

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

THE STATE OF)	
NEBRASKA, ex rel.)	Case No. CI 23-
MICHAEL T. HILGERS,)	
Attorney General,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
KYND CO. VAPE AND)	
SMOKE,)	
a Nebraska Limited)	
Liability Company,)	
)	
Defendant.)	

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

COMES NOW, the State of Nebraska, by and through its Attorney General Michael T. Hilgers, and states:

1. 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. Defendant Kynd Co. Vape and Smoke (“Kynd”) distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells products containing tetrahydrocannabinol (THC) that fall woefully short on both accounts.

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

3. Kynd’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, Kynd 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, Kynd engaged in, and continues to engage in, deceptive and harmful acts and practices which constitute unlawful conduct in violation of state law.

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

INTRODUCTION & BACKGROUND

5. “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>.

6. 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.”

7. THC is the chemical responsible for the intoxicating effect—the “high”—that is commonly associated with the consumption of marijuana. Consumption of THC also causes a variety of other, sometimes harmful, psychotropic and physiological effects.

8. Nebraska consumers, including some of the most vulnerable populations such as 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 Kynd are properly labeled and safe to consume.

9. Kynd 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:



10. Kynd 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.

11. Kynd distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products using imagery or depictions of objects, persons, animals, creatures, or similar caricatures with comically exaggerated features, anthropomorphic attributes, and/or unnatural or extra-human abilities likely to be appealing to children.

12. Examples of THC-containing products with cartoon marketing Kynd distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells include but are not limited to:





13. THC-containing products with cartoon marketing particularly appealing to young children increase the risk that children will accidentally or purposefully consume of THC-containing products and evince Kynd's intent to distribute, promote, display for sale, offer for sale, attempt to sell, and sell its unsafe, unregulated THC-containing products to children.

14. Kynd 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.

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

16. Kynd'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.

17. Kynd 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.

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

19. 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, ¶ 1.

20. "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, ¶ 2.

21. 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, ¶¶ 3 & 4.

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

23. The process for manufacturing synthetic 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, ¶ 5.

24. 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.

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

26. Kynd, 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: Kynd’s product may attract consumption by children resulting in a hospital visit or a fatal poisoning; Kynd’s product may be consumed by adults resulting in unintended or excessive intoxication, a hospital visit, or a poisoning; or, Kynd’s product may be consumed and have no effect whatsoever.

27. Kynd’s conduct creates a gravely serious threat of harm to Nebraska consumers, especially to Nebraska’s children.

28. For these reasons, and for the reasons outlined in greater detail below, Kynd’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

29. 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.

30. 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)

31. 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).

32. Defendant Kynd is a limited liability company organized under the laws of the State of Nebraska. Its principal place of business is located at 702 N 19th Street, Norfolk, NE 68701.

33. Kynd includes anyone acting on behalf of Kynd 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.

34. Kynd was and continues to be, at all times relevant to this Complaint, engaged in retail trade or other commerce in Nebraska. Kynd operates a storefront in Madison County located at 1024 S. 13th Street, Norfolk, Nebraska 68701. Kynd distributes, promotes, displays for sale, offers for sale, attempts to sell, and sells THC-containing products at all its retail locations, including its storefront in Norfolk.

JURISDICTION & VENUE

35. The District Court of Madison 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).

36. This Court has personal jurisdiction over Kynd because, at all times relevant to this Complaint, Kynd is a domestic limited liability company registered under the laws of Nebraska. Moreover, Kynd has conducted and continues to conduct retail operations in

Nebraska, including at its Norfolk storefront in Madison County, where it has distributed, promoted, displayed for sale, offered for sale, attempted to sell, and sold THC-containing products to Nebraska consumers.

37. Venue for this action properly lies in this Court because Kynd transacts business in Madison County via its retail outlet located in Norfolk.

FACTS

38. 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

39. The cannabis plant contains hundreds of naturally occurring chemical compounds. Compounds that are uniquely found within cannabis are called cannabinoids. Attachment 1, ¶ 6.

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

41. 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, ¶ 7.

42. 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.

43. 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.

44. 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, ¶ 8.

45. Another expression of THC, delta-8 (also “Δ8-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, ¶¶ 9 & 10.

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

47. 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, ¶ 9.

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

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

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

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

52. 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).

53. 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”).

54. 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

55. 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, ¶ 11.

56. 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, ¶ 12.

57. 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, ¶ 1.

