IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWANS FOR ALTERNATIVES TO SMOKING & TOBACCO, INC.; GLOBAL SOURCE DISTRIBUTION, LLC; WAGES AND WHITE LION INVESTMENTS, LLC d/b/a TRITON DISTRIBUTION; SMOKIN HOT LLC; CENTRAL IOWA VAPORS WDM, LLC; AND TASTE THE VAPE LLC d/b/a ROUTE 69 VAPOR, Plaintiffs, v. THE IOWA DEPARTMENT OF REVENUE AND MARY MOSIMAN, DIRECTOR OF THE IOWA DEPARTMENT OF REVENUE, Defendants.	Case No.: 24-cv-448 **VERIFIED COMPLAINT** **(Preliminary Injunction Requested)**

Iowans for Alternatives to Smoking & Tobacco, Inc.

LLC, Wages and White Lion Investments, LLC d/b/a Triton Distribution, Smokin Hot, L.L.C., Central Iowa Vapors WDM, LLC, and Taste the Vape d/b/a Route 69 Vapor bring this Complaint for declaratory and injunctive relief against the Iowa Department of Revenue and Mary Mosiman, the Director of the Iowa Department of Revenue. In support of their Complaint, Plaintiffs state as follows:

INTRODUCTION

1. Plaintiffs bring this Complaint to preliminarily and permanently enjoin Defendants from implementing and enforcing Iowa House File 2677, "an Act Relating to the Regulation of Vapor Products, and Providing Penalties" (hereinafter "HF 2677"), enacted into law in various provisions of Iowa Code Chapter 453A. A copy of HF 2677 is attached hereto as Exhibit A for reference.

2. HF 2677 violates the Supremacy Clause of the United States Constitution, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and the Equal Protection Clause of the Iowa Constitution.

3. The Iowa Legislature enacted HF 2677 during its 2024 legislative session, and the Iowa Department of Revenue ("IDOR") plans to begin enforcement of HF 2677 on or about February 3, 2025.

4. HF 2677 directs the IDOR to take enforcement actions (including the issuance of monetary penalties) against the manufacturers and sellers of electronic nicotine delivery systems (also known as "ENDS," "e-cigarettes," and "vapor products") that have not received marketing authorization from the United States Food and Drug Administration ("FDA").

5. HF 2677 contains an exception for ENDS that were on the market as of August 8, 2016—the date ENDS containing tobacco-derived nicotine became subject to the Federal Food, Drug, and Cosmetic Act ("FDCA")—and that had a premarket tobacco product application ("PMTA") filed with FDA by September 9, 2020, that is still undergoing FDA review or is the subject of ongoing litigation.

6. HF 2677 contains no such exception for ENDS containing non-tobacco-derived nicotine for which PMTAs were timely filed when ENDS containing non-tobacco-derived nicotine became subject to the FDCA in 2022.

7. Most ENDS on the market today do not yet have FDA authorization. Because FDA recognizes that ENDS are less harmful than traditional cigarettes and that ENDS have helped many adult smokers quit smoking, FDA exercises its discretion to enforce the FDCA's premarket authorization requirement for ENDS on a "case-by-case" basis. In other words, based on its enforcement discretion, FDA chooses not to take regulatory or enforcement action regarding some unauthorized ENDS on the market.

8. The Supremacy Clause of the United States Constitution allows Congress to preempt State law. And preemption occurs when State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. HF 2677 is preempted here because the legislation frustrates Congress' intent to give the Federal Government the exclusive authority to enforce the FDCA.

9. Moreover, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits a State from treating similarly situated persons differently when that differential treatment lacks a rational basis. HF 2677 violates the Equal Protection Clause because it treats manufacturers and sellers of certain ENDS with tobacco-derived nicotine differently than it treats manufacturers and sellers of ENDS containing non-tobacco-derived nicotine, even though there is no rational basis for such differential treatment.

10. Finally, the Equal Protection Clause of the Iowa Constitution prohibits the State from treating similarly situated persons differently when the State has no valid reason for the differential treatment. HF 2677 violates the Equal Protection Clause of the Iowa Constitution

because the State has no valid reason for treating manufacturers and sellers of certain ENDS containing tobacco-derived nicotine differently than manufacturers and sellers of ENDS containing non-tobacco-derived nicotine.

11. Because the IDOR's planned enforcement of HF 2677 starting on February 3, 2025, would require many retailer sellers of vapor products in the State of Iowa, including several Plaintiffs, to either run the risk of incurring substantial civil penalties for sales of vapor products not eligible for listing on the vapor products registry or shut down because they cannot maintain a profitable business with the limited range of vapor products eligible for listing on the registry, Plaintiffs seek preliminary and permanent injunctions against enforcement of HF 2677.

PARTIES

12. Plaintiff Iowans for Alternatives to Smoking & Tobacco, Inc. ("IFAST") is a non-profit corporation organized under the laws of the State of Iowa whose members include manufacturers and sellers of ENDS products, including ENDS products containing non-tobacco-derived nicotine that are the subject of timely filed PMTAs pending before FDA that are still undergoing FDA review. IFAST, which was formed in 2014, educates lawmakers, other government officials, and the public on the facts about ENDS products and the impact that legislative and regulatory proposals would have on public health in Iowa.

13. Plaintiff Global Source Distribution, LLC ("Global Source") is a limited liability company organized under the laws of the State of Iowa with its principal place of business in Urbandale, Iowa. Global Source is a distributor and wholesaler of ENDS products, including ENDS devices and bottled "e-liquids" containing non-tobacco-derived nicotine that are used in certain refillable ENDS devices. Global Source derives a substantial portion of its revenue from

sales of unauthorized ENDS products containing non-tobacco-derived nicotine to Iowa-based retailers of ENDS products. Global Source is a founding member of IFAST.

