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15 R.J. Reynolds Tobacco Company,
16 American Petroleum and Convenience
Store Association, JGB Properties Inc.,
and Fresno Elite Carwash Inc.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF FRESNO**

19 R.J. REYNOLDS TOBACCO COMPANY;
20 AMERICAN PETROLEUM AND
21 CONVENIENCE STORE ASSOCIATION;
22 JGB PROPERTIES INC.; and FRESNO
23 ELITE CARWASH INC.,

24 Plaintiffs-Petitioners,

25 v.

26 ROB BONTA, in his official capacity as
27 Attorney General of California; and LISA A.
28 SMITTCAMP, in her official capacity as
District Attorney of the County of Fresno and
as a representative of all California District
Attorneys,

Defendants-Respondents.

CASE NO. [23CECG01734](#)

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
VERIFIED PETITION FOR WRIT
OF MANDATE**

[Unlimited Jurisdiction - Amount Exceeds
\$25,000]

1 Plaintiff-Petitioner¹ R.J. Reynolds Tobacco Company (“RJRT”), and Plaintiffs-Petitioners
2 American Petroleum and Convenience Store Association (“APCA”), JGB Properties Inc. (“JGB
3 Properties”), and Fresno Elite Carwash Inc. (“Fresno Elite”) (collectively, the “Retailer Plaintiffs”),
4 bring this action for declaratory and injunctive relief and verified petition for a writ of mandate
5 against Defendant-Respondent Rob Bonta, in his official capacity as Attorney General of
6 California, and Defendant-Respondent Lisa A. Smittcamp, in her official capacity as District
7 Attorney of the County of Fresno and as a representative of all California District Attorneys.

8 INTRODUCTION

9 1. Plaintiff RJRT manufactures cigarettes under the brands Camel and Newport. Until last
10 year, tobacco- and menthol-flavored versions of both brands were sold in California. Since
11 December 21, 2022, California has prohibited retailers from selling tobacco products with a
12 characterizing flavor, defined as a distinguishable taste or aroma other than that of tobacco. In
13 response to the ban, Reynolds ceased making its menthol-flavored Camel and Newport cigarettes
14 available for sale in California. At the same time, RJRT introduced several new styles of non-
15 menthol, tobacco-flavored Camel and Newport cigarettes. When smoked, none of RJRT’s new
16 cigarettes imparts any distinguishable taste or aroma other than that of tobacco. Each new product
17 prominently states on its packaging and promotional materials that the cigarettes are “NON-
18 MENTHOL.”

19 2. Despite this, on April 25, 2023, Attorney General Bonta sent RJRT four Notices of
20 Determination (collectively, the “Notices”) asserting that RJRT’s new products are “presumptively
21 FLAVORED” for purposes of the characterizing flavor ban. The Attorney General conceded that
22 these determinations are not based on any effort to determine the new products’ actual tastes or
23 aromas. Instead, relying on a “rebuttable presumption” provision that governs evidentiary burdens
24 in judicial proceedings, the Attorney General contended that the packaging and promotional
25 materials of RJRT’s new products imply that they impart a characterizing menthol flavor. In
26 reaching this conclusion, the Attorney General ignored the products’ prominent “NON-
27

28 ¹ For the convenience of the reader, this Complaint hereinafter refers to Plaintiffs-Petitioners as
“Plaintiffs” and Defendants-Respondents as “Defendants.”

1 MENTHOL” labeling, and instead offered vague allegations and cherry-picked and incomplete
2 samples of the new products’ marketing and advertising, which are misleadingly presented or
3 simply wrong (for example, they use incomplete images of the new products and rely on a
4 “comparator product” that has never been sold anywhere in the United States). In the end, the
5 Notices do not identify any statements by RJRT suggesting that any of the new products impart a
6 prohibited characterizing flavor. Nevertheless, the Attorney General promised to post the Notices
7 on the Department of Justice’s public website in a clear effort to discourage retailers from carrying
8 the products.

9 3. The Notices were subsequently obtained and published by the media, causing them to
10 be widely publicized and misinterpreted. At least one local public health official has used the
11 Notices to direct that RJRT’s new products be removed from retail shelves.

12 4. In contrast to his unwarranted focus on RJRT’s lawful products, the Attorney General
13 has apparently turned a blind eye to open and notorious sales of flavored disposable e-cigarettes.
14 Targeting RJRT’s lawful tobacco-flavored products while youth use of flavored disposable e-
15 cigarettes skyrockets is arbitrary and unlawful and undercuts the goals of the characterizing flavor
16 ban.

17 5. The Attorney General’s determination that RJRT’s new products are “presumptively
18 FLAVORED” is erroneous and unlawful in several respects, and the Notices threaten to cause
19 severe and irreparable harm to RJRT and the Retailer Plaintiffs. The Attorney General’s
20 misinterpretation and misapplication of the characterizing flavor ban must be rectified.

21 6. Plaintiffs accordingly seek declaratory and injunctive relief, and petition the Court to
22 issue a writ of mandate, as set forth more fully below.

23 **BACKGROUND**

24 7. RJRT manufactures cigarettes under the brands Camel and Newport. Until last year,
25 tobacco- and menthol-flavored styles of both brands were sold in California.

26 8. The California Legislature enacted a ban on “flavored tobacco products” on August 28,
27 2020. The bill amended the California Health and Safety Code by adding a provision that prohibits
28 a “tobacco retailer, or any of the tobacco retailer’s agents or employees” from selling, offering for

1 sale, or possessing with the intent to sell or offer to sell “a flavored tobacco product or a tobacco
2 product flavor enhancer.” Health & Saf. Code § 104559.5(b)(1).

3 9. The provision defines a “flavored tobacco product” as “any tobacco product that
4 contains a constituent that imparts a characterizing flavor.” *Id.* § 104559.5(a)(4). And in turn, it
5 defines “characterizing flavor” as “a distinguishable taste or aroma, or both, other than the taste or
6 aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco
7 product.” A provision of the statute provides that “[t]here is a rebuttable presumption that a tobacco
8 product is a flavored tobacco product if a manufacturer or any of the manufacturer’s agents or
9 employees, in the course of their agency or employment, has made a statement or claim directed to
10 consumers or to the public that the tobacco product has or produces a characterizing flavor.” *Id.*
11 § 104559.5(b)(2).

12 10. The Governor signed the characterizing flavor ban in 2020, and it then withstood a
13 popular referendum challenge at the ballot in the general election on November 8, 2022.

14 11. By the ban’s effective date of December 21, 2022, RJRT ceased making its menthol
15 cigarettes available for retail sale in California and instructed retailers and wholesalers to halt any
16 further sales of RJRT’s menthol cigarettes in California.

17 12. RJRT introduced new products in California under the Newport and Camel brands.
18 RJRT marketed these new products and took steps to make them available to retailer consumers
19 beginning December 21, 2022.

20 13. Some of these new products contain an ingredient commonly referred to as “WS-3.”²
21 This chemical imparts a cooling sensation, but has no taste or aroma that is perceptible by humans
22 in the concentrations used in RJRT’s new products.

23 14. The Flavor & Extract Manufacturers Association of the United States (“FEMA”)
24 deemed WS-3 to be Generally Recognized as Safe (“GRAS”) in the 1970s. In the decades since,
25 WS-3 has been used in many food and cosmetic products because it imparts a cooling sensation
26

27 ² N-Ethyl-p-menthane-3-carboxamide is commonly referred to as “WS-3,” or “WS3.” Reynolds
28 uses the scientific name (N-Ethyl-p-menthane-3-carboxamide) instead of the trade name “WS-3”
or “WS3” in its trade publications concerning the use of N-Ethyl-p-menthane-3-carboxamide, but
this Complaint utilizes the term “WS-3” for the reader’s convenience.

1 without any associated taste or aroma.

2 15. The remaining new products contain a crushable capsule, which does not contain
3 menthol, inside the filter. When crushed by the user while smoking the cigarette, the capsule
4 releases liquid that brightens, smooths, and mellows the tobacco flavor but does not impart a
5 distinguishable taste or aroma other than tobacco.

6 16. On the packaging and promotional materials for these new products, RJRT prominently
7 tells consumers that the products are “NON-MENTHOL.” Because federal law allows only
8 tobacco- and menthol-flavored cigarettes, consumers and the public understand that “NON-
9 MENTHOL” means that the cigarettes are unflavored or tobacco-flavored.

10 17. On April 25, 2023, the Attorney General sent four Notices of Determination
11 (collectively, “Notices”) to RJRT regarding these products. *See* Ex. 1 (Notice of Determination
12 23-04-A1); Ex. 2 (Notice of Determination 23-04-A2); Ex. 3 (Notice of Determination 23-04-A3);
13 Ex. 4 (Notice of Determination 23-04-A5).

14 18. In the Notices, the Attorney General asserted that the new products had triggered the
15 characterizing flavor ban’s rebuttable presumption through the new products’ labeling, packaging,
16 and promotional materials. *See, e.g.*, Ex. 1 [23-04-A1] at 1; Ex. 2 [23-04-A2] at 1; Ex. 3 [23-04-
17 A3] at 1; Ex. 4 [23-04-A5] at 1. Contrary to the Attorney General’s assertions, the rebuttable
18 presumption cannot be applied in enforcing the statute and RJRT’s new products in any event do
19 not trigger the rebuttable presumption. Moreover, the new products are outside the scope of the
20 characterizing flavor ban because none has any distinguishable non-tobacco taste or aroma when
21 smoked.

22 19. First, the rebuttable presumption provision of the characterizing flavor ban does not
23 apply and (even if it did) does not bring any of RJRT’s new products within the scope of the
24 characterizing flavor ban. To begin, the Attorney General misunderstands the nature of the
25 presumption, which governs burdens of production and proof in judicial proceedings, not
26 substantive application of the characterizing flavor ban. The Attorney General may not invoke the
27 presumption (and the manufacturer’s alleged failure to rebut it) as a basis for enforcing the ban
28 against the new products without a good-faith determination—absent here—that the products

1 actually impart a characterizing flavor. Moreover, the presumption (a provision of the
2 characterizing flavor ban, which is a criminal statute) cannot constitutionally be applied to the new
3 products, and the Attorney General has not met the burden imposed by California’s Evidence Code,
4 which requires the prosecution to prove beyond a reasonable doubt any facts that may trigger an
5 evidentiary presumption. Further, neither RJRT nor its agents or employees have made any claims
6 or statements that trigger the presumption. To the contrary, RJRT clearly and repeatedly
7 communicated to consumers and the public, on packaging and in promotional materials, that the
8 products are “NON-MENTHOL,” i.e. tobacco-flavored, cigarettes. Finally, any application of the
9 presumption is rebutted here because RJRT’s new products contain no constituent that imparts a
10 distinguishable taste or aroma other than tobacco when smoked.

11 20. Second, regardless whether the presumption applies and has been triggered here, the
12 new products do not impart a characterizing flavor (i.e., a distinguishable taste or aroma other than
13 tobacco) when smoked. The plain text of the characterizing flavor ban makes clear that the ban
14 applies only to products that impart a distinguishable taste or aroma other than that of tobacco.
15 Health & Saf. Code § 104559.5(a)(1), (a)(4).

16 21. The products with WS-3 do not impart a characterizing flavor other than tobacco. WS-3
17 imparts no taste or aroma (let alone a distinguishable taste or aroma) in concentrations used in
18 RJRT’s tobacco products. In fact, WS-3 has been used as an additive in food and cosmetics for
19 decades precisely because it does not add any distinguishable taste or aroma to the final product.
20 Therefore, RJRT’s tobacco products containing WS-3 impart no distinguishable taste or aroma
21 other than that of the tobacco. As a result, they are not covered by the characterizing flavor ban.

22 22. The new products with capsules also impart no distinguishable non-tobacco taste or
23 aroma—either before or after their capsules are crushed while the user smokes the product—and
24 are therefore outside the scope of the characterizing flavor ban.

25 23. Moreover, the Attorney General has selectively and arbitrarily targeted RJRT. While
26 singling out RJRT’s “NON-MENTHOL” products—despite concededly not even attempting to
27 determine whether those products actually are flavored—the Attorney General has apparently
28 turned a blind eye to other entities that are openly and notoriously violating the law, particularly

1 retailers of e-cigarettes (also known as vaping products) with characterizing flavors other than
2 tobacco.³ For example, disposable e-cigarettes with flavors such as “Watermelon Bubble Gum”
3 and “Rainbow Candy” are being sold at retail in California despite imparting a prohibited
4 characterizing flavor.

5 24. An ostensible purpose of California’s characterizing flavor ban is to address youth
6 access to e-cigarettes.

7 25. But instead of enforcing the characterizing flavor ban against these flagrant and
8 widespread violations in a way that pursues its chief purpose, California’s Attorney General is
9 targeting lawful RJRT cigarettes that lack a characterizing flavor other than tobacco and are being
10 clearly marketed as “NON-MENTHOL.” This is arbitrary and irrational. While youth smoking
11 rates are at an all-time low, disposable e-cigarettes are now the most commonly used tobacco
12 product among youth who use a tobacco product, and “[o]verwhelmingly, current [youth] users
13 (nearly 85%) used flavored e-cigarettes, with fruit flavors being the most popular, followed by
14 candy, desserts, or other sweets.” See U.S. Food & Drug Admin., *Results from the Annual National*
15 *Youth Tobacco Survey* (Dec. 20, 2022), [https://www.fda.gov/tobacco-products/youth-and-](https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey)
16 [tobacco/results-annual-national-youth-tobacco-survey](https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey) (last visited May 7, 2023).

