



United Brands Products Design Development and Marketing Inc., Patriot Beverage LLC, 11SixtySix, LLC, Sweet & Sour Holdings LLC, Lesoo USA Inc., GreatWhip USA Inc., Waterline Marketing Company, and Commerce Enterprises Inc., Guangdong Lesoo Technology Co. Ltd, Xuzhou Basic Industry Co Ltd, Pluto Brands LLC, Vice City LLC, Metatron Cubed LLC, Vape Craft LLC, Ayra Ventures, LLC d/b/a Vape Craft, Gas Pipe Inc. d/b/a The Gas Pipe, WOSV TX LLC d/b/a World of Smoke, NSKHOJA Investment Inc. d/b/a Vapor Arena Smoke Shop, Samnani Investments LLC d/b/a Vapor Arena, Infinity & Beyond SHR LLC d/b/a Infinity & Beyond Shop, MM Grand LLC d/b/a Universal Smoke and Vape, Supreme Smoke d/b/a Supreme Smoke (collectively, “Defendants”), and states as follows:

### **INTRODUCTION**

1. This action arises from the Defendants’ wrongful conduct in connection with the marketing, distribution, and sale of nitrous oxide products for illicit recreational use. Although known to be dangerous when inhaled, Defendants have flooded smoke shops (and similar establishments that cater to vices)<sup>1</sup> with nitrous oxide products that invite and enable recreational use as an inhalant while maintaining only the thinnest pretext of it being a “culinary” product intended solely for making whipped cream.

2. The facade that smoke shops are selling nitrous oxide to chefs bears little resemblance to reality. Although nitrous oxide canisters may state (usually in relatively small type) that the product is for “food purposes” only, every aspect of Defendants’ marketing and retail presentation is designed to override that warning and attract illicit recreational users. Unlike the plain metal cartridges sold at restaurant supply stores, nitrous oxide canisters at smoke shops have

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<sup>1</sup> For purposes of this petition, the term “smoke shops” refers collectively to gas stations, smoke shops, vape shops, head shops, convenience stores and other retail outlets that are not legitimate or typical channels for medical or culinary supplies.

edgy names and bright colors that nod toward drug culture—not the food industry. They are pre-flavored as “bubble gum” or “banana cream pie” to increase their appeal as inhalants—despite making them less suitable for actual food preparations. Nitrous oxide canisters sold at smoke shops are often accompanied with nozzles that make immediate inhalation after purchase possible, but that serve no legitimate kitchen-related purpose. They are sold in giant canisters (hundreds of times the size of the typical 8g chargers used in whipped cream dispensers) that are ideal for repeated inhalation but implausible for baking. And, of course, they are marketed, merchandised, displayed, and sold alongside other drug paraphernalia in smoke shops that do not sell any other legitimate culinary products. In the face of relentless signaling that nitrous oxide inhalation is safe, fun, and pleasurable, Defendants know (and profit from) the fact that the nitrous oxide products’ minimal warnings are wholly deficient to convey the products’ true dangers.

3. The ready availability of inexpensive nitrous oxide products at gas stations, smoke shops, and convenience stores has caused an explosion in recreational nitrous oxide use that researchers describe as a “public health crisis.”<sup>2</sup> Deaths attributed to nitrous oxide have spiked by more than 500% between 2010 and 2023.<sup>3</sup> Emergency room visits for nitrous oxide misuse have also risen dramatically. One researcher has commented “[w]ithout any type of regulatory intervention, deaths and poisonings from nitrous oxide will increase at an accelerating rate and become a tremendous public health issue.”<sup>4</sup>

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<sup>2</sup> Yockey, Andrew, *Americans are Using Laughing Gas as a Drug. Here are the Dangers*. Real Clear Science (May 13, 2025), available at: [https://www.realclearscience.com/articles/2025/05/13/americans\\_are\\_using\\_laughing\\_gas\\_as\\_a\\_drug\\_here\\_are\\_the\\_dangers\\_1109815.html](https://www.realclearscience.com/articles/2025/05/13/americans_are_using_laughing_gas_as_a_drug_here_are_the_dangers_1109815.html).

<sup>3</sup> The University of Mississippi, *Nitrous Oxide deaths Spike by More Than 500%, Study Finds*, available at <https://olemiss.edu/news/2025/07/nitrous-oxide-deaths-spike-by-more-than-500-study-finds/index.html>

<sup>4</sup> Simmons, Ethan, *New study reveals nitrous oxide misuse deaths are steeply increasing*, University of Illinois Urbana Champaign (July 31, 2025), available at: <https://ahs.illinois.edu/new-study-reveals-nitrous-oxide-misuse-deaths-are-steeply-increasing/>; Yockey RA, Hoopsick RA. *US Nitrous Oxide Mortality*. JAMA Netw Open. 2025;8(7):e2522164. doi:10.1001/jamanetworkopen.2025.22164

4. Defendants have capitalized on the nitrous oxide epidemic. By feigning a legitimate purpose, Defendants have enabled widespread abuse of a substance never intended for human consumption at such doses—creating foreseeable and preventable harm that Defendants have ignored in pursuit of profit.

#### **DISCOVERY CONTROL PLAN LEVEL**

5. Plaintiff intends that discovery be conducted under Level 3.

#### **PARTIES**

##### **Plaintiff**

6. Plaintiff **Lacey Winters** is an individual who currently resides, and at all times relevant to the matters in this complaint resided, in Dallas Texas. Plaintiff is a citizen of Texas.

##### **Manufacturer Defendants**

7. Manufacturer Defendants designed, manufactured, produced, packaged, and sold nitrous oxide canisters with the intent and expectation, that they would be distributed and sold to consumers through intermediaries such as Distributor Defendants and Retailer Defendants. Manufacturers designed, manufactured, produced, and packaged nitrous oxide products to appeal to recreational users and profited from the foreseeable sale of nitrous oxide to customers, like Plaintiff, seeking intoxicating products.

8. Defendant **Guangdong Lesoo Technology Co. Ltd** (“Guangdong”) is a foreign entity believed to be organized and existing under the laws of the People’s Republic of China, with a principal place of business at Room 3003, T1 Building, Poly Centre, Wenhua South Road, Shunde District, Foshan City Guangdong Province in China. At all relevant times, Guangdong was engaged in the design, manufacture, marketing, distribution, and sale of nitrogen oxide canisters, which were purposefully placed into the stream of commerce with the expectation that

they would be sold and used in the State of Texas. Defendant Guangdong may be served via the Texas Secretary of State.

9. Defendant **Xuzhou Basic Industry Co Ltd (“Xuzhou”)** is a foreign entity believed to be organized and existing under the laws of the People’s Republic of China, with a principal place of business at Room 1933 Wantai Plaza N. 283, South Beijing Rd, Xuzhou Jiangsu Cn in China. At all relevant times, Xuzhou was engaged in the design, manufacture, marketing, distribution and sale of nitrogen oxide canisters, which were purposefully placed into the stream of commerce with the expectation that they would be sold and used in the State of Texas. Defendant Xuzhou may be served via the Texas Secretary of State.

#### **Distributor Defendants**

10. Distributor Defendants functioned as the commercial conduit by purchasing nitrous oxide canisters from manufacturers, including the Manufacturer Defendants, and placing them into regular and anticipated channels of trade. Distributor Defendants marketed, promoted, sold, and distributed nitrous oxide canisters to smoke shops, including those of Retailer Defendants, with the expectation that they would be resold to consumers. By promoting nitrous oxide products for recreational use as an inhalant and selecting smoke shops as retail customers, Distributor Defendants actively facilitated and profited from the foreseeable sale of nitrous oxide to customers, like Plaintiff, seeking intoxicating products.

11. Defendant **L&K Distribution, Inc. (“L&K”)** is a California corporation with its principal place of business at 22 S Harbor Blvd Suite 530 Anaheim, California 92805. At all relevant times, L&K distributed, marketed, promoted, and sold nitrous oxide tanks to retail smoke shops under the brand “Looper Whips”. L&K may be served by serving its registered agent Jonathan Lee at 222 S Harbor Blvd Suite 530 Anaheim, CA 92805.

12. Defendant **United Brands Products Design Development and Marketing, Inc.** d/b/a United Brands Corporation (“United Brands”) is a California corporation with its principal place of business at 170 Associated Road South, San Francisco, California 94080. At all relevant times, United Brands distributed, marketed, promoted, and sold “WhipIt!” brand nitrous oxide products to retail smoke shops. United Brands may be served by serving its registered agent Stephen R. Pappas, at 500 Cathedral Drive, Box 2048, Aptos, CA 95003.

13. Defendant **Galaxy Gas LLC** (“Galaxy Gas”) is a limited liability company with its principal place of business at PO Box 2630, Kennesaw, Georgia, 30156. The sole member of Galaxy Gas is Pluto Brands, LLC. At all relevant times, Galaxy Gas distributed, marketed, promoted, and sold “Galaxy Gas” brand nitrous oxide products to retail smoke shops. Galaxy Gas terminated its corporate registration with the State of Georgia on September 6, 2024, and therefore, Galaxy Gas may be served through Pluto Brands, LLC, who at all times relevant to this matter was a member and corporate parent of Galaxy Gas, at registered agent, Cogency Global Inc., 850 New Burton Road Suite 201, Dover, DE 19904.

14. Defendant **Pluto Brands, LLC** (“Pluto”) is a limited liability company organized under Delaware law with its principal place of business in Georgia. 11SixtySix, LLC is the sole member of Pluto. At all relevant times, Pluto was the owner of Galaxy Gas LLC. Pluto distributed, marketed, promoted, and sold “Galaxy Gas” brand nitrous oxide products to retail smoke shops. Pluto may be served by serving its registered agent Cogency Global, Inc. at 850 New Burton Road Suite 201, Dover, DE 19904.

15. Defendant **11SixtySix, LLC** (“11SixtySix”) is a limited liability company organized under Delaware law with its principal place of business in Georgia. The members of 11SixtySix are Bensalem Amor, Sammy Amor and Karim Amor. At all relevant times, 11SixtySix

was the owner of Pluto Brands LLC. 11SixtySix distributed, marketed, promoted, and sold “Galaxy Gas” brand nitrous oxide products to retail smoke shops. 11SixtySix may be served by serving its registered agent Paracorp Incorporated at 2140 S Dupont Highway, Camden, Delaware, 19934.

16. Defendants **Galaxy Gas LLC**, **Pluto Brands, LLC** and **11SixtySix, LLC** are collectively referred to herein as “Galaxy Gas Defendants”.

