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14 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

15 **IN AND FOR THE COUNTY OF MARICOPA**

16 STATE OF ARIZONA, *ex rel.* MARK
17 BRNOVICH, Attorney General,

18 Plaintiff,

19 v.

20 EONSMOKE, LLC, a New Jersey limited
21 liability company,

22 Defendant.

Case No.: CV2020-000318

PRELIMINARY INJUNCTION

(Hon. Danielle Viola)

23 The Court having considered this matter and good cause appearing therefore, **FINDS,**
24 **CONCLUDES AND ORDERS AS FOLLOWS:**

25 1. This Court has jurisdiction in this matter pursuant to A.R.S. § 44-1528, a
26 provision of the Arizona Consumer Fraud Act, and Rule 65(e), Ariz. R. Civ. P.

27 2. Pursuant to Rule 65(c)(1), the State is not required to provide a security bond.
28

1 3. This Order shall remain in effect until final judgment in this case is entered
2 against the Defendant, or until the Court modifies the Order.

3 **Findings of Fact and Conclusions of Law**

4 4. The Court finds that the State is likely to succeed on its factual and legal
5 arguments, and enters the following findings of fact and conclusions of law that are consistent
6 with its Application for Order to Show Cause.

7 5. Eonsmoke, LLC (“Defendant”) is a New Jersey limited liability company that
8 produces and manufacturers a number of vaping and/or e-cigarette products consumed by
9 Arizona youth.

10 6. The U.S. Food and Drug Administration (“FDA”) has identified in writing at
11 least 96 such items manufactured and offered for sale to the public by Defendant that the FDA
12 asserts violate its regulations and federal law.

13 7. Despite receiving written notice from the FDA about the illegality of these
14 products on or about October 24, 2019, Defendant currently offers its illegal products or has
15 allowed its illegal products to remain available to Arizona consumers. These illegal products
16 are currently available to the Arizona public through retail locations, through Defendant’s
17 website for online purchases, and through distributors.

18 8. Defendant is engaging in acts of deception by misrepresenting to Arizona
19 consumers that its illegal products are legal. Such conduct violates the Arizona Consumer
20 Fraud Act, A.R.S. § 44-1521 *et seq.*

21 9. The Court finds as a matter of law that Defendant Eonsmoke’s 96 products listed
22 in the FDA’s written notice are deemed by the FDA to be illegal under federal law. Therefore,
23 these products may not be presented as legal for consumption to the Arizona public pursuant
24 to the Consumer Fraud Act.

25 10. The State of Arizona directly served Defendant with its Summons, Complaint,
26 and Application for Order to Show Cause Regarding Preliminary Injunction on January 9,
27 2020, through service on Kelly Zeller, the General Manager of Defendant. The Court finds
28 that this service of process complied with Rule 4.2(h), Ariz. R. Civ. P.

1 C. Defendant and any other persons under its control or in concert or participation
2 with Defendant, who receive notice of this Order, are hereby ordered to
3 complete the following actions:

4 i. By March 10, 2020, Defendant shall take all reasonable and necessary
5 measures to remove from Arizona, including, but not limited, to any stock
6 in the possession of Arizona retailers¹ and distributors²:

- 7 a. the 96 products listed in the FDA's October 24, 2019 letter; and
8 b. any other illegal Eonsmoke products that are required to have, but
9 lack, an FDA marketing authorization order.

10 ii. Defendant's measures to remove from Arizona illegal products identified
11 in paragraph 13(C)(i) shall include, but are not limited to:

- 12 a. written communications, sent by U.S. Mail and by electronic mail,
13 from Defendant to all known retailers, including any online
14 retailers, and distributors of such products in Arizona, instructing
15 and directing that the products are illegal and must be removed
16 from public access immediately;
- 17 b. the written communications must further direct all known
18 distributors to immediately cease all distribution of illegal products
19 into Arizona;
- 20 c. the written communications must further direct all known retailers
21 to immediately cease all sales of illegal products in Arizona;
- 22 d. the written communications must be preserved by Defendant; and,
23 e. if the Arizona Attorney General's Office requests proof of part,
24 some, or all of these written communications, Defendant must

25 ¹ The term "retailer" includes any third party (i.e., convenience stores, vape shops,
26 online sellers, etc.) that sells Eonsmoke products.

27 ² The term "distributor" includes any distributor, wholesaler, shipper, and the like which
28 is in the stream of commerce for Eonsmoke products.

1 promptly provide, within three (3) business days of the request,
2 evidence that the specified communications were delivered.

3 14. In addition to the requirements of paragraph 13(C)(ii) above, Defendant shall
4 facilitate and assist the Arizona Attorney General's Office in any effort to send additional
5 written notices to retailers and distributors. These notices shall contain information authored
6 by the Arizona Attorney General's Office, at its sole discretion, informing and instructing the
7 recipient about illegal Eonsmoke products. Defendant shall take the following steps:

8 A. By March 1, 2020, Defendant shall provide to the Arizona Attorney General's
9 Office a complete list of all known Arizona retail locations at which Eonsmoke
10 products may have been available for sale to the public at any time from January
11 1, 2019 through the date of this injunction. This list shall include the name,
12 physical mailing address, electronic mail address (if known), and telephone
13 number of each retailer;

14 B. By March 1, 2020, Defendant shall provide to the Arizona Attorney General's
15 Office a complete list of all known distributors of Eonsmoke products within
16 Arizona. This list shall include the name, physical mailing address, electronic
17 mail address (if known), and telephone number of each distributor;

18 C. By March 1, 2020, Defendant shall provide to the Arizona Attorney General's
19 Office a complete list of all known online retailers of Eonsmoke products that
20 offer such products for sale into Arizona. This list shall include the web address,
21 physical mailing address, electronic mail address (if known), and telephone
22 number of each online retailer; and

23 15. By March 10, 2020, Defendant shall modify its website and online access to its
24 products to ensure that there is no advertising, solicitation, or sale of an illegal Eonsmoke
25 product – any product that is required to have but does not have an FDA marketing
26 authorization order – to any Arizona consumer. Any modification is subject to review by the
27 Arizona Attorney General and subsequent court action if the Arizona Attorney General
28 remains unsatisfied with any modification.

1 16. By March 31, 2020, Defendant shall prepare and submit to the Arizona Attorney
2 General's Office a written report informing the Office of the specific steps it has taken to
3 accomplish the requirements set forth in above paragraphs 13(B)(i) and (ii), 13(C)(i) and (ii),
4 and 6. Thereafter, Defendant shall prepare a report every sixty (60) calendar days detailing
5 whether Defendant can confirm that paragraph 15 requirements remain in place, including but
6 not limited to, that Arizona consumers remain blocked from purchasing illegal Eonsmoke
7 products online.

8 17. Defendant, and each of its successors, assigns, agents, employees, and any other
9 person in active concert or participation with Defendant who receive notice of this Order,
10 stipulate and agree to be restrained and enjoined from destroying, concealing, defacing, or
11 otherwise altering or disposing of any books, records, accounts, mail, papers, memos, or any
12 other documents or things of any kind or nature, including electronically stored information, of
13 or relating to Defendant's business or financial affairs.

14
15 Dated this ____ day of _____, 2020.

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17 _____
18 Hon. Danielle Viola
19 Arizona Superior Court
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Filing ID: 11394153 Case Number: CV2020-000318
Original Filing ID: 11368580

Granted as Submitted



/S/ M. Scott McCoy Date: 2/19/2020
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2020-000318

SIGNATURE DATE: 2/19/2020

E-FILING ID #: 11394153

FILED DATE: 2/20/2020 8:00:00 AM

NEILENDRA SINGH