17 26. Plaintiffs accordingly seek an order enjoining the Attorney General and District
18 Attorney defendants from initiating any enforcement action or lawsuit against Plaintiffs based on
19 these Notices, or on the notion that the presumption has been triggered, requiring the Attorney
20 General to rescind the Notices and issue corrective notices, and enjoining Defendants from posting
21 the Notices on the California Department of Justice website or elsewhere. Plaintiffs also seek
22 injunctions prohibiting Defendants from enforcing the characterizing flavor ban against tobacco
23 retailers and their agents regarding the sale of RJRT’s new products, and from taking any other
24 enforcement actions or filing any lawsuits premised on the notion that RJRT’s new products violate
25 the characterizing flavor ban. Plaintiffs also seek declarations that the sale, offer for sale, or
26

27 ³ California defines “characterizing flavor” as “a distinguishable taste or aroma, or both, other than
28 the taste or aroma of tobacco,” Health & Saf. Code § 104559.5(a)(1), so the “other than tobacco”
qualifier is not necessary, but Plaintiffs include it for clarity.

1 possession with intent to sell or offer for sale of RJRT’s new products is not prohibited by Health
2 and Safety Code § 104559.5, that the characterizing flavor ban’s presumption is unconstitutional,
3 that the characterizing flavor ban’s presumption cannot be applied in a civil proceeding that
4 incorporates the substantive standards of the characterizing flavor ban, that it is improper for the
5 Attorney General to make a “determination” regarding the rebuttable presumption outside the
6 context of a judicial proceeding, that the characterizing flavor ban’s presumption has not been
7 triggered by RJRT’s new products’ packaging or marketing, and that the Notices have no legal
8 effect or evidentiary value. Plaintiffs further request that the Court issue a writ of mandate requiring
9 the Attorney General to rescind the Notices of Determination served on Plaintiff RJRT on April
10 25, 2023, and issue corrective notices indicating that RJRT’s new products impart no characterizing
11 flavor and are not prohibited under California law, and precluding the Defendants from posting the
12 Notices on the California Department of Justice website or elsewhere.

13 **PARTIES**

14 27. Plaintiff RJRT is a North Carolina corporation headquartered in Winston-Salem, North
15 Carolina. RJRT develops, manufactures, markets, and distributes tobacco products under a variety
16 of brand names, including tobacco- and menthol-flavored cigarettes under the brand names
17 Newport and Camel, among others.

18 28. Plaintiff APCA is an association of independent California gasoline and convenience
19 store owners. APCA’s mission is to unite its members by providing a platform to educate,
20 empower, and promote shared business values in the communities they serve.

21 29. Plaintiff JGB Properties owns and operates two convenience stores located in Fresno,
22 California: Bulldog Gas & Mart and Abby Arco. JGB Properties is incorporated in California.

23 30. Plaintiff Fresno Elite Carwash, Inc. is a car wash that also operates a convenience store,
24 and is located in Fresno, California. Fresno Elite is incorporated in California.

25 31. Defendants California Attorney General Rob Bonta and District Attorney Lisa
26 Smittcamp are the state’s top law enforcement officer and the chief prosecutor for the County of
27 Fresno, respectively. Defendants are sued here in their official capacities. Defendant Lisa
28 Smittcamp is also sued as the representative of all district attorneys statewide. *Planned Parenthood*

1 *Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, 257 (“The naming of a local official as
2 representative of all counterparts statewide is a recognized procedure.”).

3 32. Each violation of the characterizing flavor ban constitutes an “infraction.” Health &
4 Saf. Code § 104559.5(f). This means that both defendants have the authority to prosecute violations
5 of the characterizing flavor ban. Gov’t Code, § 26500 (“The district attorney is the public
6 prosecutor” who “shall initiate and conduct on behalf of the people all prosecutions for public
7 offenses.”); Penal Code, § 16 (defining “[c]rimes and public offenses” to include “infraction[s]”);
8 Cal. Const. art. V, § 13 (Attorney General is “the chief law officer of the state” and exercises “direct
9 supervision over every district attorney.”).

10 JURISDICTION AND VENUE

11 33. The Court has jurisdiction over the matters alleged in this Complaint pursuant to Code
12 of Civil Procedure § 1060 (declaratory relief), § 527(a) (preliminary injunction), and § 526
13 (permanent injunction).

14 34. Venue for this action properly lies in Fresno County pursuant to California Code of
15 Civil Procedure §§ 393, 395, 401.

16 FACTUAL ALLEGATIONS

17 California’s Characterizing Flavor Ban

18 35. Since 2009, federal law has banned all characterizing flavors other than menthol and
19 tobacco in cigarettes. 21 U.S.C. § 387g(a)(1)(A). Accordingly, if RJRT describes a cigarette as
20 “non-menthol,” it communicates that the cigarette is “unflavored” or “tobacco-flavored.” And for
21 this reason too, consumers and the public will understand that a cigarette described as “non-
22 menthol” is unflavored or tobacco-flavored.

23 36. On August 28, 2020, the California Legislature passed S.B. 793. The bill was intended
24 to address the rise in youth use of e-cigarettes in 2018 and 2019. The author of S.B. 793 stated,
25 “Fueled by kid friendly flavors like cotton candy and bubblegum, 3.6 million more middle and high
26 school students started using e-cigarettes in 2018.” Senate Floor Analysis of S.B. 793, at 4 (2020).
27 She went on to say that “California needs to take swift action to address this epidemic.” *Id.*

28 37. The legislature took such action by banning characterizing flavors other than tobacco in

1 tobacco products. The bill promulgated a new provision of the Health and Safety Code that bars a
2 “tobacco retailer, or any of the tobacco retailer’s agents or employees” from selling, offering for
3 sale, or possessing with the intent to sell or offer to sell “a flavored tobacco product or a tobacco
4 product flavor enhancer.” Health & Saf. Code § 104559.5(b)(1).

5 38. The law defines a “flavored tobacco product” as “any tobacco product that contains a
6 constituent that imparts a characterizing flavor.” Health & Saf. Code § 104559.5(a)(4). “Tobacco
7 product” as defined under California law includes cigarette products and e-cigarette products. *Id.*
8 § 104559.5(14) (citing Health & Saf. Code § 104495).

9 39. A “characterizing flavor,” in turn, is defined as “a distinguishable taste or aroma, or
10 both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct
11 produced by the tobacco product.” Health & Saf. Code § 104559.5(a)(1).

12 40. The law further states that “[a] tobacco product shall not be determined to have a
13 characterizing flavor solely because of the use of additives or flavorings or the provision of
14 ingredient information. Rather, it is the presence of a *distinguishable* taste or aroma, or both, as
15 described in the first sentence of this definition, that constitutes a characterizing flavor.” Health &
16 Saf. Code § 104559.5(b)(2) (emphasis added).

17 41. The law also imposes a presumption “that a tobacco product is a flavored tobacco
18 product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their
19 agency or employment, has made a statement or claim directed to consumers or to the public that
20 the tobacco product has or produces a characterizing flavor.” Health & Saf. Code § 104559.5(b)(2).
21 That presumption is rebuttable. *Id.*

22 42. Each violation of the ban is a criminal infraction punishable by a fine of \$250. Health
23 & Saf. Code § 104559.5(f).

24 43. The characterizing flavor ban went into effect on December 21, 2022.

25 Cigarette Blending & Development Process

26 44. Similar to products like wine and coffee, a variety of factors influence a cigarette’s
27 flavor.

28 45. As a general matter, RJRT’s cigarettes are developed through an extensive process that

1 creates tobacco flavor profiles that suit different adult tobacco consumers' preferences. This
2 process involves selecting varieties of cured tobacco to impart different flavor nuances, blending
3 various types of tobacco and leaf grades, and adding flavoring ingredients to modify the nuances
4 and notes of the tobacco flavor.

5 46. Tobacco itself naturally contains a strong and distinct flavor, but there are multiple
6 tobacco types, and numerous varieties within each type, each with its own distinctive flavor profile.
7 The weather and soil in which the tobacco plant is grown also affect the varieties' flavor profiles.

8 47. RJRT uses a wide range of different tobacco types and varieties in its combustible
9 cigarette products, including "burley," "oriental," "brightleaf" (also known as Bright, Virginia, and
10 Flue-cured), and "perique." Burley is known for its deep and rich tobacco flavors and is described
11 as having an almost cocoa-like flavor and aroma. Brightleaf, by contrast, has a milder flavor
12 profile. It is sometimes described as having a hay, green, or floral flavor profile. Lastly, oriental
13 tobacco has a distinctive and spicy flavor profile, while perique tobacco has a strong, powerful, and
14 wine-like fruity flavor profile.

15 48. Once harvested, each tobacco type undergoes a specific curing process that further
16 develops this profile. Different curing methods develop different flavor nuances. For example, the
17 leaves can be air-cured, fire-cured, flue-cured, and sun-cured. Air-curing involves hanging tobacco
18 in barns for several weeks, resulting in tobacco with a relatively darker flavor and low natural sugar
19 content. Sun-curing involves exposing the harvested tobacco to sunlight and yields a relatively
20 high natural sugar content and an aromatic, herbal, spicy character. Fire-curing involves air curing
21 and then exposing the tobacco to smoldering fire, which yields a low natural sugar content and an
22 intense, smoky flavor profile. Finally, flue-curing involves indirectly exposing the harvested
23 tobacco leaves to heat, which yields a higher natural sugar content and a mild, slightly sweet
24 tobacco flavor.

25 49. RJRT's tobacconists—individuals who specialize in tobacco blending—develop these
26 flavors further through the blending process. Tobacconists use different blends of tobacco to
27 achieve the desired cigarette brand characteristics. They use specific ratios of tobacco types and
28 varieties in order to make the tobacco flavor richer, smoother, bolder, more mellow, or spicier and

1 so forth. This extensive and complex process is how RJRT is able to serve different consumer
2 preferences and develop desired tobacco flavor profiles.

3 50. Finally, cigarette manufacturers commonly add flavoring ingredients to their products,
4 including natural and artificial flavors, which modify the nuances and notes of the tobacco flavor.

5 51. These ingredients give each product distinct and unique characteristics, but their
6 presence does not impart a distinguishable taste or aroma other than tobacco.

7 52. Cigarette manufacturers publish ingredient lists showing which flavoring ingredients
8 are used in their products.

9 53. For instance, Philip Morris USA's ingredient list contains over 100 items, including
10 "cocoa and cocoa products," "coffee extract," "dill oil," "licorice extract," "lime oil," "peppermint
11 oil," "rum," "spearmint oil," and "tangerine oil," among others.

12 54. It is well known to tobacconists and others in the tobacco industry that, for instance,
13 adding cocoa to tobacco will take harshness away from, or "mellow," a tobacco leaf's flavor. But
14 the ingredient does not have the effect of making the tobacco taste like cocoa or chocolate; rather,
15 the tobacco still tastes like tobacco.

16 55. This is similar to the use of flavoring ingredients in other consumer products. For
17 example, vegetable broth is added to canned tuna, but canned tuna still tastes like tuna rather than
18 like vegetable broth.

19 RJRT's New Products

20 56. In anticipation of the characterizing flavor ban, RJRT ceased making its menthol
21 cigarettes available for retail sale in California. Further, RJRT instructed all retailers and
22 wholesalers in California to halt the sale of any remaining RJRT menthol cigarettes. In addition,
23 JGB Properties, the APCA member stores, and Fresno Elite ceased the retail sale of menthol
24 cigarettes (including those manufactured by RJRT) in California.

25 57. In anticipation of the characterizing flavor ban going into effect, RJRT notified adult
26 tobacco consumers that RJRT's current menthol products would no longer be available in
27 California, and that new non-menthol products would be available.

28 58. RJRT introduced new styles of products in California. These New Products are

1 marketed under four Camel and Newport styles: (i) Newport Non-Menthol Green (comprising
2 Newport Non-Menthol Green Box and Newport Non-Menthol Green 100 Box), (ii) Newport EXP
3 (comprising Newport EXP Non-Menthol Mix Box, Newport EXP Non-Menthol Mix 100 Box,
4 Newport EXP Non-Menthol Max Box, and Newport Non-Menthol EXP Max 100 Box), (iii) Camel
5 Crisp Non-Menthol Green (comprising Camel Crisp Non-Menthol Green Box), and (iv) Camel
6 Crush Non-Menthol Oasis (comprising Camel Crush Non-Menthol Oasis Blue Box, Camel Crush
7 Non-Menthol Oasis Green Box, and Camel Crush Non-Menthol Oasis Silver Box) (collectively,
8 the “New Products”). These cigarettes are not menthol-flavored, and impart no distinguishable
9 taste or aroma other than tobacco when smoked.

10 WS-3 Products

11 59. Several of the New Products contain a cooling agent known as WS-3. These products
12 include the Newport Non-Menthol Green, Newport EXP, and Camel Crisp Non-Menthol Green
13 sub-brands.

14 60. The WS-3 Products provide adult consumers who wish to continue smoking with an
15 alternative to menthol cigarettes.

16 61. WS-3 produces a cooling sensation but not a taste or aroma when used in the
17 concentration used in consumer products.

18 62. WS-3 has been used for decades in food and cosmetics because it produces a cooling
19 sensation without imparting any taste or aroma when added in the concentrations used in those
20 products.

21 63. Beginning in the 1970s, a men’s razor company called Wilkinson Sword began an
22 expansive effort to develop cooling compounds that did not have the attributes associated with the
23 volatility of menthol—for example, menthol’s distinctive odor. Wilkinson Sword developed over
24 1,200 potential cooling compounds between 1971 and 1976. WS-3 was one such compound.

25 64. In 1975, WS-3 was recognized by the Flavor and Extract Manufacturers Association of
26 the United States as “Generally Recognized As Safe” for use in a number of consumer products.
27 WS-3 is used extensively in flavored chewing gum, breath fresheners, confectionaries, oral care
28 products, and cosmetics like aftershave lotions.

1 65. WS-3 is added to these products precisely because it generates *only* a cooling sensation
2 when added in the concentrations used in consumable products, and does *not* interfere with any
3 flavoring agents used in the product.

4 66. For example, WS-3 is added to cherry and coconut lip balm, but the resulting flavor
5 remains cherry or coconut because WS-3 does not impart its own taste or aroma when added in the
6 concentrations used in consumable products.

7 67. The reason that WS-3 does not impart a taste or aroma that is perceptible to humans
8 when added in the concentrations used in consumable products is a matter of chemistry. Humans
9 experience taste through molecular interactions with taste receptors. Taste receptors are proteins
10 that recognize taste stimuli of varying types. Humans experience “taste” when molecules interact
11 with saliva and specifically bind to those taste receptors in the mouth.