17. Defendant **Sweet & Sour Holdings LLC** (“Sweet & Sour”) is a limited liability company with its principal place of business at 800 N. Rainbow Blvd, Suite 208, Las Vegas, Nevada 89107. At all relevant times, Sweet & Sour distributed, marketed, promoted, and sold “Cosmic Gas” brand nitrous oxide products to retail smoke shops. Sweet & Sour may be served by serving its registered agent Raich Law PLLC at 2280 Pama Lane, Las Vegas, NV 89119.

18. Defendant **Lesoo USA Inc.** (“Lesoo”) is a Washington corporation with its principal place of business at: 100 Howard Street, Suite 4, Spokane, Washington, 99201-0508. At all relevant times, Lesoo distributed, marketed, promoted, and sold “GreatWhip” brand nitrous oxide products. Lesoo may be served by serving its registered agent Changjian Huang at 100 N Howard St., Ste R, Spokane, WA 99201.

19. Defendant **GreatWhip USA Inc.** (“GreatWhip”) is a Delaware corporation with its principal place of business at 8 The Green, Ste A, Dover, DE 19901. At all relevant times, GreatWhip distributed, marketed, promoted and sold “GreatWhip” brand nitrous oxide products. GreatWhip may be served by serving its registered agent A Registered Agent, Inc. at 8 The Green, Ste A, Dover, DE 19901.

20. Defendant **Patriot Beverage LLC** (“Patriot”) is a Delaware limited liability company with its principal place of business at 7800 Peters Road, Suite 200, Plantation, FL 33324

. The members of Patriot are C-Freddy Solutions, LLC and SRD Advisors LLC. At all relevant times, Patriot distributed, marketed, promoted and sold “Infuzd” brand nitrous oxide products to retail smoke shops. Patriot may be served by serving its registered agent Corporation Service Company at 251 Little Falls Drive, Wilmington, DE 19808.

21. Defendant **Waterline Marketing Company** (“Waterline”) is a Florida corporation with its principal place of business at: 4085 Arnold Avenue 201, Naples, Florida 34101. At all relevant times, Waterline distributed, marketed, promoted and sold “Ultra-Purewhip” brand nitrous oxide products to retail smoke shops. Waterline may be served by serving its registered agent Waterline Marketing, at 4085 Arnold Avenue 201, Naples, FL 34104.

22. Defendant **Commerce Enterprises Inc.** (“Commerce”) is a Florida corporation with its principal place of business at 7950 NW 53<sup>rd</sup> Street Suite 337, Miami Florida 33166. At all relevant times, Commerce distributed, marketed, promoted and sold nitrous oxide-filled canisters under brands including “Quickwhip” and “Supreme Whip” to retail smoke shops. Commerce may be served by serving its registered agent The Law Offices of Nick Spradline, PLLC at 4300 Biscayne Boulevard, Suite 203, Miami, FL 33137.

### **Retailer Defendants**

23. Retailer Defendants each own and operate one or more retail smoke shops in Dallas, Texas or the surrounding suburbs or areas. Retailer Defendants each sold nitrous oxide to Plaintiff. Upon information and belief, Retailer Defendants also provided Plaintiff with accessories, including nozzles, that modified the nitrous oxide canisters and made them usable by consumers to inhale nitrous oxide for illicit purposes. Retailer Defendants knew that by selling nitrous oxide to the public, including Plaintiff, they were delivering a substance that was going to be used as an intoxicating recreational drug.

24. Defendant **Vice City LLC** (“Vice City”) is a Texas domestic limited liability company with its principal place of business in Dallas, Texas. The sole member of Vice City LLC is Shawn Hadian, an individual who is a citizen of the State of Texas. Defendant Vice City may be served by serving its registered agent Shawn D. Hadian at 9147 Skillman Street, Suite 300, Dallas, Texas 75243.

25. Defendant **Metatron Cubed LLC** (“710 Vapors”) is a Texas domestic limited liability company operating under the name “710 Vapors” with its principal place of business in Dallas, Texas. The members of Metatron Cubed LLC are Micah Jue, an individual who is a citizen of Texas and Seth Kirkpatrick, an individual who is a citizen of Texas. At all relevant times, 710 Vapors operated smoke shops that sold nitrous oxide to the public at two Dallas locations: 6751 Abrams Road, Suite 124, Dallas, Texas 75231 (the Lake Highlands location) and at 4311 Lemmon Ave., Dallas, Texas 75219 (the Oak Lawn location). Defendant Metatron Cubed LLC may be served by serving its registered agent Seth Joseph Kirkpatrick at 6751 Abrams Road, Suite 124, Dallas, Texas 75231.

26. Defendant **Vape Craft LLC** (“Vape Craft”) is a Texas domestic limited liability company with its principal place of business at 2300 Hidalgo Drive, Carrollton, Texas 75010. The members of Vape Craft LLC include Alim Anwar, an individual who is a citizen of Texas. Defendant Vape Craft may be served by serving its registered agent Alim Anwar at 2300 Hidalgo Drive, Carrollton, Texas 75010.

27. Defendant **Ayra Ventures, LLC** (“Ayra”) d/b/a Vape Craft is a Texas domestic limited liability company with its principal place of business at 2300 Hidalgo Drive, Carrollton, Texas 75010. Upon information and belief, the members of Ayra Ventures, LLC include Abir Anwar, an individual who is a citizen of Texas. Defendant Ayra may be served by serving its

registered agent Abir Anwar at 2300 Hidalgo Drive, Carrollton, Texas 75010.

28. Defendant **Gas Pipe Inc.** d/b/a The Gas Pipe (“Gas Pipe”) is a Texas corporation with its principal place of business at 3327 Winthrop Ave, Suite 222, Fort Worth, Texas 76116. Defendant Gas Pipe may be served by serving its registered agent Jessica Karlinski at 6401 Castlemere, Plano, Texas 76093.

29. Defendant **WOSV TX LLC** d/b/a World of Smoke (“World of Smoke”) is a Texas domestic limited liability company with its principal place of business in Florida. The members of World of Smoke include SH World Holdings, LLC, a domestic limited liability company with its principal place of business in Florida. Defendant World of Smoke may be served by serving its registered agent Registered Agents Inc., at 5900 Balconies Drive, Suite 100, Austin, Texas 78731.

30. Defendant **NSKHOJA Investment Inc.** d/b/a Vapor Arena Smoke Shop (“Vapor Arena Smoke Shop”) is a Texas corporation with its principal place of business at 4000 W. Pioneer Pkwy, Suite 140, Arlington, Texas 76013. Defendant Vapor Arena Smoke Shop may be served by serving its registered agent Mohammad Almoghayer at 4000 W. Pioneer Pkwy, Suite 140, Arlington, Texas 76013.

31. Defendant **Samnani Investments LLC** d/b/a Vapor Arena (“Vapor Arena”) is a Texas domestic limited liability company with its principal place of business at 1032 Foxglove Drive, Carrollton, Texas 75007. The members of Vapor Arena include Sofiyan Samnani, an individual who is a citizen of Texas, and Shefali Samnani, an individual and citizen of Texas. Defendant Vapor Arena may be served by serving its registered agent Irfana Allana at 1032 Foxglove Drive, Carrollton, Texas 75007.

32. Defendant **Infinity & Beyond SHR LLC** d/b/a Infinity & Beyond Shop (“Infinity”) is a Texas limited liability company with its principal place of business at 5621 E Grand Ave, Dallas, TX 75223. Nouman Muhammad, an individual, is the sole member of Infinity and a citizen of Texas. Defendant Infinity may be served by serving its registered agent Nouman Muhammad, at 1401 Elm Street #2810, Dallas, Texas 75202.

33. Defendant **MM Grand LLC** d/b/a Universal Smoke & Vape (“Universal”) is a Texas limited liability company with its principal place of business at 960 S Westgate Way, Apt. 1132, Wylie TX 75098. Muhammad Saad Malik, an individual, is the sole member of Universal and a citizen of Texas. Defendant Universal may be served by serving its registered agent Muhammad Saad Malik at 960 S Westgate Way, Apt. 1132, Wylie, Texas 75098.

34. Defendant **Supreme Smoke and Vape LLC** d/b/a Supreme Smoke (“Supreme Smoke”) is a Texas limited liability company with its principal place of business at 4300 Main Street Ste 800, The Colony, Texas 75056. Sharjeel Surani, an individual, is the sole member of Supreme Smoke and a citizen of Texas. Defendant Supreme may be served by serving its registered agent Sharjeel Surani, at 2076 Hidalgo Ln, Frisco, Texas 75034.

### **JURISDICTION AND VENUE**

35. This Court has personal jurisdiction over each Defendant insofar as (1) some Defendants are residents of Texas and (2) each Defendant is authorized and licensed to conduct business in the State of Texas, maintains and carries on systematic and continuous contacts in the State of Texas, regularly transacts business within the State of Texas, and regularly avails itself of the benefits of the State of Texas. In addition to other acts that may constitute doing business, this Court has jurisdiction over Defendants pursuant to Tex. Civ. Prac. & Rem. Code §17.042 in that Defendants each transacted business in the State of Texas, contracted with a Texas resident

(and either party was to perform the contract, in whole or in part, in the State of Texas), and/or committed tortious acts, in whole or in part, within the State of Texas. Defendants caused tortious injury by acts and omissions in this judicial jurisdiction and caused tortious injury in this jurisdiction by acts and omissions outside this jurisdiction while regularly doing and soliciting business, engaging in a persistent course of conduct, and deriving substantial revenue from goods used or consumed and services rendered in this jurisdiction.

36. Defendants have substantial, systematic, and continuous contact with the State of Texas such that the exercise of personal jurisdiction is fair, just, and appropriate. All parties have sufficient minimum contacts with the forum state, Texas, such that “maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

37. Venue is proper in Dallas County. Under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code venue is proper in Dallas County because a substantial part of the events or omissions giving rise to this action occurred in Dallas County, Texas. Under Section 15.002(a)(3) of the Texas Civil Practice and Remedies Code venue is proper in Dallas County because Defendants Vice City LLC, Vape Craft LLC, Ayra Ventures, LLC, Metatron Cubed LLC, Infinity & Beyond SHR LLC and Samnani Investments LLC have their principal places of business in Texas in Dallas County. Under Section 15.002(a)(4), if prior subsections of Section 15.002 do not apply, venue is proper in Dallas County because Plaintiff resided in Dallas County at the time that the cause of action accrued. Pursuant to Tex. Civ. Prac. & Rem. Code §15.005, where Plaintiff has established proper venue against a defendant, this Court also has venue of all the defendants in all claims or actions arising out of the same transaction or occurrence.

