UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

Civil Action No.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs are sixteen Massachusetts retailers who hold valid local tobacco-sales permits. Defendants now use those permits to punish them for one thing only: selling electronic cigarettes and oral nicotine pouches that lack an FDA Marketing Granted Order. Plaintiffs ask the Court to stop that enforcement while this case proceeds.

Congress assigned the premarket review of new tobacco products, and the enforcement of that requirement, to FDA alone. A new tobacco product generally may not enter interstate commerce without an FDA marketing order, and FDCA enforcement proceedings must be brought "by and in the name of the United States." 21 U.S.C. § 337(a). Congress also barred States and localities from imposing requirements "different from, or in addition to," federal requirements "relating to … premarket review," while preserving their authority over independent tobacco-sales rules. 21 U.S.C. § 387p(a)(2)(A)–(B).

Defendants crossed that line through a coordinated campaign. MDPH distributed a protocol and a template retailer letter telling local boards that retailers may not sell products lacking an MGO, and directing them to require removal, refer retailers to FDA, and issue local violation notices. (Compl. Ex. 4). The Municipal Defendants then issued notices that make MGO status the measure of local permit compliance and threaten removal, inspections, violation notices, fines, FDA-portal referral, and permit consequences. No Defendant adopted any local rule making MGO status a permit condition.

Plaintiffs do not dispute that Defendants may regulate tobacco. They do not challenge enforcement of the flavor ban, age limits, licensing, placement, nicotine-content, tax, or any other valid restriction. They challenge only MGO-based local enforcement that rests on no independent, valid, nonpreempted state or local rule.

Plaintiffs ask the Court to bar Defendants from requiring product removal, issuing a local violation or fine, inspecting to enforce MGO status, or imposing a permit consequence, solely because FDA has not issued an MGO, absent a valid independent legal predicate. The directives force Plaintiffs to choose now between stripping their shelves and risking enforcement. That choice threatens lost customers, stranded inventory, jeopardized permits, and closure—harms no later judgment can repair. Plaintiffs satisfy each preliminary-injunction factor and request the Court allow their motion.

BACKGROUND

I. The Federal Premarket-review framework

Congress directed FDA to review new tobacco products before they reach the market. A new tobacco product generally may not be introduced into interstate commerce without an FDA marketing order issued after premarket review. 21 U.S.C. § 387j; 21 C.F.R. § 1114.5. A Marketing Granted Order ("MGO") is the order FDA issues at the end of that federal review. The presence or absence of an MGO is therefore a federal determination made by FDA.

FDA has explained how it approaches enforcement of the premarket-review requirement. In May 2026, FDA's Center for Tobacco Products issued guidance titled Enforcement Priorities for Certain New Tobacco Products Marketed Without Premarket Authorization. (Compl. Ex. 8). The guidance states that it does not establish legally enforceable responsibilities, that FDA "generally does not intend to prioritize enforcement" against certain electronic nicotine delivery systems ("ENDS") and nicotine-pouch products with pending applications, and that FDA reserves case-by-case judgment. (Compl. Ex. 8).

II. The Massachusetts retail-tobacco framework

Massachusetts independently regulates the retail sale of tobacco products and ENDS. The Commonwealth's regulations address age verification, product placement, nicotine-content limits, flavored-product restrictions, and manufacturer documentation. 105 CMR 665.010 (Compl. Ex. 3). Massachusetts also separately prohibits the sale of flavored tobacco products and defines the characteristics that make a product "flavored." M.G.L. c. 270, § 28 (Compl. Ex. 10). Local boards of health issue and administer tobacco-sales permits and enforce the Commonwealth's tobacco rules. None of these state-law subjects turns on FDA MGO status.

III. MDPH's January 2026 campaign

In January 2026, MDPH distributed an enforcement package to local boards of health. The package included a guidance document titled Suggested Protocol for Utilizing FDA Marketing Granted Orders, a template retailer letter, the FDA's December 5, 2025 letter, and a webinar presentation. (Compl. Ex. 4). The FDA letter underlying the package was addressed to Joan E. Hamlett, Director of the Boards of Health Tobacco Control Alliance, not to any Plaintiff. *Id.* at 5–6.

The protocol told local officials that retailers "cannot sell any electronic cigarettes or oral nicotine pouches that lack a Marketing Granted Order." *Id.* at 3. It directed officials to have retailers remove products lacking an MGO, to document any remaining products at the next inspection, to photograph them, to submit the information to FDA's illegal-tobacco portal, and to issue a local notice of violation. *Id.* at 3–4. The accompanying template letter instructed retailers: "To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA." *Id.* at 7. The template added that, if products were not removed, the health department

would submit the information to FDA's illegal-tobacco portal and might issue a local violation notice. *Id.* MDPH coordinated implementation through regional tobacco-control personnel. Medford Bd. of Health Minutes 2–3 (Compl. Ex. 5).