14. Plaintiff Wages and White Lion Investments, LLC d/b/a Triton Distribution ("Triton") is a limited liability company organized under the laws of the State of Texas with its principal place of business in Richardson, Texas. Triton is a manufacturer of bottled e-liquids that contain non-tobacco-derived nicotine that are used in certain refillable ENDS devices. Triton's PMTAs for those e-liquids were timely filed with FDA when ENDS containing non-tobacco-derived nicotine became subject to the FDCA in 2022 and those PMTAs remain under FDA review. Triton sells those e-liquids to distributors and retailers in Iowa, including Global Source and other members of IFAST. Triton is a member of IFAST.

15. Plaintiff Smokin Hot, L.L.C. ("Smokin Hot") is a limited liability company organized under the laws of the state of Missouri authorized to do business in the State of Iowa. Smokin Hot is an ENDS retailer with locations in Centerville, Iowa, Oskaloosa, Iowa, and Ottumwa, Iowa. Smokin Hot sells unauthorized ENDS, including, but not limited to, unauthorized ENDS containing non-tobacco-derived nicotine. Smokin Hot is a member of IFAST.

16. Plaintiff Central Iowa Vapors WDM, LLC ("Central Iowa Vapors WDM") is a limited liability company organized under the laws of the State of Iowa with its principal place of business in West Des Moines, Iowa. Central Iowa Vapors WDM is an ENDS retailer that sells unauthorized ENDS including, but not limited to, unauthorized ENDS containing non-tobacco-derived nicotine. Central Iowa Vapors WDM is a member of IFAST.

17. Plaintiff Taste the Vape LLC d/b/a Route 69 Vapor ("Route 69 Vapor") is a limited liability company organized under the laws of the State of Iowa with its principal place of business in Indianola, Iowa. Route 69 Vapor is an ENDS retailer with locations in Des Moines, Iowa,

Indianola, Iowa, and Altoona, Iowa. Route 69 Vapor sells unauthorized ENDS, including but not limited to, unauthorized ENDS containing non-tobacco-derived nicotine. Route 69 Vapor is a member of IFAST.

18. Defendant Iowa Department of Revenue ("IDOR") is an Executive Branch agency of the State of Iowa and is headquartered in Des Moines.

19. Defendant Mary Mosiman, who is sued in her official capacity, is the Director of the Iowa Department of Revenue with her office in Des Moines, Iowa.

JURISDICTION AND VENUE

20. This action arises under and asserts claims based on violations of the United States Constitution. The Court therefore has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

21. This action also asserts a claim based on a violation of the Iowa Constitution. This Court has subject matter jurisdiction for that claim under 28 U.S.C. § 1367(a).

22. The Declaratory Judgment Act authorizes the Court to grant Plaintiffs' request for declaratory relief. 28 U.S.C. §§ 2201–2202.

23. Because this action seeks to enjoin a state official from implementing and enforcing a state statute that violates the United States Constitution, the Eleventh Amendment to the United States Constitution does not prohibit this Court from deciding this action. *See Ex Parte Young*, 209 U.S. 123, 159-160 (1908).

24. This Court has personal jurisdiction over IDOR because it is an Executive Branch agency of the State of Iowa and is headquartered in Des Moines, Iowa.

25. This Court has personal jurisdiction over Mosiman in her official capacity as the Director of the Iowa Department of Revenue, with her office located in Des Moines, Iowa.

26. Venue is properly laid in this district pursuant to 28 U.S.C. § 1391(b) because this is a judicial district in which both Defendants reside and all Defendants are residents of the State in which this district is located.

LEGAL AND FACTUAL BACKGROUND

A. The Supremacy Clause of the United States Constitution provides that federal law preempts conflicting state law.

27. "A fundamental principle of the Constitution is that Congress has the power to preempt state law." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000) (citing U.S. Const., Art. VI, cl. 2).

28. Federal law preempts state law "in three circumstances." *English v. General Electric Co.*, 496 U.S. 72, 78 (1990).

29. "First, Congress can define explicitly the extent to which its enactments pre-empt state law." *Id.* This is referred to as "express preemption." *See, e.g.*, *St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016, 1022 (8th Cir. 2015). "Second, in the absence of explicit statutory language, state law is preempted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." *English*, 496 U.S. at 79. This is referred to as "field preemption." *Id.*

30. Third, and relevant to this action, "even if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute." *Crosby*, 530 U.S. at 372. This "implied conflict preemption" occurs where, *inter alia*, "state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

B. The Fourteenth Amendment to the United States Constitution prohibits a State from denying persons the equal protection of the laws.

31. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Art. XIV, § 1.

32. A State violates the Equal Protection Clause when it treats similarly situated persons differently and there is no "rational basis" for the differential treatment. *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992).

C. The Equal Protection Clause of the Iowa Constitution prohibits the Iowa Legislature from adopting statutes that are not uniform in operation.

33. The Equal Protection Clause of the Iowa Constitution states: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const., Art. I, § 6.

34. A statute that treats similarly situated persons differently violates the Equal Protection Clause of the Iowa Constitution where the Iowa Legislature had no "valid reason to treat [the similarly situated persons] differently." *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004).

D. The Federal Food, Drug, and Cosmetic Act of 1938 gives the Federal Government the exclusive authority to enforce the Act.

35. In 1938, Congress enacted the Federal Food, Drug, and Cosmetic Act (the "FDCA" or "Act"). *See* 75 Pub. L. 717, 52 Stat. 1040 (1938).

36. Section 301(a) of the 1938 Act prohibited the interstate distribution of "adulterated" or "misbranded" foods, drugs, medical devices, and cosmetics. 52 Stat. 1040, 1042.

37. The 1938 Act defined the terms "adulterated" and "misbranded." *See, e.g.*, 52 Stat. at 1049 (stating a drug or device is "adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance"); *id.* at 1050 (stating a drug or device is "misbranded if its labeling is false or misleading in any particular").

38. On numerous occasions since 1938, Congress has amended the definitions of "adulterated" and "misbranded" to include situations in which the product fails to comply with an FDCA requirement even if the failure to meet that requirement does not render the product defective or the product's labeling inadequate. *See*, *e.g.*, 21 U.S.C. § 351(a)(1)(B) & (h), 21 C.F.R. Parts 210, 211, and 820; 21 U.S.C. § 352(ff).

