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11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
 12 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA, *ex rel.* MARK  
 15 BRNOVICH, Attorney General,

16 Plaintiff,

18 v.

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

21 Defendant.

Case No.: CV2020-000318

**DEFAULT JUDGMENT**

23 This matter having come before the Court on the Motion for Default Judgment of the  
 24 State of Arizona, *ex rel.* Mark Brnovich, Attorney General (the “State”), and the Court having  
 25 reviewed the pleadings and having conducted a hearing on July 8, 2020 on the issue of relief to  
 26 be awarded to the State, the Court finds that Defendant Eonsmoke, LLC (“Defendant” or  
 27  
 28

1 “Eonsmoke”), against whom default is being sought, was regularly served with process and  
2 failed to plead or otherwise defend against the State’s Complaint within the time allowed by  
3 law and that the default of Defendant was duly entered by the Clerk of this Court on March 4,  
4 2020, pursuant to Rule 55 of the Arizona Rules of Civil Procedure. The Court further finds that  
5 Defendant is neither an infant nor incompetent and that the State is entitled to affirmative relief  
6 against it. Accordingly, the Court makes the following Findings of Fact and Conclusions of  
7 Law, and enters the following Order:

8 **FINDINGS OF FACT**

9 1. The State brought this matter against Defendant pursuant to the Arizona  
10 Consumer Fraud Act (“CFA”), Arizona Revised Statutes (“A.R.S.”) § 44-1521 *et seq.*

11 2. From approximately 2011, Defendant marketed and sold various e-cigarette  
12 (“vaping”) products, in different forms, to consumers.

13 3. Defendant sold vaping products throughout Arizona through retail channels and  
14 direct-to-consumer online sales.

15 4. On August 8, 2016, the U.S. Food and Drug Administration (“FDA”) issued a  
16 rule (the “Deeming Rule”) which deemed e-cigarettes as “tobacco products” falling under its  
17 authority, and required any new vaping product brought to the market after August 8, 2016, to  
18 be approved by the FDA.

19 5. In October 2018, the FDA informed Defendant that it “may be manufacturing”  
20 certain products that had not been approved by the FDA, and included a list of those products.  
21 Defendant subsequently took no action to submit any of those products to the FDA for  
22 approval.

23 6. In October 2019, the FDA confirmed in a letter to Defendant that 96 specific  
24 products manufactured and sold by Defendant were unlawful.

25 7. As of January 2020, illegal products produced by Defendant were available for  
26 sale at retail locations in at least nine out of Arizona’s fifteen counties.

27 8. As recently as November 2019, illegal products produced by Defendant were  
28 available for sale online to Arizona consumers.

1           9.     From August 2016 forward, Defendant earned at least half a million dollars in  
2 revenue from sales of these illegal products in Arizona.

3           10.    Defendant engaged in marketing tactics that targeted youth in Arizona, including,  
4 but not limited to, selling flavored pods with youth-oriented flavors.

5           11.    Defendant also targeted young audiences through social-media platforms  
6 including Twitter, Instagram, YouTube, Facebook, and Reddit.

7           12.    Defendant’s sales of its illegal products in Arizona generated approximately  
8 \$511,136.00 in revenue.

9   **CONCLUSIONS OF LAW**

10          1.     Defendant, in connection with the sale or advertisement of merchandise, used or  
11 employed deception, deceptive or unfair acts or practices, fraud, false pretense, false promises,  
12 misrepresentation, or concealment, suppression, or omission of any material fact with the intent  
13 that others rely on such concealment, suppression or omission, thereby engaging in unlawful  
14 practices as proscribed by the CFA.

15          2.     Defendant violated the CFA by appealing to, targeting, and exploiting Arizona  
16 youth with the marketing and sale of its harmful products.

17          3.     Defendant violated the CFA by misrepresenting impliedly or expressly that the  
18 sale of its products in Arizona is lawful.

19          4.     While engaging in the acts and practices alleged above, Defendant acted willfully  
20 as defined by A.R.S. § 44-1531(B).

21   **ORDER**

22 Based on the above and for good cause shown, the Court orders as follows:

23           A.     *Injunctive Relief*

24           Defendant Eonsmoke LLC and its officers, agents, servants employees, attorneys, and  
25 all other persons who are in active concert or participation with it, are permanently enjoined  
26 from the following activities:

- 27               1. Advertising, marketing, distributing, or making available for sale to Arizona  
28                 distributors, retailers, or consumers any tobacco products, as defined by 21

1 U.S.C. § 321(rr), that the United States Food and Drug Administration (“FDA”)  
2 has determined to be illegal for failure to obtain an FDA marketing authorization  
3 order, including, but not limited to, the 96 products listed in the FDA’s letter to  
4 Defendant dated October 24, 2019.