IV. Local implementation

Between January and May 2026, the Municipal Defendants sent retailers notices that followed the MDPH model. The notices share a common structure: they describe the federal MGO requirement, state that products without an MGO may not be sold, and direct retailers to remove such products to comply with the local tobacco-sales permit. See, e.g., Barnstable Notice (Compl. Ex. 11). The notices generally instruct retailers to determine MGO status themselves by consulting FDA's database, rather than identifying particular products on a retailer's shelves. See, e.g., *Id.*

Several notices set removal deadlines and described the enforcement that would follow. The Hanover notice set a June 15, 2026 removal deadline and stated that the health department would submit information to FDA's illegal-tobacco portal and might issue a local violation notice. (Compl. Ex. 13). The Cambridge and Somerville 6 City Tobacco Initiative notice directed removal by May 1, 2026 and stated that onsite inspections would begin that date. (Compl. Ex. 14). The Mansfield notice set a May 15, 2026 deadline. (Compl. Ex. 20). The Medford notice directed removal by May 1, 2026, instructed retailers to be ready for an onsite inspection that day, and stated that the health department would submit information to FDA's portal and might issue a local violation notice. (Compl. Ex. 21). The Essex and Danvers notices set July 1, 2026 deadlines. (Compl. Exs. 15 and 25).

V. The municipal records concerning rulemaking

Several municipal records describe how the boards treated the initiative. The Medford Board of Health minutes describe the matter as an "administrative change in tobacco enforcement" that "doesn't require a vote – or public hearing," and state that enforcement would begin May 1, 2026. (Compl. Ex. 5). The Medford notice itself recites that the Board "voted" that retailers must comply by May 1, 2026 by removing products not listed in FDA's database. (Compl. Ex. 21). The Everett Board of Health minutes state that no hearing, regulation change, or board approval was needed "because the matter concerns federal law," and that, at permit renewal, a board could treat the sale of products lacking an MGO as a violation of "FDA laws." (Compl. Ex. 6).

The Barnstable record addresses the Town's permit terms directly. In an April 30, 2026 email, a regional tobacco-control official advised that the Town's existing regulations did not require retailers to comply with "all local, state and federal laws" as a condition of holding a tobacco permit, and proposed adding that language to future permit applications; a Barnstable official then directed staff to add the prospective language. (Compl. Ex. 7). The Medway notice, by contrast, cites a general local provision requiring that the "sale or distribution of tobacco products must comply with all applicable federal, state, and local laws and regulations." Medway Enforcement Notice 2 (Compl. Ex. 22).

VI. The effect on Plaintiffs

Each Plaintiff holds a valid local tobacco-sales permit and sells electronic cigarettes, oral nicotine pouches, or other products covered by the notices. The affected products supply a substantial share of revenue for many Plaintiffs. They generate about 80% of revenue, or roughly $40,000 each month, for Halifax Cigar & Smoke Shop. Patel Aff. ¶ 13 (Ex. 1). They generate about 80% of revenue, or roughly $16,000 each month, for Vaporzone. Agha Aff. ¶¶ 12–13 (Ex.

2). They generate about 70% of sales, or roughly $35,000 each month, for Mansfield Vape and Smoke Shop. Patel Aff. ¶ 4 (Ex. 3). They generate about 65% of revenue, or about $32,000 each month, for Bluemoon Smoke & Vape Outlets. Chawda Aff. ¶ 3 (Ex. 4).

Removal would strand inventory the Plaintiffs already purchased—for example, about $20,000 for Halifax Cigar & Smoke Shop, Patel Aff. ¶ 14 (Ex. 1); about $36,000 for Vaporzone, Agha Aff. ¶ 14 (Ex. 2); about $42,000 for Mansfield Vape and Smoke Shop, Patel Aff. ¶ 18 (Ex. 3); and about $65,000 for Bluemoon, Chawda Aff. ¶ 9 (Ex. 4). Several Plaintiffs report sales losses since receiving the notices, including about $10,000 at D&K Smoke, Gurung Aff. ¶ 12 (Ex. 6), about $7,500 at Medford Sam's Gas, Zeaiter Aff. ¶ 10 (Ex. 9), and a 60% to 70% revenue decline at Mansfield Vape and Smoke Shop, Patel Aff. ¶ 14 (Ex. 3).

Plaintiffs also describe effects beyond the products themselves. Customers who come for these products buy other goods on the same trip, so removal reduces foot traffic and companion sales. See Agha Aff. ¶ 15 (Ex. 2); Chawda Aff. ¶ 10 (Ex. 4); Zeaiter Aff. ¶ 12 (Ex. 9). Plaintiffs further attest that the loss of this revenue threatens payroll and risks default on rent, loans, and supplier accounts, see Agha Aff. ¶¶ 17–18 (Ex. 2); Chawda Aff. ¶¶ 12–13 (Ex. 4); Patel Aff. ¶¶ 16–17 (Ex. 3), and that several stores would close, see Patel Aff. ¶¶ 16–17 (Ex. 1); Agha Aff. ¶ 19 (Ex. 2). Some Plaintiffs add that FDA-portal reporting and a local violation notice would affect their reputation and their permits. Zeaiter Aff. ¶ 15 (Ex. 9); Patel Aff. ¶ 16 (Ex. 15).