39. The 1938 Act provided three enforcement tools to address "adulterated" and "misbranded" products—a district court criminal prosecution of the person distributing the products, a district court injunction restraining the person from distributing the products, and a district court-ordered seizure and destruction of the products. *See* 52 Stat. at 1043-44. Those three enforcement tools still exist today. *See* 21 U.S.C. §§ 332, 333, 334.

40. However, section 307 of the 1938 Act made clear that *only* the Federal Government could enforce the Act. *See* 52 Stat. 1046 ("All such proceedings for the enforcement, or to restrain violations, of this Act shall be by and in the name of the United States.").

41. In the eighty-six years since it enacted the FDCA, Congress has provided for only one exception to the Federal Government's exclusive authority to enforce the Act. In 1990, Congress amended the Act to allow a State, in limited circumstances, to bring a civil action to enforce some of the Act's provisions relating to food.[1]

[1] Section 310 of the current FDCA, 21 U.S.C. § 337(a), states: "Except as provided in subsection (b), all such proceedings for the enforcement, or to restrain violations, of this Act shall be by and

E. Congress attempts to reduce smoking by amending the Federal Food, Drug, and Cosmetic Act to regulate cigarettes.

42. In 2009, Congress amended the FDCA through the Family Smoking Prevention and Tobacco Control Act ("TCA") to grant FDA authority over certain traditional tobacco products, including cigarettes. Pub. L. No 111-31, Div. A, 123 Stat. 1776; 21 U.S.C. § 387a(b).

43. Congress granted this authority to FDA because cigarettes "cause cancer, heart disease, and other serious adverse health effects." TCA § 2(2), 123 Stat. 1776, 1777 (codified at 21 U.S.C. § 387 note).

44. Indeed, Congress found that the use of cigarettes "is the foremost preventable cause of premature death in America," that it "causes over 400,000 deaths in the United States each year," and that "approximately 8,600,000 Americans have chronic illness relating to smoking." TCA § 2(13), 123 Stat. 1776, 1777. Congress also found that a 50 precent "reduction in youth smoking" would save "over 3,000,000" minors "from premature death due to tobacco-related disease" and "would result in approximately $75,000,000,000 in savings attributable to reduced health care costs." TCA § 2(13), 123 Stat. 1776, 1777.

45. However, the TCA prohibits FDA from "banning all cigarettes." 21 U.S.C. § 387g(d)(3)(A). In fact, cigarette manufacturers can market "new" cigarettes—defined as cigarettes that were not commercially marketed in the United States as of February 15, 2007—if the manufacturer can demonstrate to FDA that the new cigarette is "substantially equivalent to" one marketed in the United States before that date. 21 U.S.C. § 387j. FDA has authorized the marketing of hundreds of new cigarettes through the issuance of "substantially equivalent" orders.[2]

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in the name of the United States." Subsection (b) allows a State, in limited circumstances, to bring a civil action to enforce some of the Act's food provisions.

[2] *See* FDA Searchable Products Database, available at https://www.accessdata.fda.gov/scripts/searchtobacco/ (last accessed on Dec. 5, 2024).

46. Many of those newly authorized cigarettes are manufactured by the "Big Tobacco" companies—*e.g.*, companies operated by Altria Group Inc. and Reynolds American Inc. Altria's operating companies include Phillip Morris (the largest cigarette manufacturer in the United States and the maker of Marlboro, Benson & Hedges, and Virginia Slims cigarettes). Reynolds American's operating companies include the R.J. Reynolds Tobacco Company (the second largest cigarette manufacturer in the United States and the maker of Camel, Lucky Strike, and Newport cigarettes).

47. According to the Federal Trade Commission's most recently released data, the major cigarette manufacturers sell approximately 170 billion cigarettes in the United States every year. Federal Trade Commission Cigarette Report for 2022 at 3 (Oct. 30, 2023).[3]

F. The FDCA's tobacco product requirements are extended to electronic nicotine delivery systems.

48. The FDCA's tobacco product requirements originally extended only to "cigarettes, cigarette tobacco, roll-you-own tobacco, and smokeless tobacco." *See* 21 U.S.C. § 387a(b). The requirements were extended to ENDS products containing tobacco-derived nicotine in August 2016, *see* 81 Fed. Reg. 28974 (May 10, 2016); and the requirements were extended to ENDS products "containing nicotine from any source" (including non-tobacco-derived nicotine) in April 2022, *see* Pub. L. 117-103, § 111(a)(1); 21 U.S.C. § 321(rr)(1).

49. ENDS, also known as electronic cigarettes, heat a solution containing nicotine, flavorings, and other ingredients (called "e-liquid") into an aerosol that the user inhales. Unlike traditional cigarettes, ENDS do not contain any tobacco leaf, do not rely on combustion, and do not generate smoke.

[3] Available at https://www.ftc.gov/system/files/ftc_gov/pdf/2022-Cigarette-Report.pdf (last accessed Dec. 5, 2024).

50. As the top officials from the National Institutes of Health ("NIH") and FDA recently noted, "Many adults who smoke have used e-cigarettes to quit smoking."[4] Moreover, according to FDA, "ENDS are generally likely to have fewer and lower concentrations of harmful and potentially harmful constituents" than cigarettes and "biomarker studies demonstrate significantly lower exposure to [those harmful constituents] among current exclusive ENDS users than current smokers."[5] Thus, "smokers who switch completely to ENDS will have reduced toxic exposures and this likely leads to less risk of tobacco-related diseases."[6]

51. And, while the nicotine found in ENDS is not harmless, FDA has emphasized that "the nicotine in cigarettes is *not* directly responsible for the cancer, lung disease, and heart disease that kill hundreds of thousands of Americans each year * * * [Rather], it's the other chemical compounds in tobacco, and in the smoke created by setting tobacco on fire, that directly and primarily cause the illness and death."[7] As FDA has explained, "If you could take every adult smoker * * * and fully switch them to e-cigarettes, that would have a substantial public health impact."[8]

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[4] H. Harraich, et al., *Opportunities for Innovation in Smoking Cessation Therapies: A Perspective from the National Institutes of Health and the U.S. Food and Drug Administration*, Annals of Internal Medicine, Oct. 15, 2024, at 3.