58. “The effects of synthetic cannabinoids can be unpredictable and severe or even life-threatening.” Attachment 1, ¶ 13.

59. “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, ¶ 14.

60. “[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, ¶¶ 15 & 16.

61. “[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, ¶ 17.

62. 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).

63. 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, ¶¶ 9 & 18.

64. 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, ¶ 19.

65. Other variations on the process utilize different solvents, such as benzene or ethanol, in the place of toluene or heptane, as well as other acids (sulfuric, nitric, etc.). Attachment 1, ¶¶ 18 & 20.

66. 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, ¶¶ 5 & 19.

67. 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, ¶ 19.

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

69. Benzene, for example, is a known carcinogen, subject to exposure restrictions enforced by multiple federal regulatory agencies; acute exposure to high concentrations can be lethal. Long term exposure to lower levels of benzene is also harmful, causing damage to bone marrow, weakening the immune system, and inducing hematologic disorders. Attachment 1, ¶¶ 21 & 22.

70. 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.

71. 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, ¶ 5.

72. 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, ¶ 9.

73. 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, ¶ 9.

74. 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, ¶ 1.

75. 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, ¶ 23.

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

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

78. 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, ¶ 24.

79. “Vaping products [have] emerg[ed] as the tool of choice for teenagers both nationally and in Nebraska.” Attachment 1, ¶ 25.

80. 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, ¶ 26.

81. Vaping is a dangerous, unhealthy activity and is especially harmful to children. Attachment 1, ¶ 27.

82. 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, ¶¶ 26 & 28.

83. Kynd 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 Kynd

84. Kynd Co. Vape and Smoke (“Kynd”) is a limited liability company organized in the State of Nebraska.

85. Kynd maintains its principal place of business at 702 N. 19th Street, Norfolk, NE 68701.

86. Kynd maintains a storefront under the d/b/a of Kynd Co. Vape and Smoke at 1024 S. 13th Street, Norfolk, Nebraska 68701.

87. Kynd sells a variety of THC-containing products including, but not limited to, dried flower, distillates, gummies, other candies, and vapes.

88. Kynd sells THC-containing products using imagery or depictions of objects, persons, animals, creatures, or similar caricatures with comically exaggerated features, anthropomorphic attributes, and/or unnatural or extra-human abilities, such as:

- a. **Neon Buttr Midwest Jealousy** is in packaging that contains the image of a cartoon bear’s head with exaggerated, psychedelic features, a melting pad of butter on its head, and honey dripping from its mouth:



- b. **Neon Buttr Magic Carpet** is in packaging that contains

the image of a cartoon bear's head with exaggerated, psychedelic features, a melting pad of butter on its head, and honey dripping from its mouth:



- c. **Neon Buttr Bear Bites** is in packaging that contains the image of a cartoon bear's head with exaggerated, psychedelic features, a melting pad of butter on its head, and honey dripping from its mouth:



- d. **Neon Buttr Unmatched Potency Badder** is in packaging that contains the image of a cartoon bear's

head with exaggerated, psychedelic features, a melting pad of butter on its head, and honey dripping from its mouth:



- e. **Alien Jelly XXL** is in packaging that features the image of a cartoon extraterrestrial alien's head with exaggerated, psychedelic features and some form of drool or saliva dripping from its mouth:



- f. **Brain Boosterz** is in packaging that contains the image of a cartoon figure's head with a stylized, pink, exposed,

and enlarged brain with no skull, stylized and enlarged eyeballs, the left containing an image of a lightning bolt and the right containing an image of a marijuana flower. In place of the ears are what look to be metallic bolts, and the lower half of the green face looks like an exposed skull with a nose socket instead of a nose and exposed white and yellow teeth. The whole thing could be described as a psychedelic zombie Frankenstein:



89. Kynd 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:
- Neon Buttr Midwest Jealousy** misrepresents the kind of THC within the product, not disclosing it has Delta-9 THC along with THCA.
 - Neon Buttr Magic Carpet** misrepresents the kind of THC within the product, not disclosing it has Delta-9 THC along with Delta-8 THC, THC-P and THCA.
 - Alien Jelly XXL** misrepresents the kind of THC within the product, not disclosing it has Delta-9 THC along with Delta-8 THC.
 - Neon Buttr Bear Bites** misrepresents the kind of THC

within the product, not disclosing it has Delta-6a10a-THC or any exo-THC along with Delta-9 THC, Delta-8 THC, THC-P, Delta-10 THC and exo-THC.