12 68. WS-3 molecules do not specifically bind to human taste receptors.

13 69. Humans experience smell in a similar way to taste. That is, the perception of aroma is,
14 from a chemistry perspective, a matter of the binding of chemical compounds or molecules to
15 specialized proteins primarily in the nose. Humans experience aroma when chemical compounds
16 specifically bind to proteins known as odorant or olfactory receptors.

17 70. The extent to which a human can detect an aroma from any chemical compound is
18 dependent on the chemical compound’s vapor pressure. A higher vapor pressure means that the
19 compound evaporates quickly and releases more scent molecules into the air.

20 71. WS-3 has a very low vapor pressure. This means that WS-3 releases far fewer
21 molecules that can interact with a person’s odorant receptors, or sense of smell. In the
22 concentrations used in the New Products, WS-3 has no odor perceptible by human beings.

23 72. The function of WS-3—as used in the New Products—is to impart a cooling sensation
24 and *not* a taste or aroma. From a chemical perspective, WS-3 accomplishes this by activating a
25 cooling receptor known as the TRPM8 thermoreceptor.

26 73. This receptor is distinct from a human’s taste and odorant receptors.

27 74. WS-3 and menthol both activate the TRMP-8 thermoreceptor, but WS-3 does so without
28 activating the taste or odorant receptors, that is, without imparting a perceptible taste or aroma in

1 humans.

2 75. As a result, while WS-3 and menthol both impart a cooling sensation, WS-3 does so
3 without activating taste or odorant receptors.

4 Oasis Products

5 76. The remaining products, which include the Camel Crush Non-Menthol Oasis sub-brand,
6 each contain a crushable capsule, which does not contain menthol, inside the product. Each of the
7 Oasis Products contains a traditional Camel tobacco blend. The Oasis Products do not contain
8 WS-3.

9 77. Camel cigarettes are known for their rich and distinct tobacco flavor, which comes from
10 a blend of Turkish and domestic tobacco.

11 78. The Oasis Products also each contain a capsule with a proprietary solution (which does
12 not contain menthol) in the tip of each cigarette. When the cigarette is smoked, the adult consumer
13 may elect to crush the capsule, thereby releasing the solution.

14 79. The solution contains compounds that are designed to shift the spectrum of the Camel
15 tobacco flavor. This is consistent with the ordinary use of additives in the tobacco-blending
16 process, and with the use of flavoring ingredients in other consumer products.

17 80. In this case, the solution functions to brighten, smooth, and mellow the otherwise rich
18 and distinct Camel tobacco.

19 81. The solution does not impart a characterizing flavor of its own when the user crushes
20 the capsule while smoking the cigarette.

21 82. Rather, it allows the adult consumer to control the experience of the Camel cigarette at
22 her own discretion by giving her the option to smoke the product as is or with the shifted tobacco
23 profile provided by the additional solution.

24 83. As a result, when smoked these products lack any distinguishable taste or aroma other
25 than tobacco.

26 84. The Oasis Products were first introduced in California in December 2022 following the
27 enactment of California's characterizing flavor ban.

28 85. Prior to the enactment of the ban, RJRT made "Camel Crush Menthol" products

1 available for sale, which products provided users with a Camel original-blend cigarette and a tip
2 containing an embedded capsule. The capsule in those products contained a menthol solution.

3 86. The new Oasis Products were introduced to offer adult consumers who wished to
4 continue smoking a non-menthol Camel alternative that provides a capsule experience—one which
5 allows the user to choose between smoking a rich and intense Camel cigarette and a smoother
6 version of the same tobacco flavor.

7 The New Products' Packaging and Advertising

8 87. The California characterizing flavor ban creates what is known in consumer product
9 marketing as a “moment of disruption”—an event that causes well-established products to change
10 in character, or to no longer be available for purchase. During a moment of disruption, consumers
11 reevaluate their purchasing decisions, and a company is at risk of losing those consumers to
12 competitive or different products.

13 88. The California characterizing flavor ban created a moment of disruption. Reynolds's
14 menthol cigarette products would no longer be available for purchase in California after the law's
15 effective date. In anticipation of this moment of disruption, RJRT assessed its options to preserve
16 the brand equity of the Camel and Newport brands while offering products that comply with the
17 new law.

18 89. In a moment of disruption, consumers seek familiarities from their brand of choice,
19 which includes logos, designs, fonts, and colors. Providing these familiarities is essential to avoid
20 losing consumers to competitors.

21 90. Thus, RJRT wanted to provide adult tobacco consumers with new products that retained
22 those familiarities, including the iconic logos, symbols, and colors long associated with the Camel
23 and Newport brands, while also clearly stating that these are non-menthol products.

24 91. RJRT's marketing strategy for the New Products seeks to retain the core brand equities
25 in both product quality and packaging, including the iconic logos, symbols, and colors long
26 associated with the Camel and Newport brands, while clearly and accurately articulating the
27 differences in the new non-menthol products to be offered in California after the ban. For example,
28 the packaging of the new Camel Non-Menthol products retains various elements long-associated

1 with the Camel brand, such as the camel icon and oasis text, while clearly stating that the products
2 inside are non-menthol.

3 92. As for the new non-menthol Newport products, the packaging retains various elements
4 long-associated with the Newport brand, such as the spinnaker logo, the distinctive Newport
5 lettering, and color and design elements on the pack, while clearly stating that the product inside is
6 non-menthol.

7 93. Camel Crisp was never sold as a menthol product. Its labeling and packaging leverage
8 brand equity, while prominently telling consumers that the Camel Crisp style is not menthol-
9 flavored. Similarly, there has never been a menthol style of Newport EXP on the market in
10 California or anywhere else in the United States. Its labeling and packaging leverage brand equity,
11 while prominently telling consumers that the Newport EXP styles are not menthol-flavored.

12 94. The New Products' marketing and packaging leverages the substantial brand equity of
13 the Camel and Newport brands, both of which have loyal adult customers who associate Camel-
14 and Newport-branded product offerings with high quality and value. This can clearly be seen in
15 the packaging of the products, which is reproduced below. These images depict the packages with
16 the cellophane wrappers in which they are sold.

17 *Newport Non-Menthol Green*

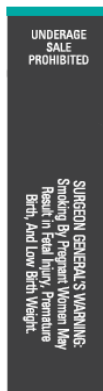


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Newport Max EXP



Top



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Front



Back



Right

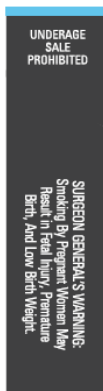


Bottom

Newport Mix EXP



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Front



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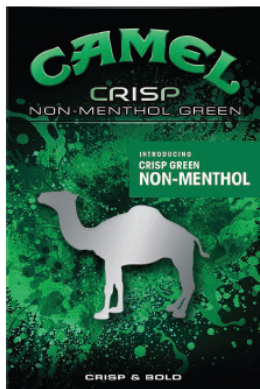
Camel Crisp Non-Menthol Green



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Front



Back



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Bottom

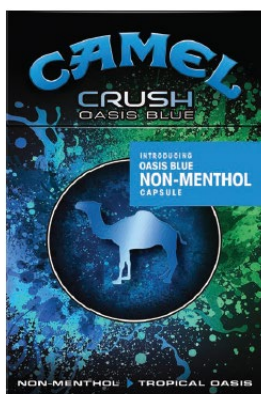
Camel Crush Oasis Blue



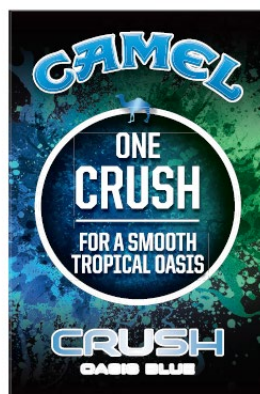
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Camel Crush Oasis Green



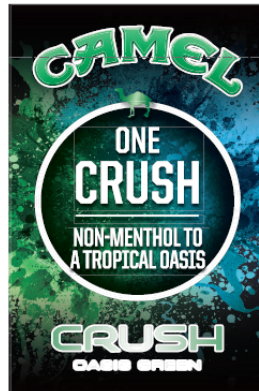
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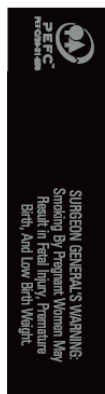


Bottom

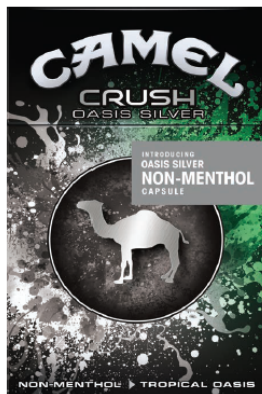
Camel Crush Oasis Silver



Top



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Front



Back



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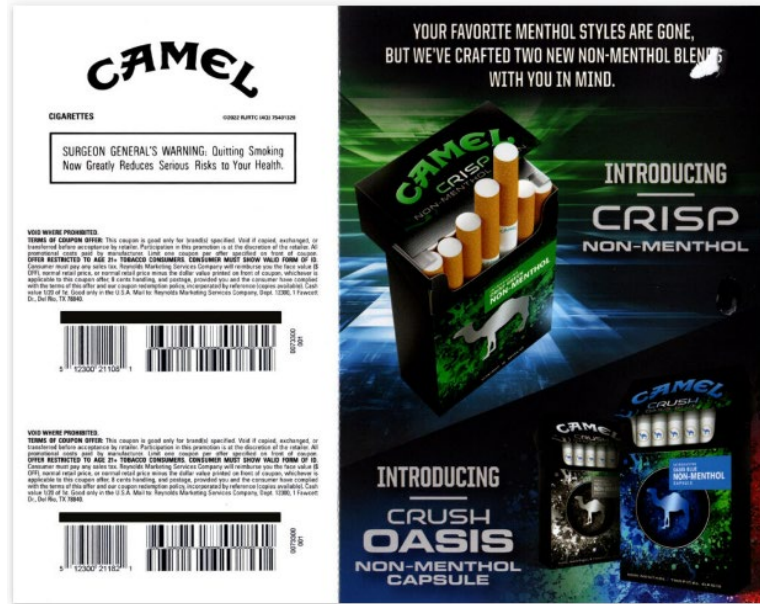
1 95. As shown in the above images, each of the New Products states prominently on the
2 packaging that the product is “NON-MENTHOL.” This “NON-MENTHOL” branding is printed
3 directly on the packs and on the cellophane wrappers in which the products are sold. The above
4 images are also attached as Exhibit 5.

5 96. RJRT’s marketing materials also clearly communicate that the products are non-
6 menthol. As shown in the below images, and as illustrated in the Notices, the advertisements for
7 the New Products have prominently stated that the products are “NON-MENTHOL” (red boxes
8 added). The advertising for Camel Crisp also expressly and prominently refers to the product’s
9 “tobacco flavor.” As another example, before the characterizing flavor ban went into effect, RJRT
10 sent a promotional email with the following statement about Camel Crush Oasis products:
11 “Menthol won’t be around for much longer in California, but we crafted two new non-menthol
12 styles with a taste and smoking experience you’ll love.”



21 MENTHOL WON'T BE AROUND FOR MUCH LONGER IN
22 CALIFORNIA, BUT WE CRAFTED TWO NEW
23 NON-MENTHOL STYLES WITH A TASTE AND
24 SMOKING EXPERIENCE YOU'LL LOVE.

1 97. There are further examples of Oasis trade materials not cited in the Notice that further
2 emphasize the non-menthol nature of the Oasis products, including the following:



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14 FDA Marketing Authorization

15 98. To market new tobacco products, manufacturers must seek FDA marketing
16 authorization, including (among other possibilities) an order that the new product is “substantially
17 equivalent” to a currently marketed product and “is in compliance with the requirements of [the
18 Federal Food, Drug, and Cosmetic Act].” 21 U.S.C. § 387j(a)(2)(A)(i)(I); *see also* 21 C.F.R.
19 § 1107.18(i).

20 99. FDA may issue an exemption from the substantial-equivalence requirements where
21 (among other things) an exemption “would be appropriate for protection of the public health” and
22 would be “otherwise appropriate.” 21 U.S.C. § 387e(j)(3)(A).

23 100. RJRT applied for—and FDA granted—substantial-equivalence exemptions for the
24 Oasis and WS-3 Products. An appendix attached to FDA’s letters expressly states that the
25 characterizing flavor of the Oasis and WS-3 Products is “none”—in contrast to the characterizing
26 flavors of the predicate products, which are identified as “menthol.”

27 Enforcement Threats in California Relating to RJRT’s New Cigarette Products

28 101. On April 25, 2023, the Attorney General sent four Letters of Determination to RJRT

1 regarding these products. *See* Exs. 1-4. In the Letters, the Attorney General expressed his view
2 that the New Products had triggered the rebuttable presumption of the characterizing flavor ban
3 through the labeling, packaging, and promotional materials of the products. *See, e.g.*, Ex. 1 [23-
4 04-A1] at 1-2; Ex. 4 [23-04-A5] at 1-2. Each Letter addresses one of the four sub-brands. *See* Ex.
5 1 [23-04-A1] (Camel Crush Oasis Silver; Camel Crush Oasis Blue; Camel Crush Oasis Green); Ex.
6 2 [23-04-A2] (Camel Crisp); Ex. 3 [23-04-A3] (Newport EXP Non-Menthol Mix; Newport EXP
7 Non-Menthol Max); Ex. 4 [23-04-A5] (Newport Non-Menthol Green).

8 102. According to the Attorney General, promotional materials for all of the New Products
9 “purposefully target users of menthol-flavored tobacco products and promote the [New] Products
10 as substitutes or replacements for such menthol-flavored tobacco products.” *See* Exs. 1-4. The
11 Attorney General also stated that “[l]abeling and packaging for [the New Products] uses brand
12 names, text, and colors traditionally associated with menthol-flavored tobacco products.” *See* Exs.
13 1-4.