[5] *FDA v. Wages and White Lion Investments, L.L.C.*, No. 23-1038, App. to Pet. Cert. 251a-252a (U.S. Mar. 19, 2024).

[6] FDA, *Technical Project Lead (TPL) Review of PMTAs* at 6 (May 12, 2022), https://perma.cc/7BGZ-DUEH.

[7] FDA Commissioner Scott Gottlieb, Protecting American Families: Comprehensive Approach to Nicotine and Tobacco (June 28, 2017), https://tinyurl.com/4zjcmvjb (emphasis added).

[8] CSPAN, *FDA Commissioner on E-Cigarettes and Public Health Concerns*, at 10:25 (Sept. 25, 2018), https://tinyurl.com/mujce8hr.

G. FDA exercises enforcement discretion regarding unauthorized ENDS.

52. When ENDS containing tobacco-derived nicotine became subject to the FDCA in August 2016, they became "adulterated" tobacco products until the manufacturer obtained an FDA marketing granted order through the premarket tobacco product application ("PMTA") process. 21 U.S.C. §§ 387b(6)(A), 387j(a)(2)(A).

53. Similarly, when ENDS containing non-tobacco-derived nicotine became subject to the FDCA in April 2022, they became "adulterated" tobacco products until the manufacturer obtained an FDA marketing granted order through the PMTA process. 21 U.S.C. §§ 387b(6)(A), 387j(a)(2)(A).

54. However, there were already countless ENDS with tobacco-derived nicotine on the market in August 2016; likewise, there were countless ENDS with non-tobacco-derived nicotine on the market in April 2022.

55. FDA has recognized that immediately forcing all unauthorized ENDS off the market while manufacturers go through the PMTA process could result in many ENDS users reverting to traditional cigarettes. *See Vapor Tech. Ass'n v. FDA*, 977 F.3d 496, 498 (6th Cir. 2020) (noting FDA's view that removing all unauthorized ENDS from the market too quickly "creates a genuine risk of migration from potentially less harmful [e-cigarette] products back to combustible products," and that this would be a "public health outcome that should be avoided if at all possible").

56. Therefore, "[t]hrough enforcement [discretion] policies that FDA *has revised over time*, the agency has sought to strike a balance between the serious risk that e-cigarettes pose to youth and their potential benefit in helping adult smokers completely transition from or

significantly reduce smoking combustible cigarettes." (Exhibit B, Letter from FDA to the U.S. International Trade Commission, dated October 27, 2023, at 2) (emphasis added).

57. Indeed, since ENDS became subject to the FDCA in 2016, FDA has revised its enforcement discretion policy no less than seven times. Those revisions were as follows:

a. **May 2016**: When FDA announced the finalization of its rule "deeming" ENDS products with tobacco-derived nicotine to be subject to the FDCA, FDA also announced that its policy would be to exercise enforcement discretion for those unauthorized products until August 2019 (so long as the product was on the market by August 2016 and the manufacturer submitted a PMTA by August 2018).[9]

b. **May 2017**: Approximately four months after President Trump first took office, and less than a week after President Trump's first FDA Commissioner was sworn in, FDA extended its enforcement discretion period for unauthorized ENDS until November 2019 (so long as the product was on the market by August 8, 2016, and the manufacturer submitted a PMTA by November 9, 2018).[10]

c. **July 2017**: As part of FDA's new "comprehensive regulatory plan to shift [the] trajectory of tobacco-related disease [and] death," the agency announced that the enforcement discretion period for unauthorized ENDS would be extended until August 2023 (so long as the product was on the market by August 8, 2016, and the manufacturer submitted a PMTA by August 9, 2022).[11]

d. **July 2019**: In response to a court ruling, FDA shortened the enforcement discretion period for unauthorized ENDS to May 2021 (so long as the product

[9] *See Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act: Restrictions on the Sale and Distribution of Tobacco Products and Required Warning Statements for Tobacco Products*, 81 Fed. Reg. 28,974, 29,011 (May 10, 2016).

[10] *See Three Month Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule; Guidance for Industry; Availability*, 82 Fed. Reg. 22338 (May 15, 2017); (Exhibit C, FDA Guidance for Industry, Three-Month Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule at 8 (May 2017)).

[11] (Exhibit D, FDA News Release, FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death (July 27, 2017); Exhibit E, FDA Guidance for Industry, Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule (Revised) at 8 (Aug. 2017); *Extension of Certain Tobacco Product Compliance Deadlines Related to the Final Deeming Rule; Guidance for Industry; Availability*, 82 Fed. Reg. 37,459 (Aug. 10, 2017)).

was on the market by August 8, 2016, and the manufacturer submitted a PMTA by May 9, 2020).[12]

e. **January 2020**: Largely in response to the popularity among youth of JUUL brand ENDS—an unauthorized "cartridge-based" ENDS that looked like a USB drive and was easy for youth to conceal from their teachers at school and from their parents at home—FDA revised its enforcement discretion policy to target unauthorized cartridge-based ENDS that came in flavors other than tobacco or menthol.[13]

f. **April 2020**: As a result of the COVID-19 pandemic, the enforcement discretion period for other unauthorized ENDS was extended to September 2021 (so long as the product was on the market by August 8, 2016, and the manufacturer submitted a PMTA by September 9, 2020).[14]

g. **September 2021**: Since September 2021, FDA has exercised its enforcement discretion with respect to unauthorized ENDS on a "case-by-case" basis, citing its authority to do so under the Supreme Court's *Heckler v. Chaney* decision.[15] In exercising its enforcement discretion, FDA says it "is continuously evaluating new information and adjusting its enforcement priorities in light of the best available data," and that it "will take appropriate action regarding [ENDS] that are marketed without premarket authorization, including as warranted based on changed circumstances, new information, or to better address minors' use of those products."[16]

H. Reynolds tries, but fails, to convince FDA to revise its enforcement discretion policy.

58. In February 2023, RAI Services Company, an R.J. Reynolds affiliate, filed a Citizen Petition with FDA requesting that the agency "adopt a new enforcement" policy because FDA

[12] *See Am. Acad. of Pediatrics v. FDA*, 399 F. Supp. 3d 479, 487 (D. Md. 2019).

