Federal Trade Commission, *FTC Sends Cease and Desist Letters with FDA to Companies Selling Edible Products Containing Delta-8 THC in Packaging Nearly Identical to Food Children Eat* (July 5, 2023), <https://perma.cc/3ZXE-79F8>.
5. T. Simon, J. Simon, et al., *Delta-8, a Cannabis-Derived Tetrahydrocannabinol Isomer: Evaluating Case Report Data in the Food and Drug Administration Adverse Event Reporting System (FAERS) Database*, National Library of Medicine (Jan. 2023), <https://perma.cc/G76J-JSL3>.
6. Mitchell Hamline School of Law (Public Health Law Center), *What's the Deal With Delta-9 THC? Frequently Asked Questions*, (Jun. 2022), <https://perma.cc/E7RR-SSYW>.
7. L. Pepin, M. Simon, et al., *Toxic Tetrahydrocannabinol (THC) Dose in Pediatric Cannabis Edible Ingestions*, American Academy of Pediatrics Vol. 152, Issue 3 (Sep. 2023), <https://perma.cc/DM63-UYKM>.
8. Denise Mann, *It Only Takes a Bite of a Marijuana Edible to Send a Child to the Hospital*, US News & World Report (Aug 28, 2023), <https://perma.cc/ZQ3F-NFDQ> (“A 3-year-old child who weighs around 31 pounds would need to eat just 2.5 milligrams (mg) of the standard 10-mg THC gummies to exceed the toxicity threshold”) (citing Dr. L. Pepin, author of the study published by American Academy of Pediatrics, *supra* ¶ 7).
9. Christopher Hudalla, *We Believe in Unicorns (and Delta-8)*, (Dec. 21. 2021), <https://perma.cc/CB4J-DKQE>.

10. See generally Z. Atakan, *Cannabis, A Complex Plant: Different Compounds and Different Effects on Individuals*, National Library of Medicine (Dec. 2012), <https://perma.cc/4ERR-P7YF>.
11. Guillermo Moreno-Sanz, *Can You Pass the Acid Test? Critical Review and Novel Therapeutic Perspectives of Δ^9 -Tetrahydrocannabinolic Acid A*, National Library of Medicine (Jun. 1, 2016), <https://perma.cc/L4TK-SLBG>.
12. M. Wang, Y. Wang, *et al.*, *Decarboxylation Study of Acidic Cannabinoids: A Novel Approach Using Ultra-High-Performance Supercritical Fluid Chromatography/Photodiode Array-Mass Spectrometry*, National Library of Medicine (Dec. 1, 2016), <https://perma.cc/64CJ-RUUU>.
13. See Food and Drug Administration, *5 Things to Know About Delta-8 Tetrahydrocannabinol: Delta-8 THC*, National Library of Medicine (Feb. 2022), <https://perma.cc/B4EU-SZ75>.
14. D. Gieringer, *NORML's Guide to Delta-8 THC and Other Novel Cannabinoids*, <https://perma.cc/RPL7-AZAH>.
15. See, e.g., Drug Enforcement Administration, *Drug Fact Sheet Spice/K2 (Synthetic Marijuana)* (Oct. 2022), <https://perma.cc/9NQP-YV6E> (“Since 2009, law enforcement has encountered hundreds of different synthetic cannabinoids”; these substances are “chemical compounds created in a laboratory” that are “intended to mimic THC, the main psychoactive ingredient of marijuana”).
16. Centers for Disease Control, *Synthetic Cannabinoids: What Are They? What Are Their Effects* (April 2022), <https://perma.cc/7CWG-RD95>.
17. Ed Cara, *At Least 52 People in Utah Were Poisoned by Fake Cannabis Oil*, Gizmodo (May 25, 2018), <https://perma.cc/37WR-S82B> (quoting CDC’s Epidemic Intelligence Service).
18. DrugFreeConnecticut, *Synthetic Cannabinoids’ Effects on the Body*, <https://perma.cc/NN9D-P6JW>.
19. Hemp Benchmarks, *What Does it Take to Manufacture Delta-8 THC?* (Oct. 13, 2021), <https://perma.cc/36NZ-25BL>.
20. E. Schmidt, *The CBD Spark That Drove the Legal THC Revolution*, (Jan. 2022), <https://perma.cc/Y5B8-QWZP> (“Delta-8 THC, Delta-10 THC . . . appear in such low quantities [in hemp] that it's nearly

- impossible to extract them at scale for product manufacturing.”); *id.* (“To extract and purify [THC expressions such as Delta-8 & Delta-10] from raw plant material is unprofitable, so producers have begun converting more prevalent cannabinoids like cannabidiol (CBD) into Delta-8 and Delta-10 using a combination of acids and solvents. And thanks to the booming CBD industry, processors have access to plenty of supply.”)
21. Kristina Etter, *The Dirt on Delta 8 THC*, Medium (Jun. 7, 2022), <https://perma.cc/734L-F7GB> (citing research and calculations of Dr. Christopher Hudalla, Phd., *see also* ¶ 9, *supra*).
 22. G. Schaurer, *Delta-8 THC and other THC Analogues: Health and Consumer Safety Considerations*, Presentation to Washington State Legislature (Oct. 21, 2021), <https://perma.cc/5MVB-72U2> (“CBD can be synthetically converted into delta-8, delta-9, or delta-10 THC using solvents (e.g., benzene, ethanol) and acids”)
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