38. Plaintiff seeks relief that is within the jurisdictional limits of the Court. Federal

courts lack jurisdiction over this suit. There is incomplete diversity of citizenship as Plaintiff and the four Retailer Defendants are all Texas citizens. Additionally, the Retailer Defendants are each local forum defendants. Further, Plaintiff's claims raise no federal questions, and Plaintiff seeks no relief under a federal law, statute, regulation, treaty, or constitution. Thus, removal would be improper. To the extent any Defendant seeks to improperly remove this case, Plaintiff requests an award of all costs, expenses, and fees available.

### **FACTUAL ALLEGATIONS**

#### **A. ABOUT NITROUS OXIDE**

39. Nitrous oxide is a colorless, odorless, non-flammable gas.

40. Nitrous oxide was discovered more than two centuries ago. Early on, humans recognized the psychoactive effect of nitrous oxide and its potential for recreational use—as reflected by “laughing gas” exhibits at fairs. Yet, illicit recreational use was constrained because nitrous oxide was inconvenient to acquire. The first spike in recreational nitrous oxide use came between 1970 and 1990 when small 8g whipped cream chargers, known as “whippets,” were introduced. A second spike in nitrous oxide use began around 2015, when nitrous oxide transitioned from industrial-looking 8g single-use chargers to brightly colored, high-volume industrial canisters. The large volume canisters allowed for hundreds of doses, continual inhalation, group use, and binge use. The large canisters of nitrous oxide were sold, not at culinary supply stores, but at smoke shops that cater to customers seeking recreational intoxication.

41. In the modern era, there are legitimate purposes for which nitrous oxide can be legally sold and used; most commonly, as a pain reliever and numbing agent for dental procedures and as a whipping propellant for food-grade aerosols. When administered for medical and dental procedures, the Federal Food, Drug, and Cosmetic Act treats it as a “designated medical gas,”

subjecting it to specific labeling, usage, and regulatory constraints that limit its accessibility to recreational users. *See* 21 U.S.C. §§ 360ddd(1)(C); 360ddd-1. However, when used as a propellant or aerating agent, it is regulated far more permissively and subject to no restrictions beyond compliance with current good manufacturing practices. *See* 21 C.F.R. § 184.1545 (Feb. 14, 2008). Defendants have capitalized on this permitted and lightly-regulated use for culinary purpose as a pretext for selling nitrous oxide for recreational use.

42. Food-grade nitrous oxide is sold in canisters that come in various sizes ranging from small 8g metal chargers, commonly used in whipped cream dispensers, to large 3000g tanks.

43. Users can release the nitrous oxide from the canister in several ways. Some nitrous oxide canisters are packaged together with nozzles that allow the gas to be immediately accessed once purchased. Other canisters, particularly large canisters, incorporate release valves that permit the user to start and stop the flow of gas making it more convenient to take multiple inhalation “hits” from the large container. The small 8g nitrous oxide chargers can also be placed in whipped cream dispensers, or “crackers,” that puncture the container allowing the gas to be inhaled.

44. It is common for recreational users of nitrous oxide to release the gas from canisters into a balloon before inhaling it from the balloon. This method allows the extremely cold pressurized gas to warm before inhalation, thereby lessening the risk of damage to lungs, vocal cords, and other tissue.

45. The nitrous oxide sold to the public in chargers is undiluted as compared to the nitrous oxide used in in medical or dental applications, which is a 30-50% concentration of nitrous oxide mixed with oxygen. This undiluted nitrous oxide is less safe because nitrous oxide, once inhaled, displaces oxygen in the body. Administering nitrous oxide combined with oxygen reduces the risk of harms associated with oxygen deprivation.

## B. THE GROWING NITROUS OXIDE EPIDEMIC

46. Upon information and belief, the bulk of Defendants' nitrous oxide products, particularly the flavored, large canister nitrous oxide products, go to smoke shops, where they are sold to persons seeking recreational intoxication. A former United Brands warehouse employee has estimated that three quarters of the company's product went to smoke shops.<sup>5</sup>

47. The ready accessibility of nitrous oxide at smoke shops has caused an explosion in recreational nitrous oxide use that researchers have described as a "public health crisis."<sup>6</sup> Deaths attributed to nitrous oxide abuse have jumped more than 100% between 2019 and 2023.<sup>7</sup> Emergency room visits, poison control calls, and hospitalizations related to recreational nitrous oxide inhalation have increased. Researchers warn that the trend could continue to worsen.

48. When inhaled, nitrous oxide causes users to become dizzy, light-headed, and giggly. It can produce feelings of euphoria, dissociation, and out-of-body experiences.<sup>8</sup> Nitrous oxide can also have anti-anxiety effects.<sup>9</sup> The "high" from nitrous oxide is brief but very intense.

49. Nitrous oxide is widely used and addictive. According to a 2019 survey by the U.S. Substance Abuse and Mental Health Services Administration, approximately 12.64 million Americans aged 12 and older had misused nitrous oxide in their lifetime.<sup>10</sup> Research evaluating

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<sup>5</sup> Spectrum News, Jury awards \$745 million to family of Missouri woman killed in Whip-It abuse case (Sept. 11, 2023) available at <https://spectrumlocalnews.com/mo/st-louis/news/2023/09/11/missouri-jury-awards-745-million-in-death-of-woman-struck-by-driver-who-used-inhalants>.

<sup>6</sup> Yockey, Andrew, Americans are Using Laughing Gas as a Drug. Here are the Dangers. Real Clear Science (May 13, 2025), available at: [https://www.realclearscience.com/articles/2025/05/13/americans\\_are\\_using\\_laughing\\_gas\\_as\\_a\\_drug\\_here\\_are\\_the\\_dangers\\_1109815.html](https://www.realclearscience.com/articles/2025/05/13/americans_are_using_laughing_gas_as_a_drug_here_are_the_dangers_1109815.html).

<sup>7</sup> *Id.*

<sup>8</sup> van Amsterdam J, Nabben T, van den Brink W. Recreational nitrous oxide use: prevalence and risks. *Regul Toxicol Pharmacol* 2015;73:790–6.

<sup>9</sup> *Id.*

<sup>10</sup><https://www.samhsa.gov/data/sites/default/files/reports/rpt29394/NSDUHDetailedTabs2019/NSDUHDefTabsSect1pe2019.htm?s=nitrous&#tab1-97a>

recreational use has found that a substantial proportion of heavy nitrous oxide users meet multiple DSM-5 substance use disorder criteria—including using more than intended, spending significant time using, and experiencing interpersonal problems due to use—supporting the addictive potential of nitrous oxide.<sup>11</sup>

### **C. INJURIES ASSOCIATED WITH INHALING NITROUS OXIDE.**

50. Inhalation of nitrous oxide directly from a pressurized source can severely damage tissue in the form of frostbite to the lips, mouth, throat, vocal cords, and lungs. The temperature of the nitrous canisters can also cause severe burns to the face, neck, stomach, arms, legs, and feet.

51. Inhalation of high concentrations of nitrous oxide (particularly when not mixed with an appropriate concentration of oxygen) deprives the body of oxygen. Depriving the brain of oxygen can cause hypoxia, nerve damage, unconsciousness, and even death.

52. Chronic nitrous oxide inhalation disrupts vitamin B12 metabolism causing a B12 deficiency. Vitamin B12 deficiency in turn interrupts the body's ability to engage in the methylation of myelin proteins, leading to the demyelination of nerve cells. Demyelination refers to the destruction or degradation of myelin, which leaves nerve cells exposed and vulnerable. Demyelination causes many serious health problems including severe neuropathy, paralysis, vision impairment or loss, muscle weakness and fatigue, impaired coordination, diminished or intensified touch sensitivity, cognitive impairment, and depression. B12 deficiency can also cause a bone spur on the cervical spine, causing the health problems above.

53. Because nitrous oxide inhalation also introduces dissociative and disorienting feelings, it poses a risk for acute physical injury from falls or other mishaps should the user attempt

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<sup>11</sup> Back S, Kroon E, Colyer-Patel K, Cousijn J. Does nitrous oxide addiction exist? An evaluation of the evidence for the presence and prevalence of substance use disorder symptoms in recreational nitrous oxide users. *Addiction*. 2024 Apr;119(4):609-618. doi: 10.1111/add.16380. Epub 2023 Oct 30. PMID: 37904333.

to stand, walk, or operate machinery while under its effects.

54. Nitrous oxide side effects include nausea, vomiting, dizziness, unconsciousness, B12 deficiency, which can result in numbness in fingers and toes, nerve damage, neurologic and psychiatric illness, lung collapse, blood vessel hemorrhage in the lungs, heart attacks, seizures, comas, asphyxiation, and death.<sup>12</sup> The repeated use of nitrous oxide can cause serious and permanent physical and neurological injuries. Nitrous oxide has been tied to numerous injuries and deaths.

55. The FDA has summarized the risks associated with recreational nitrous oxide use:

Inhaling nitrous oxide can result in a range of symptoms and serious health problems, from abnormal blood counts, asphyxiation, blood clots, frostbite, headache, impaired bowel and bladder function, lightheadedness, limb weakness, loss of consciousness, numbness, palpitations, paralysis, psychiatric disturbances (delusions, hallucinations, paranoia, depression), tingling, trouble walking, vitamin B12 deficiency, and in some cases, death. For some individuals who regularly inhale nitrous oxide, this habit can lead to prolonged neurological effects, including spinal cord or brain damage, even after stopping use.<sup>13</sup>

56. Despite the many harms associated with nitrous oxide inhalation, most recreational nitrous oxide users are unaware of its harm potential. One study found that 77% of users reported ignorance of the potential harmful effects of nitrous oxide inhalation.<sup>14</sup>

#### **D. DEFENDANTS KNOWINGLY PROMOTED AND SOLD NITROUS OXIDE PRODUCTS FOR RECREATIONAL USE.**

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<sup>12</sup> Campdesuner V, Teklie Y, Alkayali T, Pierce D, George J. Nitrous Oxide-Induced Vitamin B12 Deficiency Resulting in Myelopathy. *Cureus*. 2020 Jul 9;12(7):e9088. doi: 10.7759/cureus.9088. PMID: 32685323; PMCID: PMC7366039.

<sup>13</sup> U.S. Food & Drug Administration, FDA Advises Consumers Not to Inhale Nitrous Oxide Products (the “FDA Advisory”), <https://www.fda.gov/food/alerts-advisories-safety-information/fda-advises-consumers-not-inhale-nitrous-oxide-products>.