[13] (Exhibit F, FDA Guidance For Industry, Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Authorization (Revised) at 19 (April 2020)). The April 2020 Guidance made slight revisions to the January 2020 Guidance, such as extending the PMTA deadline to September 9, 2020. *See id.* at 31. Other changes made in the April 2020 version are not relevant here.

[14] (Exhibit F, at 31-22).

[15] (*Id.*at 9 n. 20 (citing *Heckler v. Chaney*, 470 U.S. 821, 835 (1985), for the proposition that the FDCA's "enforcement provisions commit broad discretion to the [FDA] to decide how and when they should be exercised")).

[16] *Id.* at 3.

"was not [doing] enough" to prevent underage use of unauthorized ENDS. (*See* Exhibit G, Reynolds' Citizen Petition at 3 (Feb. 6, 2023)).

59. However, Reynolds' proposed policy excluded the company's own unauthorized ENDS from enforcement even though the latest CDC data showed that those ENDS were the second most popular ENDS among high school students and the third most popular ENDS among middle school students.[17]

60. Reynolds justified its proposal to exclude its own unauthorized ENDS from enforcement on the grounds that the products were on the market by August 8, 2016, the company submitted PMTAs for those products by September 9, 2020, and those PMTAs were still under review or were the subject of ongoing litigation against FDA.

61. But Reynolds' justification for excluding its unauthorized ENDS from enforcement was pretextual in that Reynolds' proposed policy would have offered no safe harbor for ENDS with non-tobacco-derived nicotine even if the product had a pending PMTA that had been timely filed when Congress made those products subject to the FDCA in April 2022. In other words, Reynolds' proposed enforcement policy was aimed at protecting the company's sales of its own cigarettes and unauthorized ENDS; it was not aimed at reducing youth usage of ENDS.

62. FDA denied Reynolds' Citizen Petition in November 2023. (*See* Exhibit I, Letter from FDA to RAI Services Co. (Nov. 14, 2023)). In doing so, FDA told Reynolds:

> [W]e do not agree that FDA has taken insufficient compliance and enforcement action against illegally marketed ENDS products . . . . To the contrary, we believe that FDA's comprehensive approach to this matter demonstrates the Agency's robust commitment to

[17] (*See* Exhibit H, Monica Cooper, et al., *E-cigarette Use Among Middle and High School Students—United States*, *2022*, 71 Morbidity and Mortality Weekly Report 1283, 1284 (Oct. 7, 2022) (stating that among high school students who had used an ENDS in the past 30 days, 23.8% used a Vuse brand ENDS; stating that among middle school students who had used an ENDS in the past 30 days, 20.9% had used a Vuse brand ENDS)).

> implementing and enforcing the law with respect to such products (including restricting such unauthorized products from the lawful marketplace) and preventing their access to and promotion of use by youth.
>
> (*Id.* at 3).

63. FDA also provided Reynolds with a three-page, single-spaced summary of the various regulatory and enforcement actions the agency had taken to prevent youth usage of ENDS. (*See id.* at 5-7). FDA concluded that "[g]iven all of [those] regulatory and enforcement actions," it was "clear that FDA has been taking critical compliance and enforcement efforts targeting [unauthorized] ENDS products." (*Id.* at 8). FDA also assured Reynolds that the agency "is continuously evaluating new information and, in making enforcement decisions, taking into account data on youth use and other risk factors." (*Id.*).

I. Reynolds tries, but fails, to convince the U.S. International Trade Commission to bar the importation of products identified in its Citizen Petition to FDA.

64. While its Citizen Petition to FDA was pending, Reynolds also filed a complaint at the United States International Trade Commission ("ITC") asking the Commission to, *inter alia*, bar the importation of the same products that Reynolds asked FDA to target via its Citizen Petition. *See Re: Complaint Filed by R.J. Reynolds Tobacco Co*., 2023 WL 11932250, *1 (U.S. Intern. Trade Com'n Dec. 15, 2023).

65. After learning about Reynold's ITC complaint, FDA filed a letter with the ITC urging it to reject Reynolds' attempt to use the Commission to enforce the FDCA. (Exhibit B). Citing 21 U.S.C. § 337(a), FDA noted that Congress wants "decisions about the regulatory or compliance status of tobacco products and what products should be prioritized for enforcement [to] reflect the view of the agency charged with administering the FDCA." (*Id.* at 3). FDA also

noted that 21 U.S.C. § 337(a) reflects congressional intent to have "uniform administration of the FDCA." (*Id.*).

66. Based in part on FDA's letter, the ITC dismissed Reynolds' claim seeking to bar the importation of unauthorized ENDS. *See* 2023 WL 11932250, *1 (stating "the Commission agrees with FDA"). The ITC reasoned that "it would usurp the FDA's authority to enforce the FDCA and impermissibly grant a private right of action to enforce the FDCA if the Commission were to institute an investigation based on the Reynolds complaint." *Id.* at *2.

J. The Iowa Legislature adopts Reynolds' proposed enforcement policy for unauthorized ENDS.

67. On March 27, 2024, a "Bill for an Act Relating to the Regulation of Vapor Products, and Providing Penalties" (House File 2677) was introduced in the Iowa Legislature. (Exhibit J, Bill History for HF 2677).

68. That same day, lobbyists for Reynolds and Altria declared their support for HF 2677. (Exhibit K, Lobbyist Declarations Regarding HF 2677 at 3). Other lobbyists for Reynolds and Altria declared their support for HF 2677 within a week. (*Id.* at 2). Lobbyists for the American Cancer Society Action Network declared their *opposition* to HF 2677 within two days. (*Id.*).

69. The Iowa House passed HF 2677 on April 3, 2024; the Iowa Senate passed HF 2677 on April 19, 2024; and the Governor signed HF 2677 into law on May 17, 2024. (Exhibit J).