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits

To obtain a preliminary injunction, Plaintiffs must show a likelihood of success on the merits, a likelihood of irreparable harm, that the balance of equities favors relief, and that an injunction serves the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20

(2008). Plaintiffs are likely to succeed because the Municipal Defendants are not enforcing any independently adopted tobacco-sales rule. Acting on MDPH's direction, they use local permit authority to impose local consequences for one thing only: the absence of an FDA Marketing Granted Order. That mechanism is expressly preempted, the Savings Clause does not save it, and—as to the Municipal Defendants—it exceeds their delegated authority under Massachusetts law.

A. The MGO-based portions of the Enforcement Notices impose local requirements relating to federal premarket review and are expressly preempted.

The TCA expressly preempts state and local action in defined federal domains. No State or political subdivision "may establish or continue in effect with respect to a tobacco product any requirement which is different from, or in addition to," federal requirements "relating to tobacco product standards, premarket review, adulteration, misbranding, labeling, registration, good manufacturing standards, or modified risk tobacco products." 21 U.S.C. § 387p(a)(2)(A) (Compl. Ex. 1, at 2). The TCA's preservation of state and local authority is itself made subject to that clause: it preserves more stringent local measures only "[e]xcept as provided in paragraph (2)(A)." 21 U.S.C. § 387p(a)(1) (Compl. Ex. 1).

Premarket review is the federal process the Notices invoke. A new tobacco product generally may not be introduced into interstate commerce without an FDA marketing order issued after premarket review. 21 U.S.C. § 387j; 21 C.F.R. § 1114.5. An MGO is the product of that federal review, and Congress assigned the review to FDA.

The Enforcement Notices impose a state and local "requirement" keyed to that federal determination. They are not advisory. MDPH's protocol told local boards that retailers "cannot sell any electronic cigarettes or oral nicotine pouches that lack a Marketing Granted Order," and directed officials to require removal, document remaining products at the next inspection, photograph them, submit the information to FDA's illegal-tobacco portal, and issue a local notice

of violation. Suggested Protocol for Utilizing FDA Marketing Granted Orders 3–4 (Compl. Ex. 4). MDPH's template letter then instructed retailers: "To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA." *Id.* at 7. The Municipal Defendants issued materially similar notices. *See, e.g.*, Barnstable (Compl. Ex. 11); Hanover (Compl. Ex. 13) (June 15, 2026 removal deadline); Cambridge & Somerville 6 City Tobacco Initiative (Compl. Ex. 14) (removal by May 1, 2026, with onsite inspections beginning that date); Mansfield (Compl. Ex. 20) (May 15, 2026 deadline); Medford (Compl. Ex. 21) (removal and onsite inspection by May 1, 2026); Danvers (Compl. Ex. 25) (July 1, 2026 deadline).

Each Notice makes the presence or absence of an MGO the measure of local permit compliance and attaches local consequences—removal, inspection, violation notices, fines, FDA-portal referral, and permit-renewal impacts—to that federal status. That requirement is "different from" the federal requirement, because it adds local sanctions FDA does not impose, and "in addition to" it, because it creates a parallel local enforcement mechanism for federal premarket review. 21 U.S.C. § 387p(a)(2)(A). It therefore "relat[es] to … premarket review" and is preempted. *Id.*

The contrast with federal practice confirms the conflict. FDA's own guidance states that it does not establish legally enforceable responsibilities and that FDA "generally does not intend to prioritize enforcement" against certain ENDS and nicotine-pouch products with pending applications, reserving case-by-case judgment. (Compl. Ex. 8). The Notices replace that calibrated federal judgment with an automatic local removal command, which is precisely the kind of state mechanism a federal court has found preempted. *See Nova Distro, Inc. v. Miyares*, No. 3:25cv857, slip op. at 32–37 (E.D. Va. Dec. 18, 2025) (Compl. Ex. 9) (provisions conditioning lawful sale or

imposing penalties entirely on FDA premarket-authorization status are preempted because they leave "no daylight between federal authorization and state legality"). While *Nova Distro* is persuasive authority only, its reasoning tracks the statutory text here.

B. The Savings Clause does not preserve a local permit-enforcement mechanism whose sole operative trigger is FDA MGO status rather than an independently adopted state or local sales rule.

The Savings Clause withdraws the preemption clause from genuine sales regulation. Section 387p(a)(2)(A) "does not apply to requirements relating to the sale, distribution, possession, information reporting to the State, exposure to, access to, the advertising and promotion of, or use of, tobacco products by individuals of any age, or relating to fire safety standards." 21 U.S.C. § 387p(a)(2)(B) (Compl. Ex. 1, at 2). The First Circuit applied that clause to preserve an independently enacted local sales ordinance. In *National Ass'n of Tobacco Outlets, Inc. v. City of Providence*, 731 F.3d 71 (1st Cir. 2013), the court upheld Providence's ordinance prohibiting the sale of flavored tobacco products, holding that it regulated sales within the Savings Clause and so was not preempted as a product standard. *Id.* at 82–83.