<sup>14</sup> Van Amsterdam, J, Nitrous oxide-induced reproductive risks: Should recreational nitrous oxide users worry, *Journal of Psychopharmacology* 2022, Vol. 36(8) 951–955, available at <https://journals.sagepub.com/doi/pdf/10.1177/02698811221077194>

57. Nitrous oxide is particularly dangerous because it is made readily available for illicit purposes through a pretextual distribution chain maintained by Defendants. The ready availability of nitrous oxide causes consumers to mistake its accessibility for harmlessness when, in actuality, its dangers can be quite severe.<sup>15</sup>

58. The nitrous oxide products used by restaurants and bakeries are typically 8g charger capsules. These traditional nitrous oxide chargers are small (8g), simple in design, and contain unflavored nitrous oxide. They are used in conjunction with a “Whipper” or Whip Creamer. They are listed on the websites for traditional restaurant supply businesses like Sysco and Webstaurant Store.

59. Aware that the chargers had potential for use as a recreational drug but were not easily accessible to recreational drug users who would want them for that purpose, Defendants saw an opportunity to expand the market for nitrous oxide into smoke shops, including the smoke shops of Retailer Defendants. The images below depict 8g nitrous oxide chargers and, upon information and belief, are examples of the type of 8g nitrous oxide chargers purchased by Plaintiff at Retailer Defendants’ smoke shops:



60. After approximately 2015, Manufacturing Defendants began manufacturing, and Distributor and Retailer Defendants began promoting, distributing, marketing, and selling much

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<sup>15</sup> Gardin TM, Yang A, Moeller JJ, *et al.* Subacute combined degeneration of the spinal cord in a patient with nitrous oxide use and autoimmune atrophic gastritis *BMJ Case Reports CP* 2023; 16:e254727.

larger nitrous oxide containers. This new type of nitrous oxide canister held up to 3000g of nitrous oxide (375x the amount of the typical 8g chargers sold at restaurant supply stores). Upon information and belief, the images below depict nitrous oxide products purchased by Plaintiff or are examples of the type of nitrous oxide canisters purchased by Plaintiff:





61. Through their marketing, distribution, and sales practices, Defendants actively promoted nitrous oxide for illicit recreational use and encouraged and enabled customers like Plaintiff to select nitrous oxide products for inhalation. Defendants’ marketing, distribution, and sales practices were inconsistent with the nitrous oxide products being sold for use as a culinary aid.

62. The nitrous oxide products distributed and sold by Defendants have names that feature slang words connecting the nitrous oxide products with the drug community, not the culinary community. For instance, the term “looper”, referenced by LooperWhips, is a slang word used to describe someone addicted to drugs; it is associated with thrill-seeking and living on the edge.<sup>16</sup>

63. Many of the nitrous oxide products distributed and sold by Defendants feature brightly colored packaging intended to make the products appealing to youths and young adults.

64. The large nitrous oxide canisters sold by Defendants are grossly mismatched to

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<sup>16</sup> FastSlang, “Looper”, available at: <https://www.fastslang.com/looper>

any legitimate culinary purpose. In kitchen use, whipped cream is made using small chargers (typically 8g each) or modest bulk systems designed for continuous service. Tanks holding as much as 3000g of nitrous oxide, by contrast, contain the equivalent of 375 standard chargers and would produce nearly 100 gallons of whipped cream; an amount that equates to over six thousand  $\frac{1}{4}$  cup servings. That is far more than any typical restaurant, bakery, or caterer, let alone home cook, could use before spoilage, sanitation and quality concerns rendered the whipped cream unstable. That is why legitimate restaurant supply businesses, like Sysco and Webstaurant, list 8g nitrous oxide charger capsules for sale but do not offer enormous, colorful containers of nitrous oxide.

65. Use of flavorings in nitrous oxide is a strong indicator of non-culinary intent. Flavorings added to nitrous oxide are inconsistent with legitimate culinary use in making whipped cream but are highly attractive for recreational inhalation. In culinary applications, flavor is introduced into the cream itself (through sugar or other ingredients), not into the propellant gas. Adding flavorings to the gas serves no functional culinary role and actually undermines food quality control by introducing uncontrolled tastes and aromas into the product. For that reason, legitimate restaurant supply businesses, like Sysco and Webstaurant, do not offer flavored nitrous oxide of any kind. By contrast, flavorings are desirable for inhalation because they make the gas more palatable and encourage repeated use.

66. Some nitrous oxide canisters are packaged together with a nozzle. There is no need for a nozzle when the nitrous oxide is used for standard culinary applications. Whipped cream dispensers have a built-in valve and dispensing nozzle. They are charged by either a small nitrous oxide charger that is punctured inside the dispenser or through a regulated hose from a bulk tank. In either case, the whipped cream dispenser itself controls the gas release with no external nozzle required. From a legitimate food-service perspective, packaging and selling nitrous

oxide with a nozzle is unnecessary. From a recreational consumer's perspective, inclusion of a nozzle enables direct gas release, which is how recreational users inhale nitrous oxide. The main purpose of the nozzle is to allow the nitrous oxide to be immediately accessed without connecting to regulator or dispenser. Although using a nozzle to directly consume nitrous oxide from a nitrous oxide container is dangerous, as it increases the risk of frostbite to the lips, mouth, throat, vocal cords, and lungs. Use of a nozzle is also dangerous because it allows for near continuous inhalation of nitrous oxide (as compared to a balloon, which must be repeatedly filled), greatly increasing the health dangers outlined above.

67. The release valve offered on some large nitrous oxide canisters makes it easier for illicit users to inhale nitrous oxide because it lets them control how much gas comes out at a time instead of it blasting out all at once. Recreational users frequently fill a balloon from a canister or cylinder and then inhale from the balloon, which is safer than breathing straight from the metal because the gas coming directly out is extremely cold and under high pressure. With a release valve, a user can gently open the flow, fill balloons repeatedly, and stop and start the gas as needed, which both reduces the risk of frostbite from direct discharge and makes it more convenient to take multiple inhalation "hits" from the same container.

68. The sale of nitrous oxide through smoke shops, rather than through legitimate restaurant supply channels, strongly signals that the gas is not intended for bona fide food preparations, but for recreational inhalation. Legitimate culinary nitrous oxide is sold by restaurant suppliers, baking distributors, and foodservice wholesalers that cater to chefs or home bakers. These outlets feature the cream chargers alongside dairy products and kitchen equipment. By contrast, smoke shops exist to sell products associated with intoxication and substance consumption. When nitrous oxide is sold in that environment—next to vaping products and drug

paraphernalia—it is setting signals that the product is being offered for inhalation.

69. Nitrous oxide products are heavily marketed on social media, including by engaging private social media influencers that have no legitimate connection to the culinary industry.

70. In smoke shops, nitrous oxide canisters are frequently displayed alongside paraphernalia that has no legitimate culinary purpose but clearly signals inhalant use—reinforcing that the expected use of the product is for recreational inhalation, not food prep. Commonly co-located items include balloons, balloon packs, and “crackers” or dispensers for releasing the compressed gas. Some shops also sell tubing, mouthpieces, and masks to reduce the discomfort of repeated inhalation. These tools are unnecessary for making whipped cream but widely associated with inhalant consumption.

71. These techniques were used to signal to Plaintiff and other consumers that the nitrous oxide products marketed, distributed, and sold by Defendants were appropriate for use as inhalants.

72. Between 2019 and 2023, Plaintiff purchased and inhaled the following brands of nitrous oxide products:

- a. LooperWhips. Looper Whips, also known as “Loopers”, are 615g nitrous oxide tanks. Loopers come in flavors including “Strawberry Kiwi,” “Tropical Punch” and “Sour Blue Raspberry.” A nozzle is included with every Looper Whip kit. LooperWhips were distributed by Defendant L&K.
- b. Galaxy Gas. Galaxy Gas comes in large 375g tanks and 2000g tanks, with flavors including “Vanilla Cupcake,” “Watermelon Lemonade,” and “Blueberry Mango.” Each Galaxy Gas tank is packaged and sold with an accompanying nozzle. Galaxy

Gas was distributed by Defendant Galaxy Gas.

- c. Infuzd. Infuzd is a nitrous oxide product offered in large, brightly colored 235g, 640g, 1364g, 2000g, and 3000g cylinders with flavors like “Birthday Cake,” “Banana Crème,” “Cereal Milk,” and “Aloe Grape”<sup>17</sup> Each Infuzd cylinder features a pressure relief valve. The giant 2000g and 3000g cylinders feature carrying straps. Infuzd was distributed by Defendant Patriot.
- d. Quickwhip and Supreme Whip. Quickwhip chargers come in sizes including 8g, 9g, 640g, and 2000g. The two larger-sized nitrous oxide canisters come with plastic release valves and carrying straps. SupremeWhip offers an 8.2g charger and a 615g and .95L version called “SupremeWhip Max.” Quickwhip and Supreme Whip are distributed by Defendant Commerce.
- e. Cosmic Gas. Cosmic Gas comes in flavors like “Vanilla Ice Cream” and “Watermelon Candy.” It is available in 615g, 1100g, and 0.6L sizes. Cosmic Gas was distributed by Defendant Sweet & Sour.
- f. WhipIt! WhipIt! chargers hold 8g of nitrous oxide. WhipIt! Brand nitrous oxide has become synonymous with nitrous oxide used for recreational inhalation—which is commonly called a “whippit.” Whipit! chargers are distributed by Defendant United Brands Inc. and Defendant United Brands.
- g. GreatWhip. GreatWhip offers nitrous oxide products in all sizes including 8g chargers, large flavored nitrous oxide canisters that come in 330g and 640g sizes, and under its “Infinity” line, enormous canisters of up to 2000g and 3000g that features flavors. GreatWhip canisters sized 330g and up include a nozzle.

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<sup>17</sup> <https://getinfuzd.com/collections>.

GreatWhip chargers and canisters are distributed by Defendant Lesoo and Defendant GreatWhip.

- h. Ultra-Purewhip. Ultra-Purewhip chargers hold 8 g of nitrous oxide. Ultra-Purewhip chargers are distributed by Defendant Waterline.

**E. DEFENDANTS FAILED TO ADEQUATELY WARN CONSUMERS ABOUT THE DANGERS OF INHALING NITROUS OXIDE.**

73. Defendants knew about the illicit market for nitrous oxide.

74. Defendants knew that the customer bases of smoke shops would be interested in purchasing and using nitrous oxide as an illicit drug.