14 103. The Attorney General alleged that the Oasis Products’ labeling and packaging make
15 “use of the same recognizable patterns and colors between the [Oasis] Products and menthol-
16 flavored products.” Ex. 1 [23-04-A1] at 1. Further, the Attorney General claimed that the labeling
17 and packaging for the Oasis Products “attribute[s] differentiated sensory taste effects before and
18 after the capsule is activated” and “[t]he capsules are likewise distinguished in the labeling and
19 packaging from product to product in the Camel Crush brand line, implying differential effects
20 from one product to another based on the capsule (and not merely from the blend or processing of
21 tobacco).” *Id.* at 2.

22 104. The Attorney General also stated that promotional materials for the Oasis Products used
23 “common selling message(s) with menthol-flavored tobacco products in the Camel Crush brand
24 line” and “suggest sensory taste(s) or aroma(s) apart from taste(s) or aroma(s) of a solely tobacco
25 flavored product.” *Id.*

26 105. As for the WS-3 Products, according to the Attorney General, the promotional materials
27 for the Camel Crisp Green product (one of the WS-3 products) “distinguish between the taste or
28 aroma of tobacco and other sensory taste(s) or aroma(s) in the ‘smoking experience’ of the product,

1 implying the inclusion of a non-tobacco taste or aroma.” Ex. 2 [23-04-A2] at 1.

2 106. The Attorney General stated that promotional materials for the Newport EXP Non-
3 Menthol Mix, Newport EXP Non-Menthol Max, and Newport Non-Menthol Green Box (additional
4 WS-3 Products) each “use common selling message(s) with menthol-flavored tobacco products”
5 and in the case of the Newport Non-Menthol Green Box, “use common selling message(s) with
6 menthol-flavored tobacco products in the Newport brand line.” Ex. 3 [23-04-A3] at 2; Ex. 4 [23-
7 04-A5] at 1.

8 107. The Attorney General alleged that the promotional materials for the Newport EXP Non-
9 Menthol Mix and Newport EXP Non-Menthol Max “suggest sensory taste(s) or aroma(s) apart
10 from taste(s) or aroma(s) of a solely tobacco flavored product.” Ex. 3 [23-04-A3] at 2.

11 108. The Attorney General supplied little to no detail to support these assertions. Each of
12 the four Notices appended just two to three pages of attachments. Those attachments depict the
13 New Products in a side-by-side comparison to a previously sold menthol product or examples of
14 promotional materials for the relevant product. The Notices offer no specific explanation as to how
15 these comparisons or promotional materials trigger the rebuttable presumption.

16 109. As the URLs provided in Tab B of each Notice show, the sample promotional materials
17 are all drawn from the website of the Stanford Research Into the Impact of Tobacco Advertising
18 (“SRITA”) collection. Specifically, they are drawn from the section of the website called
19 “Collection: *Non-Menthol.*” See [https://tobacco.stanford.edu/cigarettes/menthol-medicates/
20 nonmenthol/](https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/) (last visited on May 3, 2023) (emphasis added).

21 110. The Notices contain a number of material errors, including multiple factual inaccuracies
22 related to the images of the packs, the descriptions on the packs, and the promotional materials for
23 the New Products.

24 111. First, the Attorney General ignores the fact that (as shown above) every single New
25 Product contains the phrase “NON-MENTHOL” on the front of each package. Camel Crisp Green
26 and Newport Non-Menthol Green additionally have “NON-MENTHOL” text on the top and bottom
27 of the pack. The Attorney General also ignores the fact that all of the New Products are wrapped
28 in cellophane packaging that contains a printed violator that reiterates that the products are “NON-

1 MENTHOL.”

2 112. Second, the Notices also publish a series of alleged “comparator” predicate products.
3 But the pack image—“Newport EXP Menthe”—listed as a “comparison product[]” for Camel
4 Crisp, Newport EXP Non-Menthol Mix, and Newport Non-Menthol Max is not a product that was
5 ever sold in California, or anywhere else in the United States.

6 113. Third, the Notices also fail to include complete images of the New Products’
7 promotional materials. For example, none of the promotional materials cited in the Notices show
8 the federal warning.

9 114. And while the Attorney General alleges that the New Products “purposefully target
10 users of menthol-flavored tobacco products and promote the [New] Products as substitutes or
11 replacements for such menthol-flavored tobacco products”—the promotional materials to which
12 the Attorney General cites expressly indicate that the New Products lack menthol and are “Non-
13 Menthol” products. The Attorney General fails to explain how those promotional materials
14 nevertheless imply that the products are menthol flavored or why it would be improper to market
15 non-menthol products to former adult menthol smokers who wish to continue smoking cigarettes.

16 115. Finally, the Notices also ignore the fact that the cited promotional materials for the
17 Camel Crisp Green product indicate the product has a “smooth *tobacco* flavor.” (emphasis added).
18 The Attorney General ignores this clear statement that the product is tobacco-flavored.

19 116. In the final paragraphs of each Notice of Determination, the Attorney General suggests
20 that retailers and distributors of the New Products may be subject to fines and penalties, including
21 under the characterizing flavor ban and under Business and Professions Code § 17200.
22 Specifically, the Notices state that “[u]nder the California flavor ban law, retailers and their agents
23 are subject to fines for the possession and sale of such flavored tobacco products.” And “[o]ther
24 state statutes and local ordinances may impose additional penalties on retailers or other vendors as
25 well.” (citing Bus. & Prof. § 17200). The Notices “encourage[]” RJRT “to provide a copy to your
26 California distributor and retail customers as well.”

27 117. Both the Attorney General and the District Attorney have the authority to enforce
28 Business and Professions Code § 17200. *See* Bus. & Prof. § 17204. Both the Attorney General

1 and the District Attorney have enforcement authority under another consumer protection statute,
2 Business and Professions Code § 17500. *See* Bus. & Prof. § 17508.

3 118. The Notices additionally “encourage” RJRT “to submit a response with any supporting
4 materials ... on or before June 23, 2023” “if you believe these determinations or conclusions are in
5 error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED.”

6 119. Politico, a media outlet, somehow obtained the Notices and published an article about
7 them on May 3, 2023, which included a link to a copy of the Notices themselves. Rachel Bluth,
8 *California AG Warns Tobacco Companies Their New Cigarettes Are Banned In The State*,
9 POLITICOPRO (May 3, 2023), <https://tinyurl.com/3hsv8pyd>; Notices of Determination, *Politico Pro*
10 (May 3, 2023) <https://tinyurl.com/yerru7hx>. Reynolds did not authorize the release of the Notices
11 to Politico.

12 120. The next day, the Campaign for Tobacco-Free Kids (“CTFK”) issued a press release
13 entitled “California AG Warns Tobacco Companies Their New Menthol-Like Cigarettes Violate
14 State’s Law Banning Flavored Tobacco Sales.” *See* Statement of Matthew L. Myers (May 4, 2023),
15 [https://www.tobaccofreekids.org/press-releases/2023_05_04_california-ag-warns-tobacco-](https://www.tobaccofreekids.org/press-releases/2023_05_04_california-ag-warns-tobacco-companies)
16 [companies](https://www.tobaccofreekids.org/press-releases/2023_05_04_california-ag-warns-tobacco-companies). In that press release, CTFK stated that “[w]ith these letters, Attorney General Bonta is
17 sending a clear message that California is serious about enforcing the law and will not tolerate the
18 tobacco industry’s efforts to evade it.” CTFK additionally “urge[d] Attorney General Bonta to
19 move as quickly as possible to get these products off the shelves” and “applaud[e]d his leadership”
20 in “enforcing the law in California.”

21 121. The Notices are phrased and formatted in a way that tends to incorrectly suggest to the
22 reader that the Attorney General has determined that the products are *flavored* rather than
23 *presumptively* flavored. First, in the phrase “presumptively FLAVORED,” only the second word
24 is capitalized. Second, the Notices include a chart that includes a “Determination” of simply
25 “FLAVORED.” This confusing framing appears to have misled Politico and CTFK into believing
26 that the Attorney General had deemed the products unlawful in California. For instance, CTFK
27 stated that the Attorney General “issu[e]d warning letters to R.J. Reynolds and ITG Brands that
28 their new menthol-like flavored cigarettes *violate the state’s new law* prohibiting sales of flavored

1 tobacco products.” Myers, *supra* (emphasis added). And Politico stated that the Notices “inform”
2 RJRT that its New Products “have all been *determined to be in violation of the ban* that’s been in
3 effect since December 2022.” Bluth, *supra* (emphasis added).

4 122. On information and belief, the purpose of the Notices and their unauthorized release to
5 the media is to dissuade California retailers from selling the New Products.

6 123. Within days of the publication of the Notices, one jurisdiction began relying on the
7 Notices to instruct retailers to stop selling the New Products. Specifically, the City of Ukiah’s Code
8 Enforcement office sent at least one agent to a retailer in Ukiah; that agent delivered copies of the
9 Notices to that retailer and directed the retailer to remove the New Products or the agent would
10 return with a citation for the retailer.

11 124. Separately, on April 25, 2023, the Attorney General’s office sent a different letter to
12 RJRT, this one signed by Deputy Attorney General Taylor Ann Whittemore and entitled “California
13 Health and Safety Code section 104559.5.” The letter stated that the Attorney General’s Office
14 intends to publish a list of “product certifications and case-by-case determinations made by our
15 office and other agencies under” the California characterizing flavor ban. This list is to be
16 “similar[]” to the “list of all cigarette manufacturers and their brands found in compliance with
17 California Revenue and Taxation Code section 30165.1.”

18 125. The letter explained that the Attorney General’s Office was “reaching out to tobacco
19 product manufacturers to request they fill out a spreadsheet with information about their products.”
20 Per the letter, this information would “facilitate reconciliation of public and non-public information
21 regarding domestically marketed tobacco products” and provide “input regarding manufacturers’
22 own assessments of compliance under” the characterizing flavor ban. The letter went on to explain
23 *that*, while “[p]roviding this information is voluntary,” “tobacco products not certified by a tobacco
24 product manufacturer may not be affirmatively listed on the Attorney General’s website.”

25 126. Along with the letter, Whittemore attached a spreadsheet soliciting information about
26 RJRT’s tobacco products. Among other things, the spreadsheet asks manufacturers to certify
27 whether each of their tobacco products is flavored or unflavored within the meaning of the
28 California flavor ban. The instructions also ask manufacturers to “attach electronic sample

1 packaging for each of the identified tobacco products.”

2 127. The letter further provides that “[t]he Attorney General’s Office anticipates publishing
3 its initial list of product certifications and case-by-case determinations on or after June 1, 2023.”
4 In light of that, tobacco product manufacturers are asked to complete and return the spreadsheet by
5 May 25, 2023 if they “wish [their] submission to be included in the initial posting.”

6 Lack of Enforcement in California Against Flavored Disposable E-cigarettes

7 128. RJRT is not aware of any efforts by the Attorney General to enforce the characterizing
8 flavor ban against companies deliberately and obviously violating the law. The main catalyst for
9 S.B. 793 was the rise in youth vaping in 2018 and 2019, though those rates have thankfully come
10 down precipitously. *See* Senate Floor Analysis of S.B. 793, at 4 (2020).⁴ California legislators
11 attempted to tackle the youth vaping problem by banning non-tobacco characterizing flavors in
12 tobacco products on the theory that flavors help drive youth to use the products. Instead of going
13 after those products, however, the Attorney General is targeting a major *cigarette* manufacturer
14 whose products are in full compliance with the law. That is arbitrary.

15 129. Youth use of *cigarettes* is at an all-time low. And, as noted, the characterizing flavor
16 ban was primarily meant to bring down the rates of youth use of *e-cigarettes*. Those are now the
17 most popular tobacco product among youth who use tobacco products (though the use of tobacco
18 products among youth is on the decline). Moreover, disposable e-cigarettes are the most popular
19 type of e-cigarette with youth who use e-cigarettes.⁵ As FDA researchers recently found, “[a]mong
20 middle and high school current e-cigarette users ... use of disposable e-cigarette devices increased
21 significantly between 2019 and 2020 ... and was the most commonly used device type reported in
22 2021.” Cooper, *supra*. In fact, disposables are more than 75% more popular than cartridge-based
23 e-cigarettes. Disposables rose to popularity with youth after FDA effectively banned all
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25

26 ⁴ Compare Maria Cooper, et al., *Notes from the Field: E cigarette Use Among Middle and High*
27 *School Students—United States, 2022* (Oct. 2022), <https://tinyurl.com/44fk6y8p>, with Teresa W.
28 Wang, et al., *E cigarette Use Among Middle and High School Students—United States, 2020* (Sept.
2020), <https://tinyurl.com/5763s6a9>.

⁵ *See* Cooper, *supra*.

1 characterizing flavors in cartridge-based e-cigarettes (other than tobacco and menthol) in 2020.⁶

2 130. Retailers in California continue to sell e-cigarettes, particularly disposables, with
3 characterizing flavors other than tobacco, in open defiance of the characterizing flavor ban.⁷ For
4 example, disposable e-cigarettes with flavors such as “Watermelon Bubble Gum” and “Rainbow
5 Candy” are being sold at retail in California despite having a prohibited characterizing flavor.

6 **FIRST CAUSE OF ACTION**

7 **(By Plaintiffs against all Defendants for Declaratory Relief)**

8 131. Plaintiffs reallege paragraphs 1 through 130 of the Complaint as though fully
9 incorporated and re-alleged here.

10 132. The Code of Civil Procedure allows “any person . . . who desires a declaration of his or
11 her rights or duties with respect to another to seek declaratory relief.” Code Civ. Proc., § 1060. It
12 permits a request for a “declaration of rights or duties, either alone or with other relief,” and it
13 provides that “the court may make a binding declaration of these rights or duties, whether or not
14 further relief is or could be claimed at the time.” *Id.*

15 133. California courts have long held that “[t]he interpretation of ordinances and statutes are
16 proper matters for declaratory relief.” *Walker v. Los Angeles County* (1961) 55 Cal.2d 626, 637.
17 In particular, declaratory relief is an appropriate remedy for professionals and businesses
18 “attempting to steer a legitimate course among a maze of prohibitory laws.” *Manchel v. Los*
19 *Angeles County* (1966) 245 Cal.App.2d 501, 509. That is precisely what Plaintiffs seek.