This case is different in kind. *Providence* involved a duly enacted ordinance that independently regulated a product characteristic—flavor—chosen and defined by local law. *Id.* The Enforcement Notices regulate no independent local subject. They do not turn on age, flavor, nicotine content, product placement, signage, or any criterion adopted through state or local law. Their sole operative trigger is FDA MGO status. The notices are not, then, independently adopted sales regulations that merely affect what may be sold; they convert a federal premarket-review determination into the local rule of decision. The Savings Clause preserves local sales policy. It does not authorize a municipality to relabel FDA premarket review as a local "sale" regulation and enforce it through permit sanctions. Reading § 387p(a)(2)(B) otherwise would let the savings clause swallow the express preemption of local requirements relating to premarket review.

C. Plaintiffs seek traditional prospective equitable relief against allegedly preempted state and local action; they do not seek to privately enforce the FDCA.

The FDCA reserves its own enforcement to the United States. With exceptions not relevant here, "all such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States." 21 U.S.C. § 337(a) (Compl. Ex. 2). The Supreme Court has called that language "clear evidence that Congress intended" the FDCA to "be enforced exclusively by the Federal Government," and has held that claims existing solely by virtue of FDCA duties are impliedly preempted because they would disturb FDA's enforcement judgment. *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 349, 352 (2001). The First Circuit applies the same rule: only FDA may enforce the FDCA, and § 337(a) bars state-law claims that exist solely by virtue of an FDCA violation. *DiCroce v. McNeil Nutritionals, LLC*, 82 F.4th 35, 40–41 (1st Cir. 2023); *Plourde v. Sorin Grp. USA, Inc.*, 23 F.4th 29, 33 (1st Cir. 2022).

Those principles support Plaintiffs; they do not bar this suit. Plaintiffs do not sue to enforce the FDCA, do not ask the Court to decide that any product is lawfully marketable under federal law, and do not seek to compel or restrain FDA. They challenge separate state and local coercive action—local permit enforcement imposed solely because FDA has not issued an MGO. Section 337(a) and *Buckman* show why that local action conflicts with federal law: the Municipal Defendants use local permit power to police and punish alleged premarket-review violations that Congress reserved to FDA. Section 337(a) thus informs the conflict-preemption analysis; it does not itself create Plaintiffs' cause of action.

Plaintiffs' claim instead rests on the Court's traditional authority to enjoin preempted state and local action. A suit seeking to enjoin state regulation on the ground that federal law preempts it presents a federal question, and federal courts have jurisdiction under 28 U.S.C. § 1331 to hear it. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983). The Supremacy Clause is not itself

a cause of action, but a regulated party may invoke the court's equitable power to obtain prospective relief against preempted state action unless Congress has displaced that remedy. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324–28 (2015). Congress has not displaced it here. Against the Commissioner, that relief is available under *Ex parte Young*, 209 U.S. 123, 155–56 (1908), and *Verizon Md. Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645 (2002), which permit prospective declaratory and injunctive relief against state officials alleged to be enforcing measures that conflict with federal law. The inquiry is straightforward: whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective. *Cotto v. Campbell*, 126 F.4th 761, 767–68 (1st Cir. 2025). Plaintiffs satisfy it. They seek no damages or other retrospective remedy; they seek to stop the future implementation of the MGO-based portions of the Enforcement Notices. That an order has already issued does not make the challenge retrospective where the requested injunction would prevent future enforcement and avert harms not yet incurred. *Town of Barnstable v. O'Connor*, 786 F.3d 130, 139–41 (1st Cir. 2015).

The Commissioner and the Municipal Defendants each have the required connection to the threatened enforcement. MDPH developed and distributed the enforcement protocol and template letter, instructed local officials to require removal and issue violation notices, and coordinated implementation through regional tobacco-control personnel. (Compl. Exs. 4 and 5). Each Municipal Defendant then issued or implemented an Enforcement Notice and controls the local inspections, violation notices, fines, and permit consequences the Notices threaten. *See, e.g.*, Compl. Exs. 11 and 21. The Municipal Defendants, as municipalities and municipal officials, do not enjoy Eleventh Amendment immunity, and prospective relief against them follows ordinary equitable principles. *Cotto*, 126 F.4th at 773 (requiring a connection to enforcement and authority

to grant the requested relief). Plaintiffs seek only to bar coercive MGO-based enforcement, including the threatened use of FDA-portal referral as part of that local enforcement scheme; they do not seek to bar lawful communications between Defendants and FDA.

D. The Municipal Defendants lack Massachusetts-law authority to create or enforce an MGO-based permit condition through notices where no valid state or municipal rule supplies that condition.