75. Defendants sought to exploit the illicit market for nitrous oxide through marketing the gas to recreational drug users by offering the product at smoke shops that do not otherwise sell culinary products and that have no plausible reason to sell a culinary product, but rather sell only smoke inhalation products and drug paraphernalia. To that end, Distributor Defendants distributed and sold, and continued to distribute and sell, nitrous oxide in and to retail smoke shops, including the shops operated by Defendant Retailers, who, in turn, sell the nitrous oxide to consumers seeking intoxicants.

76. Retailer Defendants sell nitrous oxide products alongside items commonly associated with illicit drug use, including pipes, dabs, and drug detox kits. In so doing, Retailer Defendants hold themselves out as purveyors to consumers seeking intoxicating substances. Retailer Defendants sought to exploit the illicit market for nitrous oxide by providing consumers nozzles with nitrous tank purchases, displaying balloons (an accessory used for inhalation but not food preparation) alongside nitrous oxide canisters, and offering rewards programs for frequent purchasers.

77. By either packaging the nitrous oxide canisters together with nozzles or giving

customers nozzles with their purchase of nitrous oxide canisters, Distributor Defendants and Retailer Defendants altered or modified the nitrous oxide products to be accessible for inhalation. This modification caused harm to Plaintiff.

78. Defendants knew that the nitrous oxide products promoted and marketed to consumers as inhalants, distributed to smoke shops, and sold by smoke shops to consumers, were being purchased for recreational use via inhalation. By the sheer volume of sales at smoke shops, Defendants knew that nitrous oxide products were being purchased for use as a recreational drug. Despite this knowledge, Defendants continued to supply nitrous oxide to smoke shops and to consumers.

79. Defendants were aware of the harm that is caused by their unethical practices, including the fact that individuals who purchase and ingest nitrous oxide are subjected to an array of dangers and harms including, but not limited to: addiction, nerve damage, vitamin B12 deficiency, psychiatric disturbances (delusions, hallucinations, paranoia, depression), cognitive injuries, numbness, paralysis, asphyxiation, and in some cases, death.

80. Defendants had actual knowledge that multiple states have enacted laws and regulations prohibiting or regulating recreational inhalation of nitrous oxide, including statutes criminalizing possession for purposes of inhalation, use to intoxicate, and the sale of nitrous oxide to individuals under the age of 18.

81. Despite knowledge of the harm inhaling nitrous oxide could cause their customers, Defendants chose to sell nitrous oxide to consumers, including Plaintiff, that they knew were purchasing the nitrous oxide to use as an illicit drug.

82. Together, Manufacturer Defendants, Distributor Defendants, and Retailer Defendants, despite actual awareness of the risk, acted with conscious indifference for the rights,

safety, and welfare of others by operating a distribution ring for illicit nitrous oxide. Together, Defendants marketed, distributed, and sold a drug they knew was addictive and prone to abuse to individuals they knew are using their product as a recreational drug. Defendants did so with an explicit profit motive and with a deliberate and flagrant disregard of and conscious indifference to the consequences.

83. The warning language included on Defendants' nitrous oxide products was wholly inadequate to warn consumers about the nature, extent, and severity of the dangers of inhaling nitrous oxide. Some nitrous oxide canisters include language (usually in small type) on the label to the effect that the product is "For Food Purposes Only." This mildly worded warning is inadequate to convey the risk of serious physical injury or harm. To the contrary, describing the product as "food" suggests to customers that the product is safe to ingest because it is intended for "food" purposes. A false image of safety that is further promoted by flavoring the gas like food items including: "vanilla cupcakes" or "banana cream pie." Some nitrous oxide canisters include language (again usually in small type) saying "Do Not Inhale" on the product packaging. The seriousness of such a warning is minimized, however, by instructions to merely "remove person to fresh air" if inhaled.

84. Defendants failed to provide consumers with information about specific diseases or injuries that could result from consuming the nitrous oxide in the manner Defendants expected.

85. Defendants failed to advise consumers that inhaling the nitrous oxide canisters in the manner Defendants expected—directly from the canister or from a balloon, but, in either case, unmixed with oxygen—would place consumers at risk for hypoxia, asphyxiation, demyelination, nerve damage, blood clots, frostbite, headaches, impaired bowel and bladder

function, lightheadedness, limb weakness, loss of consciousness, numbness, palpitations, paralysis, psychiatric disturbances (delusions, hallucinations, paranoia, depression), tingling, trouble walking, vitamin B12 deficiency, and in some cases, death.

86. Defendants failed to advise consumers as to the addictive potential of recreational nitrous oxide inhalation.

**D. PLAINTIFF PURCHASED AND USED DEFENDANTS' NITROUS OXIDE PRODUCTS IN THE MANNER DEFENDANTS EXPECTED AND SUFFERED INJURIES.**

87. Between 2019 and 2024, Plaintiff repeatedly purchased nitrous oxide canisters from the Retailer Defendants for recreational use as an inhalant.

88. Plaintiff was first introduced to nitrous oxide inhalation via the small 8g chargers. Plaintiff purchased and used brands and products including WhipIt!, Great Whip, Supreme Whip, and Ultra-Purewhip.

89. In time, Plaintiff graduated to purchasing larger volume canisters, including the following brands and products: Galaxy Gas, Cosmic Gas, Loopers, Infuzd, GreatWhip and Quickwhip.

90. Plaintiff purchased the nitrous oxide products listed in the preceding paragraphs on one or more occasions from each of the following retail smoke shops operated by Retailer Defendants in the Dallas area: Infinity & Beyond Shop, Vice City, 701 Vapors, The Gas Pipe, World of Smoke, Universal Smoke & Vape, Vape Craft LLC, Vape Craft, Vapor Arena Smoke Shop, and Vapor Arena.

91. The nitrous oxide products sold to Plaintiff were marketed, packaged, and sold in a manner consistent with recreational inhalation, including but not limited to: (a) oversized large-capacity canisters far exceeding culinary needs, (b) branding, flavoring, and labeling appealing to

recreational users, (c) merchandising and point-of-sale placement alongside smoking and drug-use paraphernalia, and (d) the absence of meaningful warnings regarding the risks and dangers of nitrous oxide inhalation.

92. Plaintiff purchased and used nitrous oxide products regularly; estimating that a box of small bullet chargers would last her one day and large canisters lasted approximately five days. Retailer Defendants were aware of Plaintiff's volume of nitrous oxide use based on her frequent appearances in their stores and her participation in their rewards programs—which tracked purchases and offered discounts and incentives based on the volume of purchases.

93. Retailer Defendants knew that the purpose of Plaintiff's purchases of nitrous oxide was to achieve intoxication based on the conversations they had with Plaintiff, Plaintiff's frequency of purchases, the quantity and type of canisters sold to Plaintiff, the retail environment, and the well-known and widespread recreational abuse of nitrous oxide. Despite this knowledge, Retailer Defendants sold nitrous oxide to Plaintiff though they knew that Plaintiff intended to inhale the nitrous for recreational use.

94. At no time did any Retail Defendant attempt to limit Plaintiff's purchases of nitrous oxide products. At no time did any Retail Defendant instruct Plaintiff not to inhale nitrous oxide or warn Plaintiff about the dangers of using nitrous oxide as a recreational drug. To the contrary, when purchasing nitrous oxide canisters, Plaintiff was offered a free nozzle by Retailer Defendants. Plaintiff was asked by Retailer Defendants if she needed balloons (an accessory with no application to culinary uses) to enable the products' use as an inhalant. On one occasion, Plaintiff asked a salesperson at 701 Vapors for whipped cream chargers and was told he would not sell them to her if she did not ask for them by their drug name, "whippits."

95. In early 2024, Plaintiff experienced numbness in her legs that caused her to lose

motor function and fall. After seeking medical treatment, Plaintiff was diagnosed with a severe B12 deficiency, myelopathy, and neuropathy requiring ongoing treatments, including B12 supplements and physical therapy.

96. As a result of Plaintiff's use of Defendants' nitrous oxide products, Plaintiff suffered physical injuries and harm including but not limited to: vitamin B12 depletion, myelopathy, numbness, peripheral neuropathy, gait disturbance, numbness and weakness in her extremities, loss of coordination, difficulty speaking, difficulty swallowing, cognitive and neurological impairments, extreme paranoia, anxiety, depression, conscious pain and suffering, and other injuries.

#### **PUNITIVE DAMAGES ALLEGATIONS**

97. Defendants' conduct was, and is, of the type for which applicable laws provide for the imposition of punitive damages.

98. The acts and omissions of Defendants made dangerous downstream consumer use of nitrous oxide as an inhalant, not merely possible, but commercially intended and predictable.

99. Defendants' acts, omissions, and representations involved an extreme degree of risk considering the probability and magnitude of the harm. Defendants acted with reckless disregard for human life, safety, and the rights of consumers, including Plaintiff. Defendants knew their nitrous oxide canisters would be used for recreational inhalation and were aware of the serious risks associated with that use. Despite this knowledge, Defendants intentionally marketed and promoted their products in a manner that encouraged human consumption while failing to provide adequate warnings regarding the risk of severe injury.

100. Defendants' conduct was not accidental or merely negligent, but was willful, wanton, and motivated by profit. Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff and other consumers. By omitting adequate warnings, Defendants deprived consumers of the ability to make informed decisions about whether and how to use nitrous oxide. Defendants continue to sell these products without adequate warnings, demonstrating a conscious and ongoing disregard for consumer safety. As a direct result of Defendants' knowing and malicious conduct, Plaintiff suffered severe harm and may require future medical care.

101. Defendants' actions warrant the imposition of punitive damages in an amount sufficient to punish Defendants and deter similar misconduct in the future.

**MISNOMER, ALTER EGO, OR MISNAMED**

102. In the event that any parties are misnamed or not included herein, it is Plaintiff's contention that such was a misnomer and/or such parties are/were alter egos of parties named herein. As authorized by Rule 28 of the Texas Rules of Civil Procedure, this suit is brought against all those partnerships, unincorporated associations, private corporations, and individuals, either known or unknown, who are or were, during the period in which the incident made the basis of this lawsuit occurred.

103. Whenever in this petition it is alleged that the Defendants did any act or thing, it is meant that the Defendants' agents, officers, servants, borrowed servants, employees, or representatives did such act or thing and that the time such act or thing was done, it was done with the full authorization or ratification of Defendants or was done in the normal and routine course and scope of employment of Defendants' officers, agents, servants, borrowed servants, employees, or representatives. The principal is vicariously liable for the acts of the agent because

of an employer/employee status, agency by estoppel, ostensible agency, or borrowed servant doctrine.