90. Kynd sells THC-containing products that contain chemicals, adulterants, or other contaminants unsafe for human consumption, such as:
 - a. **Neon Buttr Midwest Jealousy** contains a yeast and mold content of 90,000 CFU per gram that is far in excess of recommended limits for consumable botanical products of 10,000 CFU per gram.
 - b. **Neon Buttr Magic Carpet** contains 1,120 parts per million of ethanol and 708 parts per million of acetone.
91. Kynd sold low-price THC-containing products, including **Slosh Pops**, a single-packaged lollipop product containing Delta-8 THC for a mere \$0.99 in an unrestricted self-help display right next to their cash register.
92. Kynd offered store-exclusive, promotional bulk purchasing taking 50% off of the purchase price of \$200-worth of brand-specific product that the customer is able to fit into a “smell proof bag” that also includes free cartoon-containing, brand-specific apparel merchandise.
93. Kynd has a customer loyalty or other promotional policy designed to encourage repeat buying.
94. Kynd offered significantly discounted prices, offered coupons, or otherwise utilized sales tactics that make its THC-containing products more accessible to minor children.
95. Kynd provided customers with recommendations for storage and use of the offered vape and edible THC products.
96. Kynd does not require proof of identification or a minimum age in order to enter the store.
97. Kynd does not limit access to its THC-containing products.
98. Kynd 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.
99. Kynd 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 those products.

100. Kynd has marketed and offered for sale THC-containing products with a reckless disregard for the safety of the 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.

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

101. 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.

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

103. 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.

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

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

106. Kynd 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 with unrestricted access in a retail environment without consideration for age restriction or youth access.
- b. 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.

- c. Distributing, promoting, displaying for sale, offering for sale, attempting to sell, and selling THC-containing products at retail sale in conjunction with imagery or depictions that are likely to attract or induce youth purchasers and consumers.
- d. 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.
- e. 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.
- f. 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.
- g. 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) that are disclosed on the packaging.
- h. 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.
- i. 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.
- j. 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.

107. Kynd 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.

108. Kynd has caused injury to Nebraska consumers, especially to Nebraska's children.

109. Kynd'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 XI THROUGH XV:
VIOLATION OF THE
CONSUMER PROTECTION ACT
NEB. REV. STAT. §§ 59-1601 *et seq.*
(DECEPTION)**

110. 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.

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

112. 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.

113. Kynd is a "person" within the meaning of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(1).

114. Kynd conducts "trade and commerce" within the meaning

of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601(2).

115. Kynd 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 do not contain THC (or its variants, equivalents, or analogues) that are 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 contain THC (or its variants, equivalents, or analogues) at concentrations 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 do not contain THC (or its variants, equivalents, or analogues) at concentrations that are disclosed on the packaging.

116. Kynd'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)**

117. 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.

118. 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).

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

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

121. In the course of its business, Kynd 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.

122. In the course of its business, Kynd 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 THC (or its variants, equivalents, or analogues) that are 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 do not contain THC (or its variants, equivalents, or analogues) at concentrations that are disclosed on the packaging.

123. In the course of its business, Kynd 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.

124. As described above and without limitation, Kynd'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 XXI
VIOLATION OF THE
NEBRASKA PURE FOOD ACT
NEB. REV. STAT. §§ 81-2,282 *et seq.***

125. 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.

126. 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.”

127. 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).

128. 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.”

129. 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).

130. Kynd is a “person” within the meaning of the Nebraska Pure Food Act.

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

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

131. In the course of its business, Kynd 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 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 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.
- c. Misbranding food products, and distributing, offering for sale, and selling food products at retail sale, that are otherwise false or misleading

132. As described above and without limitation, Kynd's actions in this Complaint constitute violations of the Nebraska Pure Food Act which should be enjoined.

PRAYER FOR RELIEF

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

- A. Find that Kynd engaged in unfair acts or practices in the conduct of trade or commerce, in violation of Neb. Rev. Stat. § 59-1602;
- B. Find that Kynd engaged in deceptive acts or practices in the conduct of trade or commerce, in violation of Neb. Rev. Stat. § 59-1602;
- C. Order Kynd 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 Kynd engaged in unlawful deceptive trade practices in the course of doing business in violation of Neb. Rev. Stat. § 87-302(a)(3), (5), and (6);

- E. Order Kynd 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 Kynd 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 Kynd 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 Kynd, 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 Kynd, 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 Kynd, and any parties subject to the injunction, hereby ordered has complied with any and all orders resulting from this action.
- J. Order Kynd 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,
- K. Grant any such further relief as this Court may deem equitable, just, and appropriate under the law.