Massachusetts boards of health hold broad delegated power. They "may make reasonable health regulations." G.L. c. 111, § 31. And they may enforce valid Massachusetts tobacco statutes and regulations, including by imposing penalties, where the governing scheme supplies the substantive rule. *Cumberland Farms, Inc. v. Board of Health of Braintree*, 495 Mass. 225, 233–37 (2025). Plaintiffs do not dispute that authority, and they do not contend that the Municipal Defendants lack power to regulate tobacco sales.

The defect is narrower and dispositive. The Municipal Defendants' MGO-based directives rest on no valid Massachusetts or local legal predicate. The Commonwealth's retail tobacco regulation addresses age verification, product placement, nicotine-content limits, flavored-product restrictions, and manufacturer documentation; it does not make FDA MGO status a condition of a local permit. 105 CMR 665.010 (Compl. Ex. 3). Massachusetts separately bans flavored tobacco products, but that statute regulates a defined product characteristic and supplies no MGO condition. M.G.L. c. 270, § 28 (Compl. Ex. 10). The Municipal Defendants adopted no MGO-specific local rule. Their own records show as much: the Medford Board of Health treated the initiative as an "administrative change in tobacco enforcement" that "doesn't require a vote – or public hearing," and the Everett Board of Health stated that no hearing, regulation change, or board approval was needed because the matter concerns federal law. (Compl. Exs. 5 and 6). To the extent the Medford notice recites that the Board "voted" to set a May 1, 2026 compliance date (Compl. Ex. 21) that does not change the analysis: the record shows a vote to schedule enforcement, not

the adoption of a published municipal regulation establishing MGO status as a permit condition, and the Board itself disclaimed the rulemaking that such a condition would require. Barnstable officials likewise recognized that their existing regulations did not require retailers to comply with "all local, state and federal laws" as a permit condition, and proposed adding that language only prospectively. (Compl. Ex. 7).

A board of health cannot create a new substantive permit condition by letter while disclaiming the rulemaking required to adopt it. Enforcement under § 31 must rest on a valid statute, regulation, or order within the board's delegated authority, and *Cumberland Farms* upheld local enforcement precisely because a valid state and local rule supplied the violation. 495 Mass. at 233–37. Here, no such rule supplies the violation.

Medway's notice does not change the result. It cites a general local provision requiring that the "sale or distribution of tobacco products must comply with all applicable federal, state, and local laws and regulations." (Compl. Ex. 22). A generic compliance-with-law clause is not an independently adopted MGO-specific permit condition. It does not deputize a local board to enforce the FDCA's premarket-review requirement through permit sanctions, particularly where Congress reserved FDCA enforcement to the United States. 21 U.S.C. § 337(a); *Buckman*, 531 U.S. at 349, 352. Read to reach federal premarket-review status, such a clause would simply restate the preempted requirement addressed above.

Because the MGO-based directives rest on no valid, independent, nonpreempted state or local rule, they exceed the Municipal Defendants' delegated authority and are ultra vires to the extent they impose or threaten local inspections, violations, fines, or permit consequences solely because FDA has not issued an MGO.

II. Plaintiffs Will Suffer Irreparable Harm Without Preliminary Relief.

A preliminary injunction requires a showing that irreparable harm is likely, not merely possible. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The First Circuit recognizes that severe regulatory disruption threatening the viability of a business can constitute irreparable harm, particularly where the threatened losses cannot be made whole through later relief against government defendants. *Vaquería Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 485 (1st Cir. 2009). Plaintiffs' harm is not ordinary lost revenue. It is coerced compliance with MGO-based directives that strands inventory, drives away customers, jeopardizes permits, and threatens several Plaintiffs' continued operation—on deadlines that have already begun to run.

The Enforcement Notices create an immediate compliance dilemma. They set firm removal deadlines and threaten inspections, violation notices, FDA-portal referral, fines, and permit consequences if Plaintiffs do not pull products that lack an MGO. *See* Hanover (Compl. Ex. 13) (June 15, 2026 removal deadline); 6 City Tobacco Initiative (Compl. Ex. 14) (removal by May 1, 2026, with onsite inspections beginning that date); Mansfield (Compl. Ex. 20) (May 15, 2026 deadline); Medford (Compl. Ex. 21) (removal and onsite inspection by May 1, 2026); Essex (Compl. Ex. 15) (strict enforcement beginning July 1, 2026); Danvers (Compl. Ex. 25) (July 1, 2026 deadline). Plaintiffs must therefore either remove inventory and lose sales now, or keep selling and face local enforcement. That coerced choice is itself a present injury.

The affected products are central to Plaintiffs' businesses, so the threatened removal goes to survival rather than margin. For several Plaintiffs, these products generate most of their revenue: about 80% for Halifax Cigar & Smoke Shop, roughly $40,000 each month (Patel Aff. ¶ 13, Ex. 1); about 80% for Vaporzone, roughly $16,000 each month (Agha Aff. ¶¶ 12–13, Ex. 2); about 70% for Mansfield Vape and Smoke Shop, roughly $35,000 each month (Patel Aff. ¶ 4, Ex. 3); about

65% for Bluemoon Smoke & Vape Outlets, about $32,000 each month (Chawda Aff. ¶ 3, Ex. 4); about 60% for Gj-2 Smoke Shop (Patel Aff. ¶ 3, Ex. 5); and about 60% for D&K Smoke (Gurung Aff. ¶ 10, Ex. 6). The owners attest that their stores cannot survive the loss of this revenue. *See* Patel Aff. ¶¶ 16–17, Ex. 1; Agha Aff. ¶ 19, Ex. 2; Patel Aff. ¶ 19, Ex. 3.