### **DISCOVERY RULE**

104. This action is timely filed pursuant to the discovery rule. Despite acting with reasonable diligence, Plaintiff did not learn of the link between Plaintiff's injuries and her use of the nitrous oxide products until a date within the applicable limitations period when she was informed of the association by a healthcare provider. Within the time period of any applicable statute of limitations, Plaintiff could not have discovered, through the exercise of reasonable diligence, that long-term exposure to nitrous oxide was injurious to human health. A reasonable and diligent investigation by Plaintiff would not have revealed that nitrous oxide could cause the condition she later developed.

### **ALTERNATIVE ALLEGATIONS**

105. To the extent any allegation herein is inconsistent with any other allegation, such inconsistent allegations are pleaded in the alternative pursuant to Texas Rule of Civil Procedure 48. TEX. R. CIV. P. 48; *see Horizon Offshore Contractors, Inc. v. Aon Risk Servs.*, 283 S.W.3d 53, 59 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (“[A] party may assert inconsistent facts or remedies simultaneously against different defendants, settle with one defendant, and still recover judgment against the other defendant even though the facts or remedies alleged against the second defendant are inconsistent with the facts or remedies alleged against the settling defendant.”).

### **CAUSES OF ACTION**

#### **COUNT I** **STRICT PRODUCTS LIABILITY – DESIGN DEFECT** *(Against All Defendants)*

106. Plaintiff incorporates the above allegations as though fully set forth herein.

107. The nitrous oxide canisters purchased by Plaintiff were marketed, distributed, and sold by Defendants in the regular course of their businesses.

108. At the time of Plaintiff's injuries, the nitrous oxide products distributed by Distributor Defendants and sold by Retailer Defendants were in a defective condition and were unreasonably dangerous when put to their reasonably anticipated use in that they:

- a. Were designed and sold for recreational use;
- b. Incorporated features that enhanced recreational use as an inhalant but served no legitimate objective for the products' stated purpose as a culinary product;
- c. Were provided to consumers in unreasonably large quantities that made them ill-suited for any purpose other than inhalation and that greatly increased the risk of harm from repeated inhalation;
- d. Were addictive;
- e. Failed to incorporate abuse-deterrent designs such as adding a bitterant to the gas;
- f. Failed to incorporate abuse-deterrent designs, such as designing the canister to be incompatible with standard nozzles and inhalation accessories;
- g. Failed to contain adequate warnings against and about the dangers of inhalation;
- h. Used names, colors, branding, advertising, imagery, and components that promoted and enabled nitrous oxide inhalation and thereby contradicted, discredited, and muted any minimal warning that may have existed on the packaging about not using the product as an inhalant; and

i. Such further defects as discovery and the evidence shall reveal.

109. The design defect described herein existed at the time the product left Defendants' possession and control and was a producing cause of Plaintiff's injuries.

110. Inhalation was a reasonably anticipated and commercially intended use for the nitrous oxide sold by Defendants, based on Defendants' marketing, packaging, and distribution choices. Inhalation of the nitrous oxide was a reasonably anticipated use of the product, given Defendants' branding, packaging, choice of sales channels, accessories, and the volume and manner in which the products were sold.

111. The risk of injury to consumers who were enticed to purchase nitrous oxide canisters from smoke shops for recreational use as an inhalant outweighed any minimal utility from the challenged design features that promoted or enabled inhalation.

112. Safer alternative designs for nitrous oxide canisters existed at the time of manufacture, including (a) adding a bitterant to the nitrous oxide that would make the nitrous oxide unappealing for inhalation, (b) ceasing to include or provide nozzles with nitrous oxide tanks, (c) making nitrous oxide tanks incompatible with nozzles or inhalation accessories, and (d) limiting canister size. These alternative designs would have significantly reduced the risk of inhalation-related injuries from nitrous oxide without impairing its culinary utility.

113. Defendants were not passive or innocent sellers of nitrous oxide products. Defendants altered or modified the nitrous oxide products by offering free nozzles that allowed the nitrous oxide to be accessed for inhalation. *See* Tex. Civ. Prac. & Rem 82.003(2). Defendants exercised substantial control over the warnings, instructions, and information provided to consumers, which warnings and instructions were inadequate at the time the product left the Defendants' control and which inadequate warnings and instructions caused Plaintiff's injuries.

*See* Tex. Civ. Prac. & Rem 82.003(4). Defendants made an express factual representation about the safety of nitrous oxide as an inhalant that were incorrect, such representations were relied upon by Plaintiff and caused Plaintiff's injury. *See* Tex. Civ. Prac. & Rem 82.003(5). Defendants knew that the nitrous oxide products were defective in their warnings and design at the time Defendants supplied and sold the product and Plaintiff's injuries resulted from those defects. *See* Tex. Civ. Prac. & Rem 82.003(6). Upon information and belief, the manufacturers of certain of the nitrous oxide products used by Plaintiff are insolvent and/or not subject to the jurisdiction of the Court. *See* Tex. Civ. Prac. & Rem 82.003(7). Accordingly, Defendants are not entitled to the protections afforded to non-producing or innocent sellers under Chapter 82.

114. As a direct and proximate result of the defective nature of the nitrous oxide products, Plaintiff suffered substantial past and future conscious pain and suffering, permanent cognitive and neurological impairment, and other physical injuries.

115. The aforesaid acts, omissions and/or representations of Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Defendants to punish and to deter Defendants and others from similar conduct in the future.

116. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT II**  
**STRICT PRODUCTS LIABILITY – FAILURE TO WARN**  
*(Against All Defendants)*

118. Plaintiff incorporates the above allegations as though fully set forth herein.

119. The nitrous oxide products purchased by Plaintiff were marketed, promoted, advertised, distributed, supplied, merchandised, and sold, by Defendants in the regular course of their businesses.

120. At the time of Plaintiff's injuries, the nitrous oxide products were in a defective condition and were unreasonably dangerous when put to their reasonably anticipated use in that they failed to adequately warn about the risks of nitrous oxide inhalation, including the risks of addiction and severe health consequences.

121. The nitrous oxide products marketed, advertised, distributed, and sold to Plaintiff by Defendants are defective because the products fail to warn consumers, including Plaintiff, through the labeling, packaging, promotion, marketing, advertising or otherwise that:

- a. Inhaling nitrous oxide products can cause, maintain, or aggravate nitrous oxide addiction and subject consumers to the health hazards associated with addiction;
- b. Inhaling nitrous oxide products can deliver nitrous oxide at greater levels than medically recommended;
- c. Inhaling nitrous oxide products carries risks of behavioral, cognitive, and mental health injuries, neurological injuries, pulmonary injuries, long-term vitamin B12 deficiencies, and other harmful effects;
- d. The repeated use of nitrous oxide can cause serious and permanent physical and neurological injuries and death;

- e. Certain medical symptoms of inhaling nitrous oxide require prompt medical care and treatment, including identification of such symptoms and instructions on how to determine when to seek medical treatment;

122. Any minimal warnings that may have accompanied the nitrous oxide products were so mild in tone and so general in content as to fail to adequately warn consumers of the severe risks of inhalation. The warnings provided by Defendants failed to convey the level of information that a consumer would expect regarding risks associated with use of the products in a manner reasonably foreseeable to Defendants.

123. Plaintiff did not know and could not have reasonably been expected to know of the risks associated with recreational inhalation of nitrous oxide. The warning defects existed at the time the products left Defendants' control and rendered the products unreasonably dangerous.

124. At the point in time when Plaintiff purchased and inhaled the nitrous oxide products, Defendants were aware that inhaling nitrous oxide poses serious risks. The health risks associated with nitrous oxide inhalation were known to Defendants based on generally accepted knowledge in the scientific community at the time.

125. To the extent the nitrous oxide products' packaging contained warning language, such warnings were inadequate in size, color, prominence, wording or substance to convey the seriousness of the risk. Statements to the effect that nitrous oxide products are "For Food Purposes Only" are inadequate to convey the risk of serious physical injury or harm, and may even suggest to customers that the product is safe to ingest because it is intended for "food" purposes. Additionally, the use of names, colors, branding, flavorings, imagery, and components (e.g. nozzles, regulators, balloons) that promoted and enabled nitrous oxide inhalation served to contradict, discredit and mute any minimal warning that may have existed on the packaging about

not using the product as an inhalant.

126. The failure to adequately warn about the defective nitrous oxide products created a danger of the injuries described herein that were reasonably foreseeable at the time of labeling, design, distribution, and sale of nitrous oxide.

127. Had adequate warnings been provided, Plaintiff would not have inhaled Defendants' nitrous oxide products and the injuries she suffered would not have occurred.

128. Defendants were not passive or innocent sellers of nitrous oxide products. Defendants altered or modified the nitrous oxide products by offering free nozzles that allowed the nitrous oxide to be accessed for inhalation. *See* Tex. Civ. Prac. & Rem 82.003(2). Defendants exercised substantial control over the warnings, instructions, and information provided to consumers, which warnings and instructions were inadequate at the time the product left the Defendant's control and which inadequate warnings and instructions caused Plaintiff's injuries. *See* Tex. Civ. Prac. & Rem 82.003(4). Defendants made express factual representations about the safety of nitrous oxide as an inhalant that were incorrect, and such representations were relied upon by Plaintiff and caused Plaintiff's injury. *See* Tex. Civ. Prac. & Rem 82.003(5). Defendants knew that the nitrous oxide products were defective in their warnings and design at the time Defendants supplied and sold the product, and Plaintiff's injuries resulted from those defects. *See* Tex. Civ. Prac. & Rem 82.003(6). Upon information and belief, the manufacturers of certain of the nitrous oxide products used by Plaintiff are insolvent and/or not subject to the jurisdiction of the Court. *See* Tex. Civ. Prac. & Rem 82.003(7). Accordingly, Defendants are not entitled to the protections afforded to non-producing or innocent sellers under Chapter 82.

129. As a direct and proximate result of the defective warnings regarding nitrous oxide inhalation, Plaintiff sustained injuries, including a severe addiction to nitrous oxide, and other

severe physical, mental and emotional injuries, and past and future pain and suffering, permanent cognitive and neurological impairment, and other injuries.

130. The aforesaid acts, omissions and/or representations of Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Defendants to punish and to deter Defendants and others from similar conduct in the future.

131. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT III**  
**NEGLIGENCE**  
*(Against Manufacturer Defendants)*

132. Plaintiff incorporates the above allegations as though fully set forth herein.

133. Manufacturer Defendants designed, manufactured, branded, labeled, packaged, and sold nitrous oxide products in the regular course of their businesses throughout the United States, including into Texas, where the products were purchased by Plaintiff.

134. At all times relevant, Manufacturer Defendants owed the public, including Plaintiff, a duty to exercise ordinary care in designing, manufacturing, packaging, labeling, and distributing into the stream of commerce nitrous oxide products, including the nitrous oxide canisters at issue in this lawsuit.

135. Manufacturer Defendants further owed a duty to exercise ordinary care to prevent their products from being foreseeably misused in a manner that posed a serious risk of injury, where such misuse was reasonably anticipated based on the nature of the product, its design

features, packaging, branding, and the channels through which it was sold.

136. Manufacturer Defendants failed to exercise ordinary care, thereby breaching the duty owed to Plaintiff and others in one or more of the following respects:

- a. Designing and manufacturing nitrous oxide products in sizes, quantities, and configurations that foreseeably promoted repeated inhalation and abuse;
- b. Failing to incorporate readily available abuse-deterrent features, including bitterants, dose-limiting mechanisms, or packaging designs that were incompatible with standard nozzles and inhalation accessories;
- c. Designing, proving, and producing product packaging, branding, and labeling that promoted or normalized recreational inhalation and undermined any limited warning language;
- d. Failing to adequately warn of the known and foreseeable risks of inhalation, addiction, neurological injury, and other serious health consequences;
- e. Continuing to manufacture and supply nitrous oxide products for distribution into retail environments, including smoke shops, where Manufacturer Defendants knew or should have known the products would be sold and used for inhalation;
- f. Otherwise failing to act as a reasonably prudent manufacturer under the same or similar circumstances.

137. Retail resale for inhalation was the natural and foreseeable result of Manufacturer Defendants conduct. Manufacturer Defendants knew that the end retail customers for the nitrous oxide products they manufactured, such as Retailer Defendants, were purchasing nitrous oxide with intent to redistribute it to customers like Plaintiff to use as a recreational drug. Manufacturer Defendants nonetheless persisted in manufacturing and selling nitrous oxide canisters with

flagrant, reckless, and willful disregard for whether they were likely to be consumed by Plaintiff for their psychoactive effect.

138. Manufacturer Defendants knew that addiction, injury, and death were substantially likely to occur as a result of the intentional, reckless, and careless acts or omissions as described above.

139. As a direct and proximate result of the negligence of Manufacturer Defendants, Plaintiff sustained injuries including: a severe addiction to nitrous oxide, other severe physical, mental and emotional injuries, past and future pain and suffering, permanent cognitive and neurological impairment, and other injuries.

140. The aforesaid acts, omissions and/or representations of Manufacturer Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Manufacturer Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Manufacturer Defendants to punish and to deter Distributor Defendants and others from similar conduct in the future.

141. WHEREFORE, Plaintiff prays for judgment against Manufacturer Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT IV**  
**NEGLIGENCE**

*(Against Distributor Defendants)*

142. Plaintiff incorporates the above allegations as though fully set forth herein.

143. Distributor Defendants marketed, promoted, distributed, and sold nitrous oxide

in the regular course of their businesses throughout the United States, including into Texas, where the products were purchased by Plaintiff.

144. At all times relevant, Distributor Defendants owed the public, including Plaintiff, a duty to exercise reasonable care in marketing, promoting, supplying, selling, or otherwise placing in the stream of commerce nitrous oxide, including the nitrous oxide canisters at issue in this lawsuit.

145. Distributor Defendants further owed a duty to exercise ordinary care to prevent nitrous oxide products they distributed from being foreseeably misused in a manner that posed a serious risk of injury, where such misuse was reasonably anticipated based on the nature of the product, its design features, packaging, branding, and the channels through which it was sold.

146. Distributor Defendants failed to exercise ordinary care, thereby breaching the duty owed to Plaintiff and others in one or more of the following respects:

- a. Delivering and selling inhalant paraphernalia, knowing that the retailers receiving the paraphernalia intended that it be used to inhale ingest, use or otherwise introduce nitrous oxide into the human body;
- b. Supplying nitrous oxide to Retailer Defendants for use as a recreational drug;
- c. Supplying nitrous oxide to Retailer Defendants, knowing that Retailer Defendants were reselling the nitrous oxide as a recreational drug;
- d. Supplying Retailer Defendants with extraordinary amounts of nitrous oxide that indicated Retailer Defendants were reselling nitrous oxide as a recreational drug;
- e. Marketing and selling nitrous oxide canisters and paraphernalia that

featured names, colors, designs, and flavors that suggest to users such as Plaintiff that the nitrous oxide could be misused for illicit and recreational purposes;

- f. Promoting and encouraging recreational nitrous oxide use;
- g. Targeting, through their internet and social media advertising, potential users of recreational nitrous oxide use;
- h. Marketing nitrous oxide with items associated with drug culture, including balloons, nozzles, tubing, and merchandise suggestive of recreational use;
- i. Failing to adequately warn, instruct, or direct consumers about the consequences of inhaling nitrous oxide;
- j. Marketing, distributing and selling nitrous oxide containers with labels that are false and misleading;
- k. Marketing and promoting nitrous oxide products in a manner that promoted and encouraged inhalation and thereby contradicted, discredited, and muted, any minimal warning that may have existed on the packaging about not using the product as an inhalant; and
- l. Such further negligence and carelessness as discovery and the evidence will reveal.

147. These acts were independent of the products' condition and arose from Distributor Defendants' marketing and distribution practices.

148. Distributor Defendants had actual knowledge that their distribution chain, including their end retail customers like Retailer Defendants, were purchasing nitrous oxide with intent to redistribute it to customers like Plaintiff to use for illicit purposes as a recreational drug.

Distributor Defendants nonetheless persisted in selling and distributing nitrous oxide chargers to Retailer Defendants (for sale to Plaintiff and the public) with flagrant, reckless, and willful disregard for whether it was likely to be consumed by Plaintiff for its psychoactive effect.

149. Retail resale for inhalation was the natural and foreseeable result of Distributor Defendants' conduct.

150. Distributor Defendants knew that injury and death was substantially likely to occur as a result of the intentional, reckless, and careless acts or omissions as described above.

151. As a direct and proximate result of the negligence of Distributor Defendants, Plaintiff sustained injuries including: a severe addiction to nitrous oxide, other severe physical, mental and emotional injuries, past and future pain and suffering, permanent cognitive and neurological impairment, and other injuries.

152. The aforesaid acts, omissions and/or representations of Distributor Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Distributor Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety, and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Distributor Defendants to punish and to deter Distributor Defendants and others from similar conduct in the future.

153. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT V**  
**NEGLIGENCE**  
*(Against Retailer Defendants)*

154. Plaintiff incorporates the above allegations as though fully set forth herein.

155. At all times relevant, Retailer Defendants operated retail smoke shops that sold nitrous oxide canisters and paraphernalia in the regular course of its business.

156. Retailer Defendants owed the public, including Plaintiff, a duty to exercise reasonable care and act as a reasonably prudent seller when marketing, supplying, selling, or otherwise distributing and placing nitrous oxide products into the stream of commerce.

157. Retailer Defendants further owed a duty to exercise ordinary care to prevent nitrous oxide products they distributed from being foreseeably misused in a manner that posed a serious risk of injury, where such misuse was reasonably anticipated based on the nature of the product, its design features, packaging, branding, and the channels through which it was sold.

158. Retailer Defendants owed a duty arising from their knowledge of intended inhalation.

159. Retailer Defendants failed to exercise ordinary care thereby breaching its duty owed to Plaintiff in one or more of the following respects:

- a. Delivering and selling inhalant paraphernalia knowing that the retailers receiving the paraphernalia intended that it be used to inhale ingest, use or otherwise introduce nitrous oxide into the human body;
- b. Selling nitrous oxide canisters, with knowledge that inhalation of nitrous oxide is illegal and damaging, in a retail setting that caters to intoxication-seeking customers;

- c. Dispensing nitrous oxide canisters when it knew that they were going to be used as a recreational drug;
- d. Marketing and selling nitrous oxide chargers/containers and paraphernalia that featured names, colors, designs, and flavors that suggests to users such as Plaintiff that the nitrous oxide could be misused for illicit and recreational purposes;
- e. Dispensing nitrous oxide chargers/containers abreast drug paraphernalia with knowledge that so doing encourages and enables use of nitrous oxide for illicit purposes;
- f. Dispensing nitrous oxide chargers/containers with reckless disregard as to whether the substance was likely to be consumed, inhaled, or used as a recreational drug by the person to whom it was supplied;
- g. Selling Plaintiff large quantities of nitrous oxide that indicated Retailer Defendants were reselling nitrous oxide as a recreational drug;
- h. Promoting and encouraging the recreational use, and abuse, of nitrous oxide;
- i. Failing to institute and maintain adequate policies and procedures for ensuring the nitrous oxide canisters it sold were not utilized for illicit purposes;
- j. Targeting through their webpage, internet, and other advertising, social media accounts, in-store displays, or other means potential users of recreational nitrous oxide use;
- k. Marketing nitrous oxide with items associated with drug culture, including

- balloons, nozzles, tubing, and merchandise suggestive of recreational use;
- l. Marketing, distributing and selling nitrous oxide containers with labels that are false and misleading;
  - m. Failing to adequately warn, instruct, or direct consumers about the consequences of inhaling nitrous oxide;
  - n. Providing instruction and encouragement to customers, including Plaintiff, regarding the use of nitrous oxide as an inhalant;
  - o. Marketing, merchandising, and promoting nitrous oxide products in a manner that promoted inhalation and thereby contradicted, discredited, and muted, any minimal warning that may have existed on the packaging about not using the product as an inhalant; and
  - p. Such further negligence and carelessness as discovery and the evidence will reveal.

160. Retailer Defendants had actual knowledge that its customers were purchasing nitrous oxide with the intent to use it for illicit purposes as a recreational drug. Retailer Defendants nonetheless persisted in selling and distributing nitrous oxide chargers to the public, including Plaintiff, with flagrant, reckless, and willful disregard for whether it was likely to be consumed for its psychoactive affect.

161. Retailer Defendants knew that injury and death was substantially likely to occur as a result of the intentional, reckless, and careless acts or omissions as described above.

162. As a direct and proximate result of the negligence of Retailer Defendants, Plaintiff sustained permanent injuries, including a severe addiction to and dependence on nitrous oxide and other severe physical, mental and emotional injuries, and past and future pain and suffering,

permanent cognitive and neurological impairment, and other injuries.