70. HF 2677 directs the Iowa Department of Revenue to do, in effect, what Reynolds asked FDA to do via it March 2023 Citizen Petition and what Reynolds asked the International Trade Commission to do via its October 2023 complaint to the Commission—*i.e.*, take enforcement action against persons selling ENDS that have not been authorized by FDA unless the product was on the market by August 8, 2016, and the product has a pending PMTA that was filed by September 9, 2020.

71. HF 2677 establishes the following procedures by which the IDOR will step into FDA's role with respect to the enforcement of the FDCA's tobacco provisions:

a. An ENDS manufacturer whose products are sold in Iowa shall, on an annual basis, certify to the IDOR in writing and under penalty of perjury that it agrees to comply with HF 2677 and either (1) that the manufacturer's product "has received a marketing authorization or similar order for the vapor product from the United States food and drug administration pursuant to 21 U.S.C. § 387j," or (2) that the manufacturer's product was marketed in the United States by August 2016, the manufacturer submitted a PMTA for the product by September 2020, "and the application remains under review by the United States food and drug administration or a final decision on the application has not otherwise taken effect." HF 2677, § 4-1.

b. Each initial and annual certification shall be accompanied by "a copy of the marketing authorization or other order for each vapor product issued by [FDA] pursuant to 21 U.S.C. § 387k, or evidence that the [PMTA] for each vapor product was submitted to [FDA] and a final authorization or order has not taken effect." HF 2677, § 4-3.

c. Manufacturers shall notify IDOR of any material change to the facts contained in its most recent certification within thirty days of such material change; a material change includes "the issuance of a denial of a marketing authorization or other order by [FDA] pursuant to 21 U.S.C. § 387j, or any other order or action by [FDA] that effects the authorization of the vapor product." HF 2677, § 4-4.

d. The IDOR shall publish a publicly available directory that lists all of the ENDS products for which certifications have been submitted and shall make changes to that directory as necessary. HF 2677, § 4-5.

e. Once the IDOR's directory becomes public, it shall be unlawful for a person to sell an ENDS product in Iowa that is not listed in the directory. HF 2677, § 5-1.

f. Any person who sells an ENDS product in Iowa that is not in the IDOR directory is subject to monetary penalties and suspension of that person's State permit to sell ENDS products. HF 2677, § 6-1.

g. Any ENDS manufacturer whose ENDS are not listed in the IDOR's directory and are sold in Iowa, whether directly or through a third party, is subject to monetary penalties. HF 2677, § 6-2.

72. The IDOR has announced that it will publish the directory on January 2, 2025, and that it will begin to enforcement of the directory on February 3, 2025.[18]

K. FDA announces that youth vaping has dropped to its lowest level in ten years.

73. On September 5, 2024, FDA announced that the latest CDC data shows that 500,000 "fewer U.S. youth reported current use of [ENDS] in 2024 compared to 2023." (Exhibit L, FDA Press Release dated Sept. 5, 2024, "Youth E-Cigarette Use Drops to Lowest Level in a Decade"). This represented a drop to approximately one-third of the number of youth who reported using ENDS during the "peak" of youth usage in 2019. (*Id.*).

L. Donald Trump is elected the 47th President of the United States.

74. On November 5, 2024, the Republican Party's nominee for President, Donald J. Trump, was elected the 47th President of the United States. He will be sworn into office on January 20, 2025—exactly two weeks before the IDOR intends to begin enforcing the vapor products registry.

75. President Trump will replace President Joseph R. Biden, a Democrat.

76. Executive Branch agencies often shift their enforcement policies when there is a change in administrations from one political party to another political party, and Plaintiffs anticipate the new administration may change FDA's enforcement policies with respect to ENDS products in a manner that allows more ENDS products to continue to be marketed while premarket applications are pending.

[18] *See* https://revenue.iowa.gov/taxes/tax-guidance/sales-use-excise-tax/vapor-products-directory (last accessed Nov. 8, 2024).

COUNT I
Declaratory and Injunctive Relief on the Ground that HF 2677 Violates the Supremacy Clause of the United States Constitution

77. Pursuant to Federal Rule of Civil Procedure 10(c), Plaintiffs adopt by reference all preceding paragraphs as if fully set forth herein.

78. Under the Supremacy Clause of the United States Constitution, federal law impliedly preempts state law when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995).

79. Congress intended that the Federal Government have the sole authority to enforce the Federal Food, Drug, and Cosmetic Act's provisions on tobacco products. *See* 21 U.S.C. § 337(a) ("all such proceedings for the enforcement, or to restrain violations, of this Act shall be by and in the name of the United States").

80. In other words, the FDCA's enforcement provisions "commit complete discretion to [FDA] to decide how and when they should be exercised." *Heckler v. Chaney*, 470 U.S. 821, 835 (1985).

81. Title 21 U.S.C. § 337(a) impliedly preempts state law when "the existence of [the FDCA]" is a "critical element" of the state law. *Buckman Co. v. Plaintiffs' Legal Committee*, 531 U.S. 341, 353 (2001). This includes state statutory law. *Brown v. Medtronic, Inc.*, No. 20-cv-00295, 2021 U.S. Dist. LEXIS 262681, *15-16 (S.D. Iowa 2021).

82. 21 U.S.C. § 337(a) impliedly preempts HF 2677.

a. HF 2677 stands as an obstacle to Congress' intention that the Federal Government have the exclusive authority to enforce the FDCA in that HF 2677 authorizes the Iowa Department of Revenue to enforce the FDCA's requirements regarding ENDS products.

b. The existence of the FDCA is a critical element to HF 2677.

83. HF 2677 injures one or more of Plaintiff IFAST's members in that it forces them to stop selling certain unauthorized ENDS (including, but not limited to, unauthorized ENDS that contain non-tobacco-derived nicotine) in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those particular products.

84. HF 2677 injures Plaintiff Triton Distribution in that it forces Triton to stop selling its unauthorized ENDS products (e-liquids) containing non-tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

85. HF 2677 injures Plaintiffs Global Source in that it forces Global Source to stop selling its unauthorized ENDS products containing non-tobacco-derived nicotine in Iowa even through FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

86. HF 2677 injures Plaintiff Smokin Hot in that it forces Smokin Hot to step selling certain unauthorized ENDS products (including, but not limited to, unauthorized ENDS products containing non-tobacco-derived nicotine) even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those particular products.