20 134. There is a live dispute about the meaning of the characterizing flavor ban and its
21 application to RJRT’s New Products. Plaintiffs contend that it is improper for the Attorney General
22 to make a “determination” regarding the rebuttable presumption of the characterizing flavor ban,
23 Health & Safety Code § 104559.5(b)(2), outside the context of a judicial proceeding; that the
24 rebuttable presumption cannot properly be applied in a criminal proceeding or in a civil proceeding
25 that incorporates the substantive standards of the characterizing flavor ban; that the New Products

26 ⁶ FDA, *Enforcement Priorities for Electronic Nicotine Delivery Systems* 21-22 (rev. Apr. 2020)
27 (“2020 Guidance”), <https://tinyurl.com/8j58axb7>.

28 ⁷ Nicholas Florko, *It’s Easy To Buy Flavored Vapes In California, Even In Cities With Longtime Bans*, STAT (Jan. 27, 2023), <https://www.statnews.com/2023/01/27/california-flavored-vape-ban/>

1 and the labeling, packaging, and promotional materials identified in the Notices do not trigger, and
2 have not triggered, the characterizing flavor ban’s rebuttable presumption; that the Notices have no
3 legal effect or evidentiary value and are not binding in any judicial or administrative proceeding;
4 and that the sale, offer for sale, or possession with intent to sell or offer for sale of the New Products
5 at issue here is not within the scope of Health and Safety Code Code § 104559.5(b)(2). Defendant
6 Bonta contends that the New Products have triggered the rebuttable presumption, and that it was
7 appropriate to make such a determination in the Notices; he further contends that the New Products
8 are potentially subject to enforcement action—which could be brought by, among others,
9 Defendant Smittcamp—for violations of the characterizing flavor ban.

10 135. Further, the Attorney General’s Notices, which were disclosed to and then made public
11 by Politico, leave no doubt that this action is ripe for resolution. *Tashakori v. Lakis* (2011) 196
12 Cal.App.4th 1003, 1012–1013 (“The threat of a lawsuit can satisfy the actual controversy
13 requirement for a declaratory relief action.”); *Am. Meat Inst. v. Leeman* (2009) 180 Cal.App.4th
14 728, 742–743 (suit was ripe in light of letter threatening a lawsuit and federal agency’s stated
15 disapproval); *Alameda Cnty. Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716,
16 1723–1724 (suit for declaratory relief was ripe where the plaintiffs and defendant city and county
17 disagreed on the scope of a memorandum of understanding that affected property).

18 136. Without judicial intervention, RJRT will suffer imminent harm. The Notices will cause
19 some retailers to pull RJRT’s lawful New Products from shelves, halting all sales of such products.
20 At least one jurisdiction has already started relying on the Notices to instruct retailers to stop selling
21 the New Products. This will impose significant economic harms on RJRT, which will be unable to
22 sell several important new products from well-known and popular brands in California, a large and
23 important market.

24 137. RJRT will also suffer significant financial losses due to the non-use of existing
25 inventory. RJRT is manufacturing and producing the new non-menthol products based on
26 anticipated demand in California. Part of that process includes “tax stamping” the products with a
27 California Cigarette Tax Stamp on the product’s external packaging. State-specific product
28 coupons and offers may also be included in products intended for California retailers. Without

1 judicial intervention, RJRT will be forced to dispose of already-manufactured products. The
2 products cannot be redirected to other markets.

3 138. RJRT will also suffer significant financial losses associated with withdrawing already-
4 delivered products from California wholesalers and retailers. California retailers who remove
5 products from their shelves can and will look to RJRT to (i) physically remove the products from
6 the retailers' store rooms and wholesale stock and (ii) refund those purchases.

7 139. RJRT will also suffer significant permanent harm to the future prospects of these new
8 products. The purpose of the Notices is to remove these products from the market less than six
9 months after introduction. The introductory period, typically the first eighteen months, is critical
10 for any new product, because it takes new products time to get to the desired awareness and
11 consumer acceptance levels. RJRT will lose shelf space in retailers that will be filled by competitor
12 products, and consumers who choose to continue smoking will be forced to select an alternative
13 product.

14 140. RJRT will also suffer significant (but difficult to quantify) harm beyond just the new
15 non-menthol products. First, RJRT will suffer reputational harm associated with the removal of
16 the new non-menthol products because consumers and others may believe that "something is
17 wrong" with the new products. Worse, consumers and others may believe that "something is
18 wrong" with the *entire* Camel or Newport brand and product styles, and they may choose to
19 abandon the brand in favor of competitor products. This spillover effect would not be limited to
20 California.

21 141. Without judicial intervention, APCA member stores will also suffer imminent harm.
22 The Notices are putting APCA member stores to the choice of (i) pulling lawful products from
23 shelves, halting all sales of such products in California, and thereby suffering severe economic
24 harms, or (ii) continuing to sell the products and risking enforcement actions, fines, and criminal
25 liability.

26 142. Without judicial intervention, JGB Properties will suffer imminent harm. The Notices
27 are putting JGB Properties to the choice of (i) pulling lawful products from shelves, halting all sales
28 of such products in California, and thereby suffering severe economic harms, or (ii) continuing to

1 sell the products and risking enforcement actions, fines, and criminal liability.

2 143. Without judicial intervention, Fresno Elite will also suffer imminent harm. The Notices
3 are putting Fresno Elite to the choice of (i) pulling lawful products from shelves, halting all sales
4 of such products in California, and thereby suffering severe economic harms, or (ii) continuing to
5 sell the products and risking enforcement actions, fines, and criminal liability.

6 144. As such, what is at issue here is far from a mere “difference of opinion”—to the
7 contrary, there is “an imminent and significant hardship [to Plaintiffs] inherent in further delay.”
8 *Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.

9 145. RJRT is entitled to declaratory relief because its New Products do not contain any
10 constituent that imparts any characterizing flavor when smoked.

11 146. APCA is entitled to declaratory relief because the New Products manufactured by RJRT
12 that its member stores wish to sell to adult tobacco consumers do not contain any constituent that
13 imparts any characterizing flavor when smoked.

14 147. JGB Properties is entitled to declaratory relief because the New Products manufactured
15 by RJRT that it wishes to sell to adult tobacco consumers do not contain any constituent that imparts
16 any characterizing flavor when smoked.

17 148. Fresno Elite is entitled to declaratory relief because the New Products manufactured by
18 RJRT that it wishes to sell to adult tobacco consumers do not contain any constituent that imparts
19 any characterizing flavor when smoked.

20 149. The text of the statute is clear and unambiguous. The only products that the law
21 proscribes are “flavored tobacco products” that contain a constituent that imparts a “characterizing
22 flavor.” Health & Saf. Code § 104559.5(b)(1), (a)(4). In order to have a “characterizing flavor,”
23 the flavored tobacco product must have “a distinguishable taste or aroma” other than that of
24 tobacco. *Id.* § 104559.5(a)(1).

25 150. None of the New Products at issue satisfy the statutory test.

26 151. First, the characterizing flavor ban’s rebuttable presumption provision, Health & Safety
27 Code § 104559.5(b)(2), may not be used in the way the Attorney General has sought to use it, and
28 in any event has not been triggered.

1 152. The Attorney General misunderstands the role of the presumption in the statute by
2 treating it as a substantive standard rather than an evidentiary presumption. Moreover, the
3 presumption cannot constitutionally be applied to the New Products and the Attorney General has
4 not met the burden imposed by California’s Evidence Code § 607, which requires the prosecution
5 to prove beyond a reasonable doubt any facts that may trigger an evidentiary presumption. Next,
6 the presumption is not triggered because RJRT, its employees, and its agents have made no claims
7 or statements directed to consumers or to the public that any of RJRT’s New Products have or
8 produce a characterizing flavor. To the contrary, RJRT has clearly and repeatedly communicated
9 that the cigarettes are “NON-MENTHOL,” which consumers and the public will understand means
10 that the cigarettes are tobacco-flavored. Finally, any presumption would be rebutted because the
11 New Products contain no constituent that imparts a characterizing flavor while smoked.

12 153. Second, the WS-3 and Oasis products are tobacco-flavored and have no other
13 distinguishable taste or aroma while smoked.

14 154. The WS-3 Products are tobacco-flavored. WS-3 is a cooling agent that has been used
15 for decades in food and cosmetics because it does not impart any taste or aroma in the
16 concentrations used in consumable products.

17 155. As a result, the WS-3 Products have no distinguishable taste or aroma other than that of
18 tobacco, and therefore they are not within the scope of the characterizing flavor ban.

19 156. The Oasis Products are also tobacco-flavored. The products do not impart a
20 distinguishable non-tobacco taste or aroma while smoked, and therefore have no characterizing
21 flavor.

22 157. As a result, the Oasis Products have no distinguishable taste or aroma other than that of
23 tobacco while smoked, and therefore they are not within the scope of the characterizing flavor ban.

24 158. Plaintiffs seek a declaration that it is improper for the Attorney General to make a
25 “determination” regarding the rebuttable presumption outside the context of a judicial proceeding.

26 159. Plaintiffs seek a declaration that the rebuttable presumption of the characterizing flavor
27 ban, Health & Safety Code § 104559.5(b)(2), violates the Due Process Clause of the Fourteenth
28 Amendment of the United States Constitution and therefore cannot be applied in a criminal case in

1 California.

2 160. Plaintiffs seek a declaration that the rebuttable presumption of the characterizing flavor
3 ban, Health & Safety Code § 104559.5(b)(2), cannot be applied in a civil proceeding that
4 incorporates the substantive standards of the characterizing flavor ban, such as a proceeding under
5 Business & Professions Code § 17200 and Business & Professions Code § 17500.

6 161. Plaintiffs seek a declaration that the New Products and the labeling, packaging, and
7 promotional materials identified in the Notices do not trigger, and have not triggered, the
8 characterizing flavor ban's rebuttable presumption.

9 162. Plaintiffs seek a declaration that the Notices of Determination served on Plaintiff RJRT
10 on April 25, 2023 have no legal effect or evidentiary value and are not binding in any judicial or
11 administrative proceeding.

12 163. Plaintiffs seek a declaration from the Court that the sale, offer for sale, or possession
13 with intent to sell or offer for sale of the New Products at issue here is not within the scope of
14 Health and Safety Code, § 104559.5.

15 **SECOND CAUSE OF ACTION**

16 **(By Plaintiffs against all Defendants for Injunctive Relief)**

17 164. Plaintiffs reallege paragraphs 1 through 163 of the Complaint as though fully
18 incorporated and re-alleged here.

19 165. Plaintiffs are entitled to the relief demanded, which includes a declaration that RJRT's
20 New Products do not have a characterizing flavor and do not violate the characterizing flavor ban,
21 and that the characterizing flavor ban's rebuttable presumption is unconstitutional and is not
22 triggered here; that the characterizing flavor ban's rebuttable presumption cannot be applied in a
23 civil proceeding that incorporates the substantive standards of the characterizing flavor ban; that it
24 is improper for the Attorney General to make a "determination" regarding the rebuttable
25 presumption outside the context of a judicial proceeding; and that the Notices served on RJRT on
26 April 25, 2023 have no legal effect or evidentiary value and are not binding on any court of law or
27 administrative proceeding.

28 166. Because they are entitled to declaratory relief, Plaintiffs are further entitled to

1 injunctions prohibiting Defendants from enforcing the characterizing flavor ban against tobacco
2 retailers and their agents regarding the sale of RJRT's New Products, and from taking any other
3 enforcement actions or filing any lawsuits premised on the notion that RJRT's New Products violate
4 the characterizing flavor ban, based on the notion that the characterizing flavor ban's rebuttable
5 presumption has been triggered, or premised on the Notices of Determination.

6 167. Plaintiffs do not otherwise have a plain, speedy or adequate remedy at law and will
7 suffer irreparable harm unless this Court grants the requested injunctive relief.

8 168. Plaintiffs seek a permanent order requiring Defendant Bonta to rescind the Notices of
9 Determination served on Plaintiff RJRT on April 25, 2023.

10 169. Plaintiffs seek a permanent order requiring Defendant Bonta to issue corrective notices
11 indicating that the New Products have no characterizing flavor and are not prohibited under
12 California law.

13 170. Plaintiffs seek a permanent order precluding the Defendants from posting the Notices
14 on the California Department of Justice website or elsewhere.

15 **THIRD CAUSE OF ACTION**

16 **(By Plaintiffs and against all Defendants for Writ of Mandate)**

17 171. Plaintiffs reallege paragraphs 1 through 170 of the Complaint as though fully
18 incorporated and re-alleged here.

19 172. The Code of Civil Procedure allows a party to seek a writ of mandate "to compel the
20 performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or
21 station, or to compel the admission of a party to the use and enjoyment of a right or office to which
22 the party is entitled, and from which the party is unlawfully precluded." Civ. Proc. § 1085(a).
23 California courts recognize "the established principle that mandamus may issue to ... correct an
24 abuse of discretion." *Glendale City Emps.' Ass'n v. City of Glendale* (1975) 15 Cal.3d 328, 344
25 (en banc).

26 173. A party may challenge the Attorney General's exercise of discretion by writ of mandate.
27 *Int'l Ass'n of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 697. The Attorney
28 General may not abuse his discretion by issuing a decision that is "arbitrary, capricious, entirely

1 lacking in evidentiary support, unlawful, or procedurally unfair.” *Khan v. Los Angeles City Emps.’*
2 *Ret. Sys.* (2010) 187 Cal.App.4th 98, 106; *see City of Sacramento v. Drew* (1989) 207 Cal.App.3d
3 1287, 1297 (“Action that transgresses the confines of the applicable principles of law is outside the
4 scope of discretion and we call such action an ‘abuse’ of discretion.”).

5 174. The Attorney General has a clear obligation to comply with the requirements of the
6 characterizing flavor ban.