- 5 2. Advertising, marketing, distributing, or making available for sale to Arizona  
6 distributors, retailers, or consumers any tobacco product without an FDA  
7 marketing authorization order, if required by the FDA.
- 8 3. Marketing on social media, including, but not limited to, Instagram, Facebook,  
9 YouTube, Snapchat, or any other similar social-media platforms through any  
10 posts or advertisements that may be accessible by underage persons in Arizona.
- 11 4. Engaging or paying individuals to promote its products on social media,  
12 including, but not limited to, Instagram, Facebook, YouTube, Snapchat, or any  
13 other similar social-media platforms through any posts or advertisements that  
14 may be accessible by underage persons in Arizona.
- 15 5. Sending marketing emails, materials, or text messages to minors and/or age  
16 unverified users in Arizona.
- 17 6. Running advertisements or promotions within or targeting Arizona that use  
18 cartoons, caricatures, or other themes that are intended primarily to target or  
19 known to appeal to underage consumers.
- 20 7. Providing any products (free, discounted, or otherwise) to underage consumers in  
21 Arizona.
- 22 8. Selling or distributing to any retailer doing business in Arizona, when Defendant  
23 knew or should have known that the retailer has had three or more violations of  
24 underage sales, whether those violations were discovered by the FDA, the  
25 Arizona Attorney General’s Office, or Defendant.

26 Pursuant to A.R.S. § 44-1528(A) Defendant Eonsmoke, LLC shall comply with the  
27 Arizona Consumer Fraud Act, as it is currently written or as amended in the future.

1 B. *Monetary Relief*

- 2 1. Pursuant to A.R.S. § 44-1528(A)(3), the State is awarded judgment against  
3 Defendant Eonsmoke, LLC in the amount of \$511,136.00, with interest at 4.25%  
4 each year pursuant to A.R.S. § 44-1201(B), until paid, as disgorgement.
- 5 2. Pursuant to A.R.S. § 44-1531, the State is awarded judgment against Defendant  
6 Eonsmoke, LLC in the amount of \$21,974,000.00, with interest at 4.25% each  
7 year pursuant to A.R.S. § 44-1201(B), until paid, as civil penalties.
- 8 3. Pursuant to A.R.S. § 44-1534, the State is awarded judgment against Defendant  
9 Eonsmoke, LLC in the amount of ~~\$168,982.95~~ **\$50,000.00**,<sup>1</sup> with interest at  
10 4.25% each year pursuant to A.R.S. § 44-1201(B), until paid, as attorney’s fees  
11 and costs.
- 12 4. The State shall allocate payments received pursuant to this Judgment first to civil  
13 penalties, then to attorney’s fees and costs, and then to disgorgement, until the  
14 total of \$22,654,118.95 (plus any interest due) is reached. Payments allocated for  
15 disgorgement shall be deposited in an interest-bearing account within the  
16 Consumer Restitution and Remediation Revolving Fund pursuant to A.R.S. § 44-  
17 1531.02(C). All other payments shall be deposited into the Consumer Protection  
18 – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01.
- 19 5. This judgment resolves all outstanding claims. As no further matters remain  
20 pending, this is a final judgment entered pursuant to Ariz. R. Civ. P. 54(c).

21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

22  
23 \_\_\_\_\_  
24 SUPERIOR COURT COMMISSIONER

25 <sup>1</sup> After careful review of the attorney billing details, the Court concluded that an appropriate award was less than the amount  
26 requested. The Court appreciates that investigation and litigation by the Arizona Attorney General’s Office (“AGO”) is a  
27 team effort and requires thoughtful consideration before bringing state action against a private enterprise. Further, several  
28 levels review and approval only enhance the quality of the investigative and prosecutorial decisions and enhance the quality  
of the work product. At some point, however, the amount of time spent exceeds the standard of reasonableness the Court  
must apply evenhandedly to all litigants seeking recovery of attorneys’ fees. In other words, while the amount of time  
required for the AGO to bring an action may appropriately be substantial, in this case, that amount of time exceeds the  
reasonableness standard the Court must apply to all cases.

# eSignature Page 1 of 1

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Granted with Modifications



/S/ David Garbarino Date: 7/20/2020  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2020-000318

SIGNATURE DATE: 7/20/2020

E-FILING ID #: 11833667

FILED DATE: 7/22/2020 8:00:00 AM

NEILENDRA SINGH

EONSMOKE L L C  
NO ADDRESS ON RECORD