87. HF 2677 injures Plaintiff Central Iowa Vapors WDM in that it forces Central Iowa Vapors WDM to stop selling certain unauthorized products (including, but not limited to, unauthorized ENDS products containing non-tobacco-derived nicotine) even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

88. HF 2677 injures Plaintiff Taste the Vape, LLC in that it forces Taste the Vape LLC to step selling certain unauthorized ENDS products (including, but not limited to, unauthorized ENDS products containing non-tobacco-derived nicotine) even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

COUNT II
Declaratory and Injunctive Relief on the Ground that HF 2677 Violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

89. Pursuant to Federal Rule of Civil Procedure 10(c), Plaintiffs adopt by reference paragraph 1 through 77, above, as if fully set forth herein.

90. The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Art. XIV, § 1.

91. A State violates the Equal Protection Clause when it treats similarly situated persons differently and there is no "rational basis" for the differential treatment. *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). A State's action fails this "rational basis test" when there is no "plausible policy reason for" the differential treatment or the differential treatment is "arbitrary" or "irrational." *Id.*

92. HF 2677 treats manufacturers and sellers of unauthorized ENDS containing tobacco-derived nicotine differently than it treats manufacturers and sellers of unauthorized ENDS containing non-tobacco-derived nicotine. Specifically, HF 2677 allows for the sale of some unauthorized ENDS containing tobacco-derived nicotine—those that were on the market as of August 2016 and for which a still pending PMTA was filed by September 2020—whereas HF

2677 does not allow for the sale of any unauthorized ENDS containing non-tobacco-derived nicotine, including those for which a still pending PMTA was timely filed.

93. HF 2677's differential treatment of manufacturers and sellers of unauthorized ENDS with non-tobacco-derived nicotine fails the rational basis test. There is no plausible policy reason for treating the manufacturers and sellers of ENDS containing non-tobacco-derived nicotine differently than the manufacturers and sellers of ENDS containing tobacco-derived nicotine. The differential treatment of the two products is arbitrary and irrational.

94. The Federal Food, Drug, and Cosmetic Act makes no distinction between tobacco products containing tobacco-derived nicotine and tobacco products containing non-tobacco-derived nicotine. *See* 21 U.S.C. § 321(rr)(1) (defining "tobacco product" as "any product made or derived from tobacco, or containing nicotine from any source, that is intended for human consumption").

95. Indeed, the arbitrariness and irrationality of HF 2677's differential treatment of ENDS containing tobacco-derived nicotine from ENDS containing non-tobacco-derived nicotine is underscored by the fact that tobacco-derived nicotine is likely to contain a higher level of organic impurities than manufactured, non-tobacco-derived nicotine, yet, paradoxically, ENDS products containing tobacco-derived nicotine are treated preferentially under HF 2677.

96. Iowa's violation of the Equal Protection Clause injures one or more of Plaintiff IFAST's members in that it forces them to stop selling unauthorized ENDS that contain non-tobacco-derived nicotine in Iowa even though FDA may decide to not exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

97. Iowa's violation of the Equal Protection Clause injures Plaintiff Triton Distribution in that it forces Triton to stop selling its unauthorized ENDS products (e-liquids) containing non-

tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

98. Iowa's violation of the Equal Protection Clause injures Plaintiff Global Source in that it forces Global Source to stop selling its unauthorized ENDS products containing non-tobacco-derived nicotine in Iowa even through FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

99. Iowa's violation of the Equal Protection Clause injures Plaintiff Smokin Hot in that it forces Smokin Hot to stop selling unauthorized ENDS products containing non-tobacco-derived nicotine even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

100. Iowa's violation of the Equal Protection Clause injures Plaintiff Central Iowa Vapors WDM in that it forces Central Iowa Vapors WDM to stop selling unauthorized ENDS products containing non-tobacco-derived nicotine even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

101. Iowa's violation of the Equal Protection Clause injures Plaintiff Taste the Vape LLC in that it forces Taste the Vape LLC to stop selling unauthorized ENDS products containing non-tobacco-derived nicotine even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

COUNT III
Declaratory and Injunctive Relief on the Ground that HF 2677 Violates the Equal Protection Clause of the Iowa Constitution

102. Pursuant to Federal Rule of Civil Procedure 10(c), Plaintiffs adopt by reference paragraph 1 through 77 and 90-102, above, as if fully set forth herein.

103. The Equal Protection Clause of the Iowa Constitution states: "All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const., Art. 6, § 1.

104. The Supreme Court of Iowa has made clear that a statute that passes muster under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution may still violate the Equal Protection Clause of the Iowa Constitution. *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 4-7 (2004).

105. A statute that treats similarly situated persons differently violates Equal Protection Clause where the Iowa Legislature had no "valid reason to treat [the similarly situated persons] differently. *Id.* at 7. Any claimed "valid reason" for the differential treatment will fail where it has no "basis in fact," or where the "relationship between the classification, *i.e.*, the differences between the [two groups of persons], and the purpose of the classification is so weak that the classification must be viewed as arbitrary." *Id.* at 8.

106. HF 2677 treats manufacturers and sellers of unauthorized ENDS containing tobacco-derived nicotine differently than it treats manufacturers and sellers of unauthorized ENDS containing non-tobacco-derived nicotine. Specifically, HF 2677 allows for the sale of some unauthorized ENDS containing tobacco-derived nicotine—those that were on the market as of August 8, 2016, and for which a still pending PMTA was filed by September 9, 2020—whereas HF 2677 does not allow for the sale of any unauthorized ENDS containing non-tobacco-derived nicotine, including those for which a still pending PMTA was timely filed.