Respectfully submitted this 25 day of October, 2023

**STATE OF NEBRASKA ex rel.
MICHAEL HILGERS, Attorney General**

BY: MICHAEL T. HILGERS, #24483
Nebraska Attorney General

BY: /s/
Jennifer A. Huxoll, #20406
Daniel J. Muelleman, # 25806
Justin J. Hall, # 26161
Joshua E. Dethlefsen, #24667
Assistant Attorneys General

Zachary A. Viglianco, #27852
Deputy Solicitor General

Office of the Attorney General
2115 State Capitol
Lincoln, Nebraska 68509-8920
Telephone: (402) 471-1921
Telephone: (402) 471-1833
jennifer.huxoll@nebraska.gov
daniel.muelleman@nebraska.gov
justin.hall@nebraska.gov
joshua.dethlefsen@nebraska.gov
zachary.viglianco@nebraska.gov

Attorneys for Plaintiff

ATTACHMENT 1

1. 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>.
2. 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>.
3. 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>.
4. 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)
5. Christopher Hudalla, *We Believe in Unicorns (and Delta-8)*, (Dec. 21. 2021), <https://perma.cc/CB4J-DKQE>.
6. *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>.
7. 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>.
8. 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>.

9. 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>.
10. D. Gieringer, *NORML's Guide to Delta-8 THC and Other Novel Cannabinoids*, <https://perma.cc/RPL7-AZAH>.
11. 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”).
12. Centers for Disease Control, *Synthetic Cannabinoids: What Are They? What Are Their Effects* (April 2022), <https://perma.cc/7CWG-RD95>.
13. 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).
14. DrugFreeConnecticut, *Synthetic Cannabinoids’ Effects on the Body*, <https://perma.cc/NN9D-P6JW>.
15. Hemp Benchmarks, *What Does it Take to Manufacture Delta-8 THC?* (Oct. 13, 2021), <https://perma.cc/36NZ-25BL>.
16. 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.”)

17. 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*).
18. 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”)
19. Britt Erickson, *Delta-8-THC craze concerns chemists*, Chemical & Engineering News, C&EN Magazine Vol. 99, Issue 31 (Aug. 30, 2021), <https://perma.cc/F93B-DQMV>.
20. G. Schaurer, *Delta-8 THC and other THC Analogues: Health and Consumer Safety Considerations*, *supra* ¶ 22, (testing of delta-8 samples “obtained legally from the market” contained not only “residual solvents” but also heavy metals including copper, chromium, nickel, lead, and numerous compounds of “unknown identification”).
21. American Cancer Society, *Benzene and Cancer Risk*, (Feb. 1, 2023), <https://perma.cc/M7FV-FMPH>.
22. Centers for Disease Control, Agency for Toxic Substances and Disease Registry, *Medical Management Guidelines for Benzene*, (Mar. 2015), <https://perma.cc/CPS6-ESB9>.
23. M. Tweet, A. Nemanich et al., *Pediatric Edible Cannabis Exposures and Acute Toxicity: 2017–2021*, American Academy of Pediatrics Vol. 151, Issue 2 (Feb. 2023), <https://perma.cc/P4WJ-WXME>.
24. Food and Drug Administration, *Results from the Annual National Youth Tobacco Survey* (Dec. 20, 2022), <https://perma.cc/BWH8-M7YN> (identifying e-cigarettes as the most commonly reported way to smoke)
25. Andrew Wegley, *“The New Cigarette” – Usage of Vape Products Skyrockets Among Nebraska Teens*, The Lincoln Journal Star (Dec 5, 2021), <https://perma.cc/N2ZV-8JKN>.

26. Centers for Disease Control, *Notes from the Field: E-cigarette Use Among Middle and High School Students — United States, 2022*, <https://perma.cc/2H49-JWW7>.
27. See generally Centers for Disease Control, *Quick Facts on the Risks of E-cigarettes for Kids, Teens, and Young Adults* (Aug. 30, 2023), <https://perma.cc/E4QN-JTPQ>.
28. M. Peace, K. Butler *et al*, *Evaluation of Two Commercially Available Cannabidiol Formulations for Use in Electronic Cigarettes*, National Library of Medicine (Aug 29, 2016), <https://perma.cc/S2QJ-LSVX>.