The inventory losses are concrete and largely unrecoverable. Enforcement would strand inventory the Plaintiffs already purchased: about $20,000 for Halifax Cigar & Smoke Shop (Patel Aff. ¶ 14, Ex. 1); about $36,000 for Vaporzone, on which Massachusetts excise tax was already paid (Agha Aff. ¶ 14, Ex. 2); about $42,000 for Mansfield Vape and Smoke Shop (Patel Aff. ¶ 18, Ex. 3); about $65,000 for Bluemoon (Chawda Aff. ¶ 9, Ex. 4); about $25,000 for Gj-2 Smoke Shop (Patel Aff. ¶ 8, Ex. 5); about $35,000 for D&K Smoke (Gurung Aff. ¶ 11, Ex. 6); and about $50,000 for City Smoke Shop (Patel Aff. ¶ 11, Ex. 8).

The harm has already begun, which confirms it is actual rather than speculative. Mansfield Vape and Smoke Shop's revenue has fallen 60% to 70% since the notice (Patel Aff. ¶ 14, Ex. 3); D&K Smoke has lost about $10,000 in sales (Gurung Aff. ¶ 12, Ex. 6); Medford Sam's Gas has lost about $7,500 (Zeaiter Aff. ¶ 10, Ex. 9); EZ Shop has lost between $2,000 and $4,000 (Patel Aff. ¶ 9, Ex. 11); AM PM Convenience Store has lost about $4,000 (Patel Aff. ¶ 16, Ex. 13); The Corner Store has lost about $4,500 (Patel Aff. ¶ 11, Ex. 14); Station Avenue Convenience has lost about $3,000 (Shukla Aff. ¶ 6, Ex. 16); and Gj-2 Smoke Shop has lost more than $2,000 (Patel Aff. ¶ 9, Ex. 5).

The injury also reaches beyond the affected products themselves. Customers who come for electronic cigarettes and nicotine pouches buy other goods on the same trip, so removal reduces foot traffic and companion sales of food, beverages, lottery tickets, liquor, groceries, and fuel. *See* Agha Aff. ¶ 15, Ex. 2; Chawda Aff. ¶¶ 10, 15, Ex. 4; Zeaiter Aff. ¶ 12, Ex. 9; Patel Aff. ¶ 15, Ex.

10; Patel Aff. ¶ 15, Ex. 13; Shukla Aff. ¶ 10, Ex. 16. And once customers leave for competitors in other towns or in New Hampshire, Plaintiffs do not expect to win them back—a loss of goodwill and customer relationships that resists later valuation. *See* Patel Aff. ¶ 15, Ex. 1; Patel Aff. ¶ 13, Ex. 8; Patel Aff. ¶ 12, Ex. 7.

These losses cascade into obligations that cannot be undone by a later judgment. Plaintiffs attest that enforcement threatens payroll and employee layoffs, and risks default on rent, business loans, lines of credit, equipment financing, and supplier accounts. *See* Agha Aff. ¶¶ 17–18, Ex. 2; Patel Aff. ¶¶ 16–17, Ex. 3; Chawda Aff. ¶¶ 12–13, Ex. 4; Gurung Aff. ¶ 14, Ex. 6; Patel Aff. ¶ 11, Ex. 7; Patel Aff. ¶ 14, Ex. 8; Zeaiter Aff. ¶ 14, Ex. 9; Patel Aff. ¶ 16, Ex. 10. Several Plaintiffs attest that enforcement would force their stores to close. *See* Patel Aff. ¶¶ 16–17, Ex. 1; Agha Aff. ¶ 19, Ex. 2; Patel Aff. ¶ 19, Ex. 3; Patel Aff. ¶¶ 12–13, Ex. 5; Patel Aff. ¶ 11, Ex. 7. Threatened FDA-portal referral and a local violation notice would also brand a store as an illegal-tobacco seller and place its permit in jeopardy—reputational and permit harms that money damages cannot readily repair. *See* Zeaiter Aff. ¶ 15, Ex. 9; Patel Aff. ¶ 14, Ex. 14; Patel Aff. ¶ 16, Ex. 15.

Finally, these harms are not adequately compensable after the fact. They fall on government defendants, and they consist largely of losses—customer goodwill, business relationships, permit standing, and continued operation—that cannot be reliably converted into a damages award. That combination is what makes the threatened injury irreparable. *Vaquería Tres Monjitas*, 587 F.3d at 485.