163. The aforesaid acts, omissions and/or representations of Retailer Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Retailer Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Retailer Defendants to punish and to deter Retailer Defendants and others from similar conduct in the future.

164. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT VI**  
**VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT**  
*(Against All Defendants)*

165. Plaintiff incorporates the above allegations as though fully set forth herein.

166. Plaintiff is a consumer who purchased nitrous oxide as a good for personal use.

167. As described in this petition, Defendants employed and used unfair practices in connection with the sale and advertisement of nitrous oxide chargers throughout the State of Texas, in violation of Tex.Bus. & Com. Code § 17.41-17.63.

168. The unfair and deceptive practices of Defendants include, but are not limited to:

- a. Distributing nitrous oxide to persons, entities and smoke shops when Defendants had actual knowledge that those persons, entities, and smoke shops were intending on distributing nitrous oxide to the public for illicit use;

- b. Distributing nitrous oxide to the public when Defendants knew it was not safe for human consumption;
- c. Targeting customers of smoke shops when the product is not safe for human consumption and would likely be used by customers of such shops for illicit recreational drug purposes;
- d. Promoting or merchandising the product in a way that suggests and encourages its use as a recreational drug, presenting the nitrous oxide with or near paraphernalia, including “crackers,” nozzles and balloons, that Defendants knew were used by consumers to inhale nitrous oxide for illicit purposes;
- e. Engaging in a pattern and practice of advertising and marketing nitrous oxide canisters and accessories and demonstrating to customers how to use the accessories to extract and inhale the nitrous oxide, even though Defendants knew, despite the false advertising, lack of warnings, and the representation that the product was fit for the intended use, that nitrous oxide is in fact a dangerous product to inhale, and
- f. Such other and further unfair and deceptive practices as discovery and the evidence will reveal.

169. Defendants’ conduct, as described in this Petition, was unethical, oppressive and unscrupulous and posed a risk of substantial injury to Texas consumers, including Plaintiff, and has, in fact, caused substantial injury to Plaintiff.

170. The unfair and deceptive practices of Defendants were targeted to Plaintiff or involved Plaintiff, and Plaintiff sustained harm as a result of Defendants’ conduct.

171. Plaintiff relied on Defendants' representations to her detriment.

172. As a direct and proximate result of Defendants' conduct Plaintiff sustained permanent injuries, including a severe addiction to and dependence on nitrous oxide, and other severe physical, mental and emotional injuries, past and future pain and suffering, permanent cognitive and neurological impairment, and other injuries.

173. The aforesaid acts, omissions and/or representations of Defendants involved an extreme degree of risk considering the probability and magnitude of the harm. Defendants had actual subjective awareness of the risk but proceeded with conscious indifference to the rights, safety and welfare of Plaintiff and other consumers. Plaintiff is entitled to punitive damages from Defendants to punish and to deter Defendants and others from similar conduct in the future.

174. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT VII**  
**CIVIL CONSPIRACY**  
*(Against All Defendants)*

175. Plaintiff incorporates the above allegations as though fully set forth herein.

176. Defendants, acting individually, jointly, and concurrently, conspired and agreed to commit the acts alleged in the preceding counts.

177. There may be additional persons or entities who together conspired with Defendants to commit the acts alleged in the preceding counts but who are not joined here as their identities are not yet known.

178. Defendants each reaped financial gain from the acts alleged in the preceding

counts, which financial gain was the object of Defendants' course of action.

179. Defendants had a meeting of the minds on the object of the course of action. More specifically, Defendants agreed to market, promote, and sell nitrous oxide for recreational use as an inhalant under the pretext of selling it as a culinary aid to making whipped cream.

180. To further the conspiracy, Defendants each, also committed one or more unlawful actions in that Defendants knowingly and deceptively distributed and sold nitrous oxide knowing and intending that the nitrous oxide was to be sold to the public, including Plaintiff, and used for recreational purposes.

181. Overt acts committed by Defendants in coordination with one another and in furtherance of the conspiracy include, but are not limited to, purposefully marketing nitrous oxide to the segment of the public that seeks intoxicating products, placing the product at retail establishments that serve consumers seeking intoxicating products, bundling nitrous oxide canisters with nozzles (or otherwise providing nozzles for free) to enable the gas to be inhaled from the canister, positioning nitrous oxide alongside paraphernalia associated with inhalants and drug use.

182. As a result of Defendants' collective actions, taken in furtherance of the described conspiracy, Plaintiff was able to purchase nitrous oxide canisters from Retail Defendants.

183. As a direct and proximate result of Defendants' civil conspiracy, Plaintiff suffered severe, disabling, and permanent injuries and damages as set forth in this Petition.

184. The above acts of Defendants, which constitute civil conspiracy, involved an extreme degree of risk considering the probability and magnitude of the harm. Defendants had actual subjective awareness of the risk but proceeded willfully, wantonly, and with conscious indifference to the rights, safety and welfare of Plaintiff and other consumers. Plaintiff is entitled

to punitive damages from Retailer Defendants to punish and to deter Retailer Defendants and others from similar conduct in the future.

185. WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

**COUNT VIII**  
**PUBLIC NUISANCE**  
*(Against All Defendants)*

186. Plaintiff incorporates the above allegations as though fully set forth herein.

187. Defendants' acts and omissions, as alleged herein, constitute a public nuisance under Texas common law.

188. A public nuisance is an unreasonable interference with a right common to the general public, including conduct that endangers public health, safety, peace or comfort or that violates laws enacted to protect the public. A public nuisance affects the public at large.

189. Defendants distribute and sell nitrous oxide at retail smoke shops that are not legitimate or customary outlets for bona fide medical or culinary supplies in a manner that foreseeably promotes illicit inhalation rather than lawful culinary or medical use.

190. The sale of nitrous oxide in these settings has caused and continues to cause widespread harm to the public, including increased substance abuse, hospitalizations, emergency medical responses, impaired driving and resulting accidents and injuries, littering of spent canisters, and other threats to public health and safety. These harms affect not merely isolated individuals, but the community at large.

191. Defendants' conduct unreasonably interferes with rights common to the general

public, including the right to be free from dangerous and illegal drug distribution, the right to public safety in commercial and residential areas, and the right to the use and enjoyment of public spaces. Defendants' conduct is ongoing, continuous, and produces a condition that substantially and unreasonably endangers public health and safety.

192. The nuisance created by Defendants is intentional and/or the result of negligent, reckless, or abnormal and out-of-place commercial activity. Any purported lawful use of nitrous oxide does not outweigh the gravity of the harm caused, particularly where Defendants sell the product in retail environments that cater to recreational drug use and fail to implement meaningful safeguards, warnings, or sales restrictions.

193. Plaintiff has standing to bring this public nuisance claim because Plaintiff has suffered a special injury different in kind, not merely degree, from those suffered by the general public. As a customer of Retail Defendants' smoke shops where nitrous oxide was sold for illicit inhalation, Plaintiff has suffered unique and foreseeable harm, including suffering physical injuries. These injuries are concrete, particularized, and ongoing, are directly attributable to Defendants' conduct, and are not equally shared by the public at large, thereby conferring standing under Texas law to seek abatement of the public nuisance and other appropriate relief.

194. As a direct and proximate result of Defendants' public nuisance, Plaintiff and the public have suffered and will continue to suffer irreparable harm for which there is no adequate remedy at law. Plaintiff's injuries resulted directly from the nuisance condition created by Defendants.

195. WHEREFORE, Plaintiff seeks all relief available under Texas law, including injunctive relief abating the nuisance, prohibiting Defendants from selling nitrous oxide in smoke shop settings, civil penalties where permitted, costs of abatement, and all other relief to which

Plaintiff may be justly entitled. Plaintiff additionally prays for judgment against Defendants for compensatory damages, punitive damages, costs herein incurred, prejudgment interest, post-judgment interest, attorneys' fees and all other and further relief that may be just and proper under the circumstances.

#### **NOTICE OF DEMAND FOR PRESERVATION**

196. This notice is to formally demand preservation of any evidence related to the subject incident. If Defendants fail to properly secure and preserve these important pieces of evidence, there may be a legal presumption that the evidence would have been harmful to Defendants' side of the case. Failure to preserve and maintain this evidence may result in the imposition of sanctions by a Court, after proper motion and hearing. The destruction, alteration, or loss of any evidence that Defendants are required to maintain could prove detrimental to Defendants' defense and request is made that it be preserved and not be destroyed, modified, altered, repaired or changed in any manner. IMMEDIATELY PRINT AND SAVE ON PAPER ALL ELECTRONIC RECORDS RELATED TO THE SUBJECT OF THIS PETITION IN ADDITION TO ELECTRONICALLY PRESERVING ALL ELECTRONIC RECORDS.

#### **NOTICE OF SELF-AUTHENTICATION**

197. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby noticed that the production of any document in response to written discovery authenticates the document for use against that party in any pretrial proceeding or at trial.

#### **PRIVILEGE LOG REQUEST**

198. If Defendants seek to exclude from discovery any information, documents or tangible things sought by Plaintiff by claiming that material or information otherwise responsive to this written discovery is privileged, please consider this document to be Plaintiff's request for a

privilege log that generally identifies and/or describes the withheld information, documents, or tangible things pursuant to the Texas Rules of Civil Procedure.

**REQUEST FOR TRIAL BY JURY**

Plaintiff hereby requests a trial by jury on all counts and as to all issues.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests the following relief:

- a. That process issue and the Defendants be served in accordance with the Texas Rules of Civil Procedure,
- b. Compensatory damages, including but not limited to medical expenses, lost wages, pain and suffering, and diminished quality of life Plaintiff is deemed entitled to in an amount to be determined by the jury;
- c. Special damages, including all expenses, incidental past and future expenses, medical expenses, and loss of earnings and earning capacity in an amount to be determined by the jury;
- d. Punitive damages in an amount to be determined by the jury;
- e. Pre- and post-judgment interest as allowed by law;
- f. Reasonable attorneys' fees and costs, as provided by law;
- g. Such other relief as this Court may deem just and proper.

DATE: February 2, 2026

Respectfully submitted,

/s/ Jeffrey M. Tillotson

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### Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeffrey Tillotson on behalf of Jeffrey M. Tillotson  
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Envelope ID: 110894285  
Filing Code Description: Original Petition  
Filing Description: PLAINTIFFS ORIGINAL PETITION  
Status as of 2/6/2026 11:02 AM CST

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