7 175. Plaintiffs have “a clear, present, and beneficial right” to performance of that obligation.
8 *People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491. Plaintiffs have no other
9 plain, speedy, or adequate remedy at law because the harms suffered cannot be remedied by money
10 damages.

11 176. For the reasons described above, the Attorney General acted arbitrarily and capriciously
12 in issuing the Notices of Determination, and his decision lacks evidentiary support. The evidence
13 that the Attorney General cites in the Notices does not support the determination that the New
14 Products are “presumptively FLAVORED,” and to the contrary supports a determination that the
15 New Products lack any characterizing flavor.

16 177. The Attorney General’s Notices of Determination are further based on critical legal
17 errors. The Notices treat the characterizing flavor ban’s rebuttable presumption as a substantive
18 legal standard rather than an evidentiary mechanism to be used in the course of a judicial
19 proceeding. And in any event, the presumption cannot be applied to RJRT’s New Products under
20 due process principles. The Attorney General’s actions in issuing the Notices were therefore
21 arbitrary, capricious, and unlawful.

22 178. The Attorney General also acted arbitrarily and capriciously by seeking to prevent the
23 sale of the New Products without first making a determination that the products impart a
24 characterizing flavor.

25 179. Finally, the Attorney General has acted in an irrational and discriminatory manner,
26 rendering the Notices and any future enforcement efforts arbitrary and capricious. *Lamden v. La*
27 *Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 265–266 (home owners
28 association must show that exercise of its enforcement power is fair and nondiscriminatory); *see*

1 *also LePage's 2000, Inc. v. Postal Reg. Comm'n*, 674 F.3d 862, 866 (D.C. Cir. 2012) (per curiam)
2 (“[A]n agency’s unjustifiably disparate treatment of two similarly situated parties works a violation
3 of the arbitrary-and-capricious standard.”). “Where an agency applies different standards to
4 similarly situated entities and fails to support this disparate treatment with a reasoned explanation
5 and substantial evidence in the record, its action is arbitrary and capricious and cannot be upheld.”
6 *Burlington N. & Santa Fe Ry. Co. v. Surface Transp. Bd.*, 403 F.3d 771, 777 (D.C. Cir. 2005).

7 180. As explained above, RJRT’s products are in full compliance with California law. But
8 many tobacco-product retailers in California are not. Many retailers continue to sell disposable e-
9 cigarettes with characterizing flavors other than tobacco, in defiance of California’s law. Despite
10 that, the Attorney General ignores those violators and instead has targeted a law-abiding company.
11 That is arbitrary and unlawful.

12 181. Plaintiffs, proceeding under Civil Procedure § 1088.5, seek a writ of mandate requiring
13 Defendant Bonta to rescind the Notices of Determination served on Plaintiff RJRT on April 25,
14 2023, requiring Defendant Bonta to issue corrective notices indicating that the New Products have
15 no characterizing flavor and are not prohibited under California law, and precluding the Defendants
16 from posting the Notices on the California Department of Justice website or elsewhere.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment and relief as set forth below:

19 **On the First Cause of Action:**

20 1. Pursuant to California Code of Civil Procedure § 1060, declare that the sale, offer
21 for sale, or possession with intent to sell or offer for sale of RJRT’s New Products (Newport Non-
22 Menthol Green Box, Newport Non-Menthol Green 100 Box, Newport EXP Non-Menthol Mix Box,
23 Newport EXP Non-Menthol Mix 100 Box, Newport EXP Non-Menthol Max Box, Newport Non-
24 Menthol EXP Max 100 Box, Camel Crisp Non-Menthol Green Box, Camel Crush Non-Menthol
25 Oasis Blue Box, Camel Crush Non-Menthol Oasis Green Box, and Camel Crush Non-Menthol
26 Oasis Silver Box) is not within the scope of Health and Safety Code, § 104559.5.

27 2. Pursuant to California Code of Civil Procedure § 1060, declare that the rebuttable
28 presumption of the characterizing flavor ban, Health & Safety Code § 104559.5(b)(2), violates the

1 Due Process Clause of the Fourteenth Amendment of the United States Constitution and therefore
2 cannot be applied in a criminal case in California.

3 3. Pursuant to California Code of Civil Procedure § 1060, declare that the rebuttable
4 presumption of the characterizing flavor ban, Health & Safety Code § 104559.5(b)(2), cannot be
5 applied in a civil proceeding that incorporates the substantive standards of the characterizing flavor
6 ban, such as a proceeding under Business & Professions Code § 17200 and Business & Professions
7 Code § 17500.

8 4. Pursuant to California Code of Civil Procedure § 1060, declare that the labeling,
9 packaging, and promotional materials for RJRT's New Products (Newport Non-Menthol Green
10 Box, Newport Non-Menthol Green 100 Box, Newport EXP Non-Menthol Mix Box, Newport EXP
11 Non-Menthol Mix 100 Box, Newport EXP Non-Menthol Max Box, Newport Non-Menthol EXP
12 Max 100 Box, Camel Crisp Non-Menthol Green Box, Camel Crush Non-Menthol Oasis Blue Box,
13 Camel Crush Non-Menthol Oasis Green Box, and Camel Crush Non-Menthol Oasis Silver Box)
14 do not trigger, and have not triggered, the characterizing flavor ban's rebuttable presumption.

15 5. Pursuant to California Code of Civil Procedure § 1060, declare that it is improper
16 for the Attorney General to make a "determination" regarding the rebuttable presumption outside
17 the context of a judicial proceeding.

18 6. Pursuant to California Code of Civil Procedure § 1060, declare that the Notices of
19 Determination served on Plaintiff RJRT on April 25, 2023 have no legal effect or evidentiary value
20 and are not binding on any court of law or administrative proceeding.

21 **On the Second Cause of Action:**

22 1. Pursuant to California Code of Civil Procedure § 527(a), preliminarily enjoin
23 Defendants from enforcing the characterizing flavor ban against tobacco retailers and their agents
24 regarding the sale of RJRT's New Products, and from taking any other enforcement actions or filing
25 any lawsuits based on the Notices of Determination or based on the notion that the characterizing
26 flavor ban's rebuttable presumption has been triggered.

27 2. Pursuant to California Code of Civil Procedure § 527(a), preliminarily enjoin
28 Defendants from enforcing the characterizing flavor ban against tobacco retailers and their agents

1 regarding the sale of RJRT's New Products, and from taking any other enforcement actions or filing
2 any lawsuits premised on the notion that RJRT's New Products violate the characterizing flavor
3 ban.

4 3. Order Defendant Bonta to rescind the Notices of Determination served on Plaintiff
5 RJRT on April 25, 2023.

6 4. Enjoin Defendants from posting the Notices on the California Department of Justice
7 website or elsewhere.

8 5. Order Defendant Bonta to issue corrective notices indicating that the New Products
9 have no characterizing flavor and are not prohibited under California law.

10 6. Enjoin Defendants from enforcing the characterizing flavor ban against tobacco
11 retailers and their agents regarding the sale of RJRT's New Products, and from initiating any
12 enforcement action or filing any lawsuits against Plaintiffs based on the Notices of Determination
13 or based on the notion that the characterizing flavor ban's rebuttable presumption has been
14 triggered.

15 7. Enjoin Defendants from enforcing the characterizing flavor ban against tobacco
16 retailers and their agents regarding the sale of RJRT's New Products, and from taking any other
17 enforcement actions or filing any lawsuits premised on the notion that RJRT's New Products violate
18 the characterizing flavor ban.

19 **On the Third Cause of Action:**

20 1. Pursuant to California Code of Civil Procedure § 1085(a), issue a writ of mandate
21 requiring the Attorney General to rescind the Notices of Determination served on Plaintiff RJRT
22 on April 25, 2023.

23 2. Pursuant to California Code of Civil Procedure § 1085(a), issue a writ of mandate
24 requiring the Attorney General to issue corrective notices indicating that the New Products have no
25 characterizing flavor and are not prohibited under California law.

26 3. Pursuant to California Code of Civil Procedure § 1085(a), issue a writ of mandate
27 precluding Defendants from posting the Notices on the California Department of Justice website
28 or elsewhere.


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On All Causes of Action:

1. For costs of suit incurred herein; and,
2. For such other and further relief as this Court deems just and proper.

1 Dated: May 11, 2023

JONES DAY

2
3 By: 
Edward Patrick Swan, Jr.

4
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20
21 Attorneys for Plaintiffs-Petitioners
R.J. Reynolds Tobacco Company; American Petroleum and
22 Convenience Store Association; JGB Properties Inc., and
Fresno Elite Carwash Inc.

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VERIFICATION

I have read the foregoing Complaint for Declaratory and Injunctive Relief and Verified Petition for Writ of Mandate and know its contents.

I am an officer of R.J. Reynolds Tobacco Company, a party to this action, and I am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 11, 2023



ANDREW P. BURNS

EXHIBIT 1



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7353
Facsimile: (916) 323-2319
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April 25, 2023

Jonathan Reed
CEO & Chief Commercial Officer
RJ Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27101

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-04-A1

Dear Mr. Reed:

Since December 21, 2022, California has restricted retailer possession, distribution, and sale of flavored tobacco products. *See* Cal. Health & Saf. § 104559.5. This California “flavor ban” law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.” *Id.* at § 104559.5(b)(2).

This letter is to advise you that the Tobacco Unit of the California Department of Justice has reviewed referred packaging and promotional materials for several of your company’s products—Camel Crush Oasis Silver, Camel Crush Oasis Blue, and Camel Crush Oasis Green (collectively, the “Reviewed Products”)—and determined that each of these Reviewed Products is presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A1-1	Camel Crush Oasis Silver	012300127387 012300127417	FLAVORED
23-04-A1-2	Camel Crush Oasis Blue	012300126304 012300126335	FLAVORED
23-04-A1-3	Camel Crush Oasis Green	012300127325 012300127356	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for each of the Reviewed Products uses brand names, text, and colors traditionally associated with menthol-flavored tobacco products, including the use of the same recognizable patterns and colors between the Reviewed Products and menthol-flavored products. *See* TAB A.

- (2) The Reviewed Products include a non-tobacco “capsule” in each cigarette. Labeling and packaging for the Reviewed Products attribute differentiated sensory taste effects before and after the capsule is activated. The capsules are likewise distinguished in the labeling and packaging from product to product in the Camel Crush brand line, implying differential effects from one product to another based on the capsule (and not merely from the blend or processing of tobacco). *See* TAB A.
- (3) Promotional materials for the Reviewed Products use common selling message(s) with menthol-flavored tobacco products in the Camel Crush brand line. *See* TAB B.
- (4) Promotional materials for the Reviewed Products suggest sensory taste(s) or aroma(s) apart from taste(s) or aroma(s) of a solely tobacco flavored product. *See* TAB B.
- (5) Promotional materials for the Reviewed Products purposefully target users of menthol-flavored tobacco products and promote the Reviewed Products as substitutes or replacements for such menthol-flavored tobacco products. *See* TAB B.

The California flavor ban law restricts the retail distribution and sale of flavored tobacco products to California consumers. Under the California flavor ban law, retailers and their agents are subject to fines for the possession and sale of such flavored tobacco products. *See* Cal. Health & Saf. § 104559.5(f). Other state statutes and local ordinances may impose additional penalties on retailers or other vendors as well. *Id.* at § 104559.5(g); *see also* Cal. Bus. & Prof. § 17200. To encourage uniform application of the California flavor ban law, this Notice of Determination will be posted on the California Department of Justice’s public website.

You are encouraged to provide a copy to your California distributor and retailer customers as well.

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If you believe these determinations or conclusions are in error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED, we encourage you to submit a response with any supporting materials to the mailing or email address below on or before June 23, 2023, identifying the Notice of Determination number in your response. The Tobacco Unit will review any such submission and may, in its discretion, update, modify, or rescind this determination in response. In such case, an updated Notice of Determination will be issued.

Flavor Determination [Determination Number(s)]
Office of the Attorney General
California Department of Justice
1300 "I" Street, PO Box 944255
Sacramento, California 94244-2550
Tobacco@doj.ca.gov

<https://oag.ca.gov/tobacco/contact>

Sincerely,

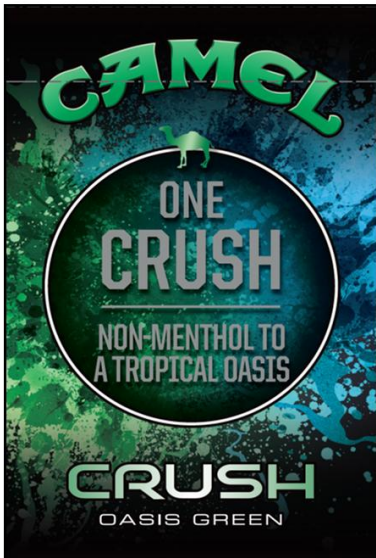
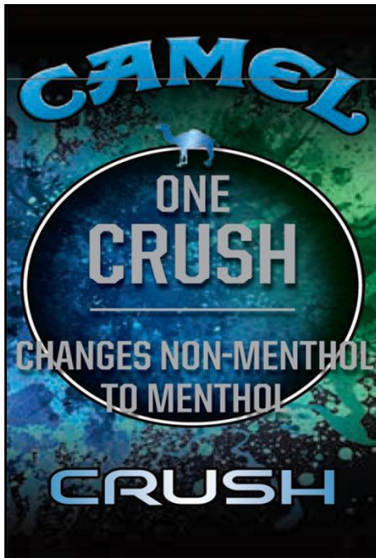