III. The Balance of Equities and Public Interest Favor a Narrow Injunction.

When the government is the opposing party, the balance-of-equities and public-interest factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Both favor preserving the status quo while the Court decides the merits. The public has no legitimate interest in MGO-based local

enforcement that lacks a valid, independent, nonpreempted legal predicate, and it has a strong interest in confining governmental action to the limits of lawful authority. An injunction that prevents only that enforcement vindicates, rather than disserves, the public interest.

The equities also favor relief because the requested injunction would impose no cognizable harm on Defendants. Plaintiffs do not seek to disturb any independent tobacco regulation. They do not ask the Court to bar enforcement of the Massachusetts flavored-tobacco ban, M.G.L. c. 270, § 28 (Compl. Ex. 10), or of the Commonwealth's retail tobacco rules governing age verification, product placement, nicotine content, and manufacturer documentation, 105 CMR 665.010 (Compl. Ex. 3). Nor do they seek to limit enforcement of licensing, signage, tax, or other valid local restrictions. Defendants remain free to enforce every lawful tobacco rule; an injunction would simply hold them to the requirement of a valid legal predicate.

Relief tailored to the proven injury should be no broader than necessary. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165–66 (2010). The requested order is narrow and specific. *See* Fed. R. Civ. P. 65(d); *Schmidt v. Lessard*, 414 U.S. 473, 476–77 (1974). Plaintiffs ask the Court to enjoin Defendants, and those acting in concert with them, from requiring Plaintiffs to remove tobacco products from sale, issuing a local violation notice or fine, conducting an inspection to enforce MGO status, or imposing any permit consequence—including suspension, nonrenewal, or revocation—solely because FDA has not issued an MGO or because of alleged noncompliance with federal premarket-review requirements, unless Defendants act under an independently adopted, valid, and nonpreempted state or local legal rule. The order would not bar Defendants from communicating with FDA; it would reach FDA-portal referral only as a component of the threatened local coercive-enforcement mechanism challenged here. So framed,

the injunction preserves the status quo, protects Plaintiffs from irreparable harm, and leaves every valid exercise of Defendants' tobacco-regulatory authority intact.

CONCLUSION

For all of the foregoing reasons, Plaintiffs' request this Court allow their Motion for Preliminary Injunction and enter an order, pending final resolution of this action, that:

1. Enjoins Defendants, and their officers, agents, servants, employees, attorneys, and all other persons acting in active concert or participation with them who receive actual notice of the Order, from requiring Plaintiffs to remove tobacco products from sale solely because FDA has not issued a Marketing Granted Order for those products or because of alleged noncompliance with federal premarket-review requirements;
2. Enjoins Defendants and those acting in concert with them from issuing a local violation notice or fine, conducting an inspection to enforce MGO status, or imposing any permit consequence—including suspension, nonrenewal, or revocation—against Plaintiffs solely because FDA has not issued an MGO for a tobacco product or because of alleged noncompliance with federal premarket-review requirements, unless Defendants act under an independently adopted, valid, and nonpreempted state or local legal rule;
3. Grants Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

PLAINTIFFS,

By their attorneys,

/s/Nicholas F. Feloney

Daniel J. Goodrich, BBO # 692624
Nicholas F. Feloney, BBO # 705336
MURPHY & KING, P.C.
28 State Street, 31st Floor
Boston, MA 02109
Tel: (617) 423-0400
Fax: (617) 423-0498
E-mail: dgoodrich@murphyking.com
E-mail: nfeloney@murphyking.com

Date : June 26, 2026

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF ANKIT PATEL

I, Ankit Patel, state the following under oath and of my own personal knowledge:

1. I own Vishveshwara Corp, which operates as Halifax Cigar & Smoke Shop at 355 Plymouth Street, Halifax, Massachusetts.

2. I run the store day to day, and I keep its sales and inventory records. I know the facts in this affidavit firsthand.

3. The Town of Halifax issued the store a tobacco retailer license, and the store sells under that license.

4. On May 13, 2026, the Halifax Board of Health sent the store a notice titled "Important Notice: Tobacco Product Compliance Requirements Effective June 1, 2026." A copy is attached as **Exhibit A**.

5. Robert Buker, the Board's interim health agent, signed the notice.

6. The Notice states that, starting June 1, 2026, every tobacco product I sell must have a valid FDA Marketing Granted Order, that I must verify each product against the FDA's official list, and that manufacturer letters "alone will no longer be sufficient."

7. The Notice directs that any product without a Marketing Granted Order "must be removed from inventory," and it warns that failure to comply after June 1, 2026 "may result in fines and other enforcement actions."

8. The Notice does not tell me which products on my shelves I must remove.

9. The list of authorized e-cigarettes attached to the Notice states on its face that it was "Last Updated: March 2026." I cannot tell from that outdated list what products are authorized for sale today.

10. For years I relied in good faith on manufacturer letters to confirm that the products I bought could be sold lawfully. The Notice now tells me those letters no longer count, yet it gives me less than three weeks to comply.

11. The Notice cites no town bylaw, ordinance, or state regulation that gives the Board authority to order me to pull these products.

12. The Notice also says an entity it calls "HPHEG" will enforce these requirements, but it never explains what HPHEG is or where its authority comes from.

13. E-cigarettes and nicotine pouches are the core of my business. They generate about 80% of the store's revenue—roughly $40,000 every month.

14. When the Board enforces the Notice after June 1, 2026, I will have to pull about $20,000 of e-cigarette and nicotine-pouch inventory from my shelves.

15. The loss will not stop at those products. Customers who come in for e-cigarettes and pouches also buy other items, so losing these sales will cut my overall customer traffic. My customers are adults who buy these products regularly. If I cannot sell them, they will buy them from other stores in different towns, cities, or states, and I expect to lose their business for good.

16. To absorb the loss of most of my revenue, I will have to cut my employees' hours and payroll. I do not believe the store can survive the loss of 80% of its revenue. Enforcing the notice threatens to close Halifax Cigar & Smoke Shop.

17. This harm is immediate and cannot be undone. Once I lose customers, cut staff, and close the store, no later ruling can win those customers back or reverse the closure.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 16 DAY OF June 2026.

Signed by:
3A73E13ED29F441...
Ankit Patel

EXHIBIT A

TOWN OF HALIFAX
COMMONWEALTH OF MASSACHUSETTS
Board of Health
499 Plymouth Street, Halifax, MA 02338
Telephone (781)293-6768 * Fax (781)293-1738

Important Notice: Tobacco Product Compliance Requirements Effective June 1, 2026

Dear Tobacco Retailers in Halifax, Raynham, Middleborough, Bridgewater, East Bridgewater, and West Bridgewater,

The Halifax Board of Health is issuing this notice to inform all tobacco retailers of updated compliance requirements aligned with federal and Massachusetts state regulations.

The U.S. Food and Drug Administration (FDA) requires that all tobacco products sold in the United States have a Marketing Granted Order (MGO). Products without an MGO are not authorized for sale and must be removed from inventory.

Effective June 1, 2026, HPHEG will begin enforcing the following requirements:
All tobacco products must have a valid FDA Marketing Granted Order (MGO).
Retailers must verify products using the FDA's official MGO list. Manufacturer letters alone will no longer be sufficient.
All products must comply with the Massachusetts flavor ban, which is more restrictive than federal regulations.

Please be advised that many products currently available in stores may not appear on the FDA's authorized list and therefore cannot be legally sold. Retailers are responsible for ensuring full compliance with both federal and state laws. Failure to comply with these requirements after June 1, 2026, may result in fines and other enforcement actions.

A list of approved products is provided below for your reference. If you have any questions or need assistance, please contact your town's local health agent.

Thank you for your attention to this important matter.

Sincerely,

Robert Buker, Interim Health Agent
Halifax Board of Health

Below is an up-to-date list of all nicotine pouch products authorized by the FDA. These are the only nicotine pouch products that may be lawfully sold in the United States.

Manufacturer	Product	
Helix Innovations LLC	on! PLUS nicotine pouches 6 mg Mint	on! PLUS nicotine pouches 9 mg Mint
	on! PLUS nicotine pouches 6 mg Tobacco	on! PLUS nicotine pouches 9 mg Tobacco
	on! PLUS nicotine pouches 6 mg Wintergreen	on! PLUS nicotine pouches 9 mg Wintergreen
Swedish Match USA, Inc.	~~ZYN Chill 3 mg~~	~~ZYN Menthol 3 mg~~
	~~ZYN Chill 6 mg~~	~~ZYN Menthol 6 mg~~
	~~ZYN Cinnamon 3 mg~~	~~ZYN Peppermint 3 mg~~
	~~ZYN Cinnamon 6 mg~~	~~ZYN Peppermint 6 mg~~
	~~ZYN Citrus 3 mg~~	ZYN Smooth 3 mg
	~~ZYN Citrus 6 mg~~	ZYN Smooth 6 mg
	~~ZYN Coffee 3 mg~~	~~ZYN Spearmint 3 mg~~
	~~ZYN Coffee 6 mg~~	ZYN Spearmint 6 mg
	~~ZYN Cool Mint 3 mg~~	ZYN Wintergreen 3 mg
	~~ZYN Cool Mint 6 mg~~	~~ZYN Wintergreen 6 mg~~

Docusign Envelope ID: C8C63190-2D99-8323-8346-6E361CC2025F

E-Cigarettes Authorized by the FDA

These are the only e-cigarettes that may be lawfully sold in the United States.
(Last Updated: March 2026)

FDA

Manufacturer	Product Name	
Glas Inc.	Glas G² DEVICE	BLONDE TOBACCO 50 MG/ML Pod
JUUL Labs Inc.	JUULpods (Menthol 3.0%)	JUULpods (Menthol 5.0%)
	JUULpods (Virginia Tobacco 3.0%)	JUULpods (Virginia Tobacco 5.0%)
	JUUL Device	
Logic Technology Development LLC	Logic Regular Cartridge/Capsule Package	