107. HF 2677's differential treatment of manufacturers and sellers of unauthorized ENDS with non-tobacco-derived nicotine violates the Equal Protection Clause of the Iowa

Constitution. There is no valid reason to treat the manufacturers and sellers of ENDS containing non-tobacco-derived nicotine less favorably than the manufacturers and sellers of ENDS containing tobacco-derived nicotine. As mentioned above, the Federal Food, Drug, and Cosmetic Act makes no distinction between tobacco products containing tobacco-derived nicotine and tobacco products containing non-tobacco-derived nicotine. *See* 21 U.S.C. § 321(rr)(1).

108. Iowa's violation of the Equal Protection Clause of the Iowa Constitution injures one or more of Plaintiff IFAST's members in that it forces them to stop selling unauthorized ENDS that contain non-tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

109. Iowa's violation of the Equal Protection Clause of the Iowa Constitution injures Plaintiff Triton Distribution in that it forces Triton to stop selling its unauthorized ENDS products (e-liquids) containing non-tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

110. Iowa's violation of the Equal Protection Clause of the Iowa Constitution injures Plaintiff Global Source in that it forces Global Source to stop selling its unauthorized ENDS products containing non-tobacco-derived nicotine in Iowa even through FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

111. Iowa's violation of the Equal Protection Clause of the Iowa Constitution injures Plaintiff Smokin Hot in that it forces Smokin Hot stop selling unauthorized ENDS products containing non-tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

112. Iowa's violation of the Equal Protection Clause injures Plaintiff Central Iowa Vapors WDM in that it forces Central Iowa Vapors WDM to stop selling unauthorized ENDS products containing non-tobacco-derived nicotine even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

113. Iowa's violation of the Equal Protection Clause of the Iowa Constitution injures Plaintiff Taste the Vape LLC in that it forces Taste the Vape LLC to stop selling unauthorized ENDS products containing non-tobacco-derived nicotine in Iowa even though FDA may decide not to exercise its discretion to enforce the FDCA premarket authorization requirements for those products.

REQUEST FOR RELIEF

114. Plaintiffs respectfully requests that this Court enter a judgment in their favor that includes the following relief:

a. A declaration pursuant to 28 U.S.C. § 2201 that HF 2677 violates the Supremacy Clause of the United States Constitution;

b. A declaration pursuant to 28 U.S.C. § 2201 that HF 2677 violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;

c. A declaration pursuant to 28 U.S.C. § 2201 that HF 2677 violates the Equal Protection Clause of the Iowa Constitution;

d. Preliminary and permanent orders enjoining the Iowa Department of Revenue and the Director of the Iowa Department of Revenue from implementing and enforcing HF 2677;

e. An order awarding Plaintiffs their costs, expenses, and fees (including attorneys' fees); and

f. An order granting such further relief as is necessary and appropriate.

Dated: December 17, 2024

Respectfully submitted,

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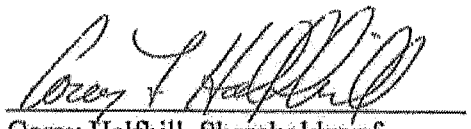
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWANS FOR ALTERNATIVES TO SMOKING & TOBACCO, INC.; et al.,	)	
Plaintiffs,	)	
v.	)	Case No.
THE IOWA DEPARTMENT OF REVENUE AND MARY MOSIMAN, DIRECTOR OF THE IOWA DEPARTMENT OF REVENUE,	)	
Defendants.	)	

VERIFICATION

Corey Halfhill, being first duly cautioned and sworn, deposes and says that the allegations contained in the foregoing Verified Complaint are true and correct based on his personal knowledge or documents with which he is familiar.



Corey Halfhill, Shareholder of Halfhill & Company, Inc., sole member of

Global Source Distribution, LLC

Corey Halfhill, Shareholder of Central Iowa Electronic Cigarettes, Inc., sole member of

Central Iowa Vapors of WDM, LLC

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWANS FOR ALTERNATIVES TO SMOKING & TOBACCO, INC.; et al.,	)	
Plaintiffs,	)	
v.	)	Case No. _
THE IOWA DEPARTMENT OF REVENUE AND MARY MOSIMAN, DIRECTOR OF THE IOWA DEPARTMENT OF REVENUE,	)	
Defendants.	)	

VERIFICATION

Heather Glenn, being first duly cautioned and sworn, deposes and says that the allegations contained in the foregoing Verified Complaint are true and correct based on her personal knowledge or documents with which she is familiar.

Heather Glenn, President

Iowans for Alternatives to Smoking & Tobacco, Inc.

Heather Glenn, Sole Member

Taste the Vape LLC d/b/a Route 69 Vapor

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWANS FOR ALTERNATIVES TO SMOKING & TOBACCO, INC.; et al.,	)	
Plaintiffs,	)	
v.	)	Case No.
THE IOWA DEPARTMENT OF REVENUE AND MARY MOSIMAN, DIRECTOR OF THE IOWA DEPARTMENT OF REVENUE,	)	
Defendants.	)	

VERIFICATION

Todd Wages, being first duly cautioned and sworn, deposes and says that the allegations contained in the foregoing Verified Complaint are true and correct based on his personal knowledge or documents with which he is familiar.

Todd Wages, Managing Member

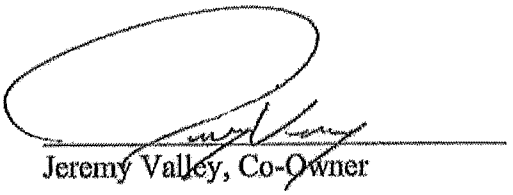
Wages & White Lion Investments, LLC d/b/a Triton Distribution

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

IOWANS FOR ALTERNATIVES TO SMOKING & TOBACCO, INC.; et al.,	)	
Plaintiffs,	)	
v.	)	Case No.
THE IOWA DEPARTMENT OF REVENUE AND MARY MOSIMAN, DIRECTOR OF THE IOWA DEPARTMENT OF REVENUE,	)	
Defendants.	)	

VERIFICATION

Jeremy Valley, being first duly cautioned and sworn, deposes and says that the allegations contained in the foregoing Verified Complaint are true and correct based on his personal knowledge or documents with which he is familiar.



Jeremy Valley, Co-Owner

Smokin Hot LLC