BYRON M. MILLER
Deputy Attorney General

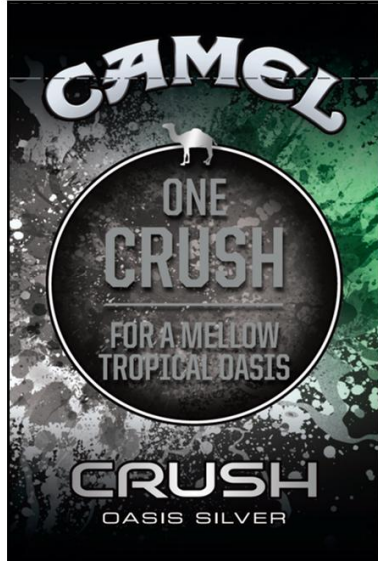
For **ROB BONTA**
Attorney General

TAB A – PACKAGING IMAGES

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>The image shows the packaging for Camel Crush Oasis Blue. At the top, the word "CAMEL" is written in a blue, stylized font. Below it is a circular logo with a camel silhouette at the top. Inside the circle, the text reads "ONE CRUSH" in large, bold letters, followed by "FOR A SMOOTH TROPICAL OASIS" in smaller text. At the bottom of the package, the word "CRUSH" is written in a large, blue font, with "OASIS BLUE" in a smaller font below it. The background is a dark blue and green splatter pattern.</p>	 <p>The image shows the packaging for Camel Crush King Box. At the top, the word "CAMEL" is written in a blue, stylized font. Below it is a circular logo with a camel silhouette at the top. Inside the circle, the text reads "ONE CRUSH" in large, bold letters, followed by "CHANGES NON-MENTHOL TO MENTHOL" in smaller text. At the bottom of the package, the word "CRUSH" is written in a large, blue font. The background is a dark blue and green splatter pattern.</p>
<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH NON-MENTHOL OASIS BLUE KING BOX PACK", 2022 RENEWAL SUBMISSION.</p>	<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH KING BOX", 2022 RENEWAL SUBMISSION.</p>

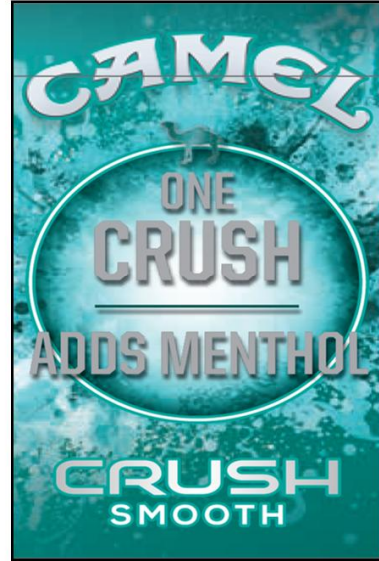
REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>The image shows the packaging for Camel Crush Oasis Green. At the top, the word "CAMEL" is written in a green, stylized font. Below it is a circular logo with a camel silhouette at the top. Inside the circle, the text reads "ONE CRUSH" in large, bold letters, followed by "NON-MENTHOL TO A TROPICAL OASIS" in smaller text. At the bottom of the package, the word "CRUSH" is written in a large, green font, with "OASIS GREEN" in a smaller font below it. The background is a dark green and blue splatter pattern.</p>	 <p>The image shows the packaging for Camel Crush King Box. At the top, the word "CAMEL" is written in a blue, stylized font. Below it is a circular logo with a camel silhouette at the top. Inside the circle, the text reads "ONE CRUSH" in large, bold letters, followed by "CHANGES NON-MENTHOL TO MENTHOL" in smaller text. At the bottom of the package, the word "CRUSH" is written in a large, blue font. The background is a dark blue and green splatter pattern.</p>
<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH NON-MENTHOL OASIS GREEN KING BOX PACK", 2022 RENEWAL SUBMISSION.</p>	<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH KING BOX", 2022 RENEWAL SUBMISSION.</p>

REVIEWED PRODUCT(S)



CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH NON-MENTHOL OASIS SILVER KING BOX PACK", 2022 RENEWAL SUBMISSION.

COMPARISON PRODUCT(S)



CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH SMOOTH MENTHOL KING BOX", 2022 RENEWAL SUBMISSION.

TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-mentocates/nonmenthol/#collection-19>



Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-mentocates/nonmenthol/#collection-21>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-mentocates/nonmenthol/#collection-18>

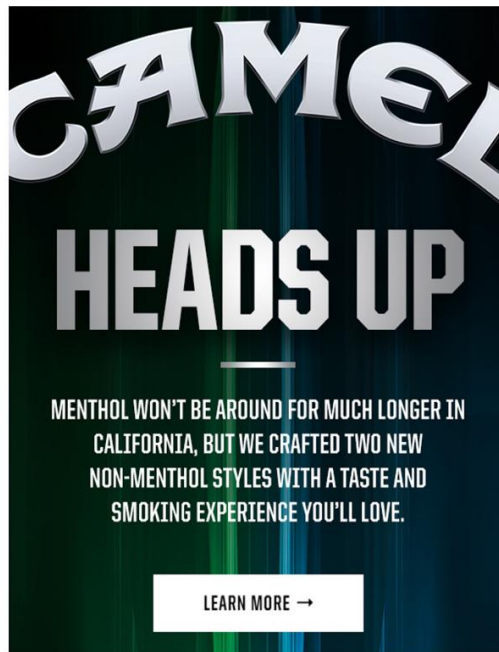


EXHIBIT 2



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7353
Facsimile: (916) 323-2319
E-Mail: Byron.Miller@doj.ca.gov

April 25, 2023

Jonathan Reed
CEO & Chief Commercial Officer
RJ Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27101

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-04-A2

Dear Mr. Reed:

Since December 21, 2022, California has restricted retailer possession, distribution, and sale of flavored tobacco products. *See* Cal. Health & Saf. § 104559.5. This California “flavor ban” law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.” *Id.* at § 104559.5(b)(2).

This letter is to advise you that the Tobacco Unit of the California Department of Justice has reviewed referred packaging and promotional materials for Camel Crisp and determined that it is presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A2	Camel Crisp	012300127509 012300127530	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for Camel Crisp uses brand names, shapes, text, and colors traditionally associated with menthol-flavored tobacco products. *See* TAB A.
- (2) Promotional materials for Camel Crisp distinguish between the taste or aroma of tobacco and other sensory taste(s) or aroma(s) in the “smoking experience” of the product, implying the inclusion of a non-tobacco taste or aroma. *See* TAB B.

- (3) Promotional materials for Camel Crisp purposefully target users of menthol-flavored tobacco products and promote the Reviewed Products as substitutes or replacements for such menthol-flavored tobacco products. *See* TAB B.

The California flavor ban law restricts the retail distribution and sale of flavored tobacco products to California consumers. Under the California flavor ban law, retailers and their agents are subject to fines for the possession and sale of such flavored tobacco products. *See* Cal. Health & Saf. § 104559.5(f). Other state statutes and local ordinances may impose additional penalties on retailers or other vendors as well. *Id.* at § 104559.5(g); *see also* Cal. Bus. & Prof. § 17200. To encourage uniform application of the California flavor ban law, this Notice of Determination will be posted on the California Department of Justice's public website.

You are encouraged to provide a copy to your California distributor and retailer customers as well.

If you believe these determinations or conclusions are in error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED, we encourage you to submit a response with any supporting materials to the mailing or email address below on or before June 23, 2023, identifying the Notice of Determination number in your response. The Tobacco Unit will review any such submission and may, in its discretion, update, modify, or rescind this determination in response. In such case, an updated Notice of Determination will be issued.

Flavor Determination [Determination Number(s)]

**Office of the Attorney General
California Department of Justice
1300 "I" Street, PO Box 944255
Sacramento, California 94244-2550
Tobacco@doj.ca.gov**

<https://oag.ca.gov/tobacco/contact>



Sincerely,



**BYRON M. MILLER
Deputy Attorney General**

For **ROB BONTA
Attorney General**

TAB A – PACKAGING IMAGES

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>The image shows the front of a Camel Crisp Non-Menthol Green cigarette pack. The background is a dark, textured green. At the top, the word "CAMEL" is written in a large, stylized, light green font. Below it is a small silhouette of a camel. The text "CRISP EXPERIENCE" is prominently displayed in the center in a bold, white font. Underneath, it says "NON-MENTHOL SIGNATURE BLEND" in a smaller white font. At the bottom, the word "CRISP" is written in a large, white font, with "NON-MENTHOL GREEN" in a smaller white font below it.</p>	 <p>The image shows two cigarette packs side-by-side. The left pack is Camel One Crush, featuring a dark blue and black background with a circular graphic containing the text "ONE CRUSH" and "CHANGES NON-MENTHOL TO MENTHOL". The right pack is Newport Exp Menthe, featuring a dark background with a green swoosh and the text "Newport EXP" and "MENTHE".</p>
<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRISP NON-MENTHOL GREEN BOX PACK", 2022 RENEWAL SUBMISSION.</p>	<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH KING BOX", 2022 RENEWAL SUBMISSION. CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "CAMEL CRUSH SMOOTH MENTHOL KING BOX", 2022 RENEWAL SUBMISSION.</p>

TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-14>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-17>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-18>

CAMEL
HEADS UP

MENTHOL WON'T BE AROUND FOR MUCH LONGER IN CALIFORNIA, BUT WE CRAFTED TWO NEW NON-MENTHOL STYLES WITH A TASTE AND SMOKING EXPERIENCE YOU'LL LOVE.

LEARN MORE →

CAMEL CRISP
NON-MENTHOL

CAMEL CRISP OFFERS SMOOTH TOBACCO FLAVOR AND A CRISP SMOKING EXPERIENCE.

COMING SOON

CAMEL CRUSH OASIS
THE ONLY CAPSULE

CRUSH OASIS PUTS A NEW TWIST ON YOUR FAVORITE CAPSULE EXPERIENCE – TRANSFORMING CAMEL'S ORIGINAL NON-MENTHOL BLEND INTO A TROPICAL OASIS.

NON-MENTHOL CAPSULE

EXHIBIT 3



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7353
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E-Mail: Byron.Miller@doj.ca.gov

April 25, 2023

Jonathan Reed
CEO & Chief Commercial Officer
RJ Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27101

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-04-A3

Dear Mr. Reed:

Since December 21, 2022, California has restricted retailer possession, distribution, and sale of flavored tobacco products. *See* Cal. Health & Saf. § 104559.5. This California “flavor ban” law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.” *Id.* at § 104559.5(b)(2).

This letter is to advise you that the Tobacco Unit of the California Department of Justice has reviewed referred packaging and promotional materials for Newport EXP Non-Menthol Mix and Newport EXP Non-Menthol Max (collectively, the “Reviewed Products”) and determined that they are presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A3-1	Newport EXP Non-Menthol Mix	026100220087 026100660159 026100660180 026100660241 026100660272 026100220179	FLAVORED
23-04-A3-2	Newport EXP Non-Menthol Max	026100219906 026100219937 026100219999 026100220025	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for the Reviewed Products uses brand names, text, and colors traditionally associated with menthol-flavored tobacco products. *See* TAB A.

- (2) Promotional materials for the Reviewed Products use common selling message(s) with menthol-flavored tobacco products. *See* TAB B.
- (3) Promotional materials for the Reviewed Products suggest sensory taste(s) or aroma(s) apart from taste(s) or aroma(s) of a solely tobacco flavored product. *See* TAB B.
- (4) Promotional materials for the Reviewed Products purposefully target users of menthol-flavored tobacco products and promote the Reviewed Products as substitutes or replacements for such menthol-flavored tobacco products. *See* TAB B.

The California flavor ban law restricts the retail distribution and sale of flavored tobacco products to California consumers. Under the California flavor ban law, retailers and their agents are subject to fines for the possession and sale of such flavored tobacco products. *See* Cal. Health & Saf. § 104559.5(f). Other state statutes and local ordinances may impose additional penalties on retailers or other vendors as well. *Id.* at § 104559.5(g); *see also* Cal. Bus. & Prof. § 17200. To encourage uniform application of the California flavor ban law, this Notice of Determination will be posted on the California Department of Justice's public website.

You are encouraged to provide a copy to your California distributor and retailer customers as well.

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If you believe these determinations or conclusions are in error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED, we encourage you to submit a response with any supporting materials to the mailing or email address below on or before June 23, 2023, identifying the Notice of Determination number in your response. The Tobacco Unit will review any such submission and may, in its discretion, update, modify, or rescind this determination in response. In such case, an updated Notice of Determination will be issued.

Flavor Determination [Determination Number(s)]

**Office of the Attorney General
California Department of Justice
1300 "I" Street, PO Box 944255
Sacramento, California 94244-2550
Tobacco@doj.ca.gov**

<https://oag.ca.gov/tobacco/contact>



Sincerely,

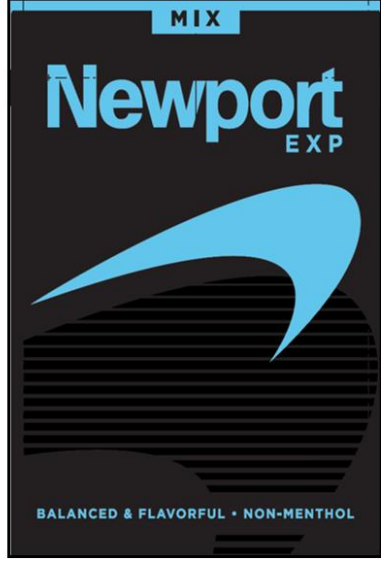



**BYRON M. MILLER
Deputy Attorney General**

For **ROB BONTA
Attorney General**

TAB A – PACKAGING IMAGES

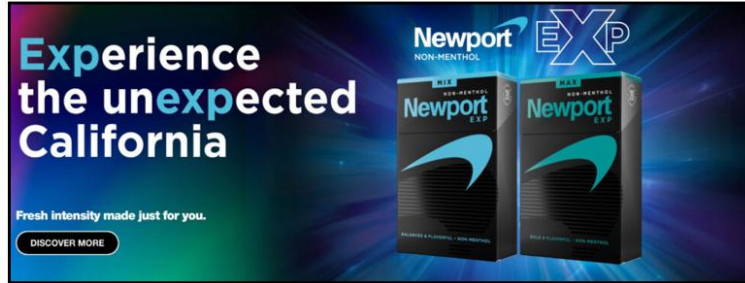
REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP NON-MENTHOL MAX", 2022 RENEWAL SUBMISSION.</p>	 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT BOOST MENTHOL KING BOX", 2022 RENEWAL SUBMISSION. CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP MENTHE BOX", 2022 RENEWAL SUBMISSION.</p>

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP NON-MENTHOL MIX", 2022 RENEWAL SUBMISSION.</p>	 <p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT MENTHOL PLATINUM BLUE KING BOX", 2022 RENEWAL SUBMISSION. CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT EXP MENTHE BOX", 2022 RENEWAL SUBMISSION.</p>

TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-2>

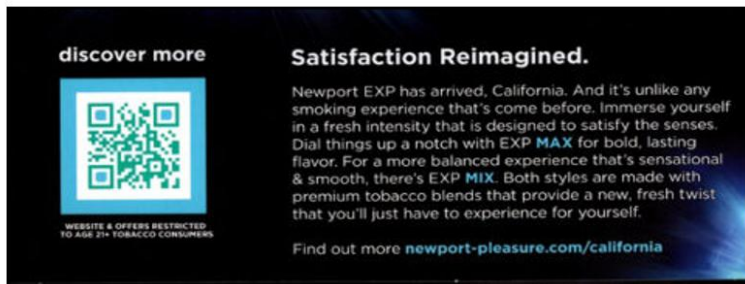


Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-6>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-7>



Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-7>



EXHIBIT 4



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7353
Facsimile: (916) 323-2319
E-Mail: Byron.Miller@doj.ca.gov

April 25, 2023

Jonathan Reed
CEO & Chief Commercial Officer
RJ Reynolds Tobacco Company
401 North Main Street
Winston-Salem, NC 27101

RE: California Flavor Ban, Health & Safety Code § 104559.5
Notice of Determination 23-04-A5

Dear Mr. Reed:

Since December 21, 2022, California has restricted retailer possession, distribution, and sale of flavored tobacco products. *See* Cal. Health & Saf. § 104559.5. This California “flavor ban” law establishes a rebuttable presumption that a tobacco product is flavored where its manufacturer “has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.” *Id.* at § 104559.5(b)(2).

This letter is to advise you that the Tobacco Unit of the California Department of Justice has reviewed referred packaging and promotional materials for Newport Non-Menthol Green and determined that this product is presumptively FLAVORED under the California flavor ban law. *Id.*

Determination Number	Reviewed Product(s)	UPC(s)	Determination
23-04-A5	Newport Non-Menthol Green	026100911459 026100911428 026100911541 026100911510	FLAVORED

We specifically conclude:

- (1) Labeling and packaging for Newport Non-Menthol Green uses brand names, text, and colors traditionally associated with menthol-flavored tobacco products. *See* TAB A.
- (2) Promotional materials for Newport Non-Menthol Green use common selling message(s) with menthol-flavored tobacco products in the Newport brand line. *See* TAB B.

- (3) Promotional materials for Newport Non-Menthol Green purposefully target users of menthol-flavored tobacco products and promote the Reviewed Products as substitutes or replacements for such menthol-flavored tobacco products. *See* TAB B.

The California flavor ban law restricts the retail distribution and sale of flavored tobacco products to California consumers. Under the California flavor ban law, retailers and their agents are subject to fines for the possession and sale of such flavored tobacco products. *See* Cal. Health & Saf. § 104559.5(f). Other state statutes and local ordinances may impose additional penalties on retailers or other vendors as well. *Id.* at § 104559.5(g); *see also* Cal. Bus. & Prof. § 17200. To encourage uniform application of the California flavor ban law, this Notice of Determination will be posted on the California Department of Justice’s public website.

You are encouraged to provide a copy to your California distributor and retailer customers as well.

If you believe these determinations or conclusions are in error, or if you believe any Reviewed Product(s) is properly classified as UNFLAVORED, we encourage you to submit a response with any supporting materials to the mailing or email address below on or before June 23, 2023, identifying the Notice of Determination number in your response. The Tobacco Unit will review any such submission and may, in its discretion, update, modify, or rescind this determination in response. In such case, an updated Notice of Determination will be issued.

Flavor Determination [Determination Number(s)]

**Office of the Attorney General
California Department of Justice
1300 “I” Street, PO Box 944255
Sacramento, California 94244-2550
Tobacco@doj.ca.gov**

<https://oag.ca.gov/tobacco/contact>

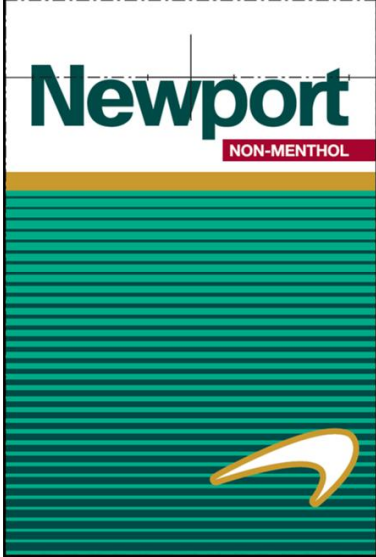
Sincerely,



**BYRON M. MILLER
Deputy Attorney General**

For **ROB BONTA
Attorney General**

TAB A – PACKAGING IMAGES

REVIEWED PRODUCT(S)	COMPARISON PRODUCT(S)
 <p>The image shows the front of a Newport Non-Menthol Green King Box Pack. At the top, the word "Newport" is written in a large, bold, green font. Below it, a red horizontal bar contains the text "NON-MENTHOL" in white. The main body of the pack is green with horizontal lines. At the bottom right, there is a stylized, curved logo in gold and white.</p>	 <p>The image shows the front of a Newport Menthol King Box Pack. At the top, the word "Newport" is written in a large, bold, green font. Below it, a gold horizontal bar is visible. The main body of the pack is green with horizontal lines. At the bottom right, there is a stylized, curved logo in gold and white.</p>
<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT NON-MENTHOL GREEN KING BOX PACK", 2022 RENEWAL SUBMISSION.</p>	<p>CALIFORNIA AG PACKAGE REPOSITORY, R.J. REYNOLDS, "NEWPORT MENTHOL KING BOX", 2022 RENEWAL SUBMISSION.</p>

TAB B – PROMOTIONAL MATERIALS

REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-4>



REVIEWED PRODUCT(S)

Stanford Research into the Impact of Tobacco Advertising Ad Collection, accessed at <https://tobacco.stanford.edu/cigarettes/menthol-medicates/nonmenthol/#collection-5>



EXHIBIT 5

Newport Non-Menthol



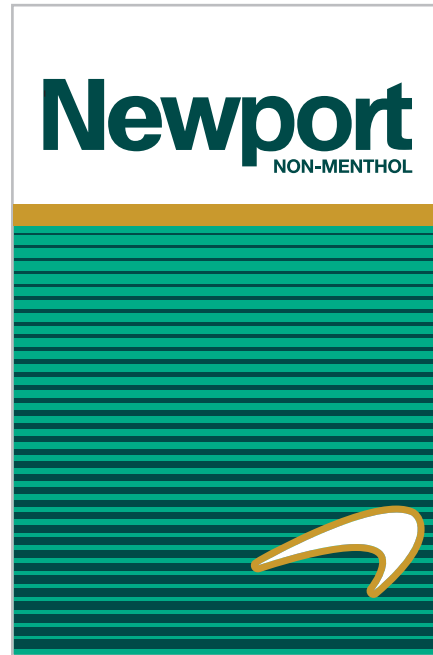
Top



Left



Front



Back



Right



Bottom

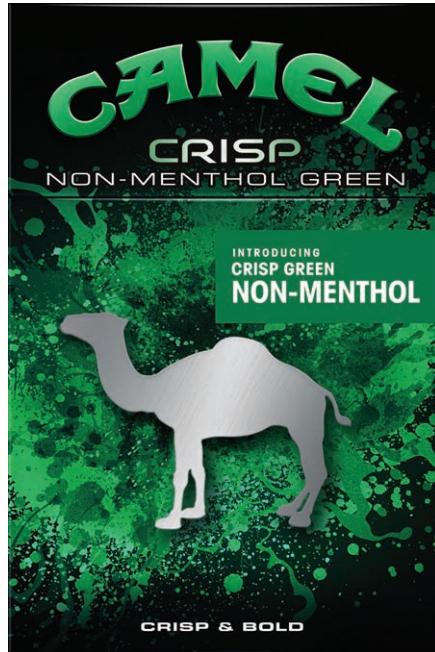
Camel Crisp “Green”



Top



Left



Front



Back



Right

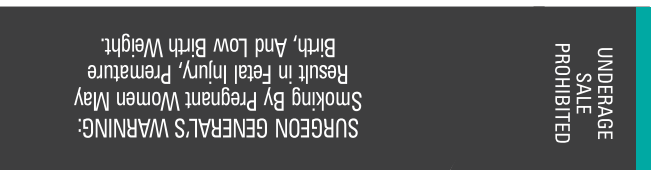


Bottom

Newport EXP Max



Top



Left



Front



Back



Right

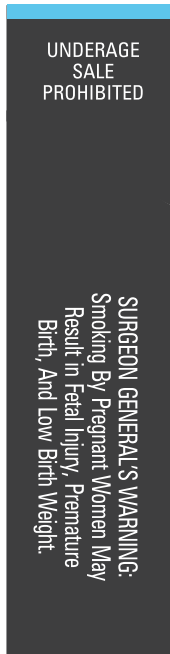


Bottom

Newport EXP Mix



Top



Left



Front



Back

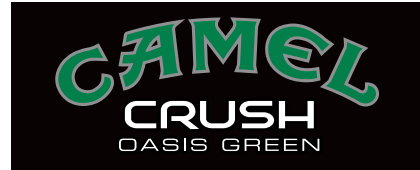


Right



Bottom

Camel Crush Oasis "Green"



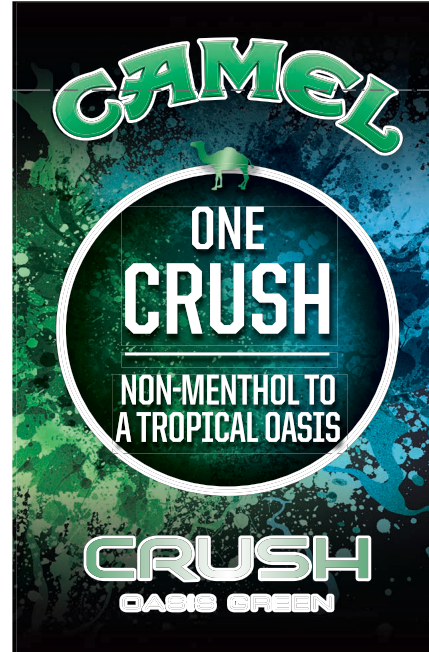
Top



Left



Front



Back



Right



Bottom

Camel Crush Oasis "Blue"



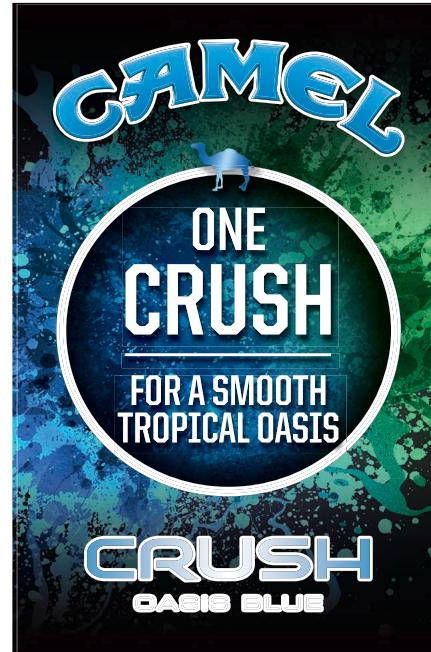
Top



Left



Front



Back



Right



Bottom

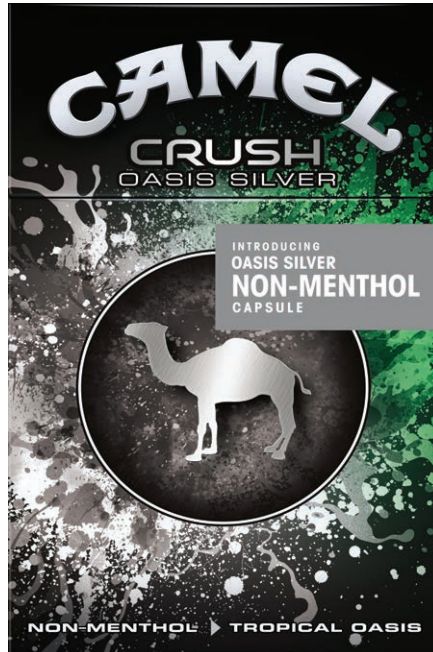
Camel Crush Oasis "Silver"



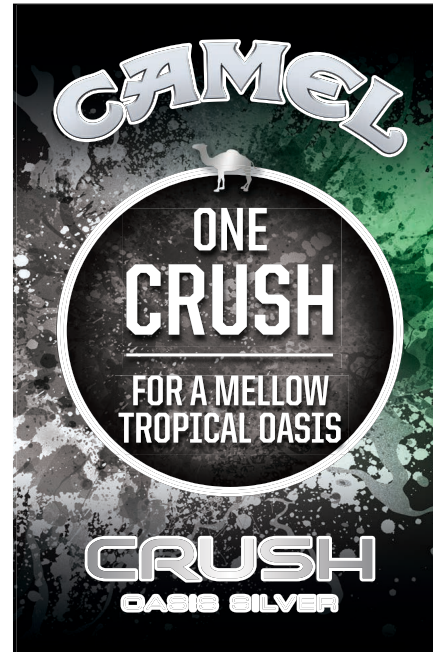
Top



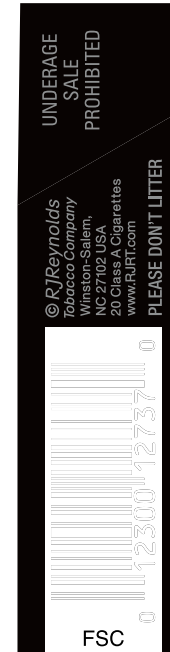
Left



Front



Back



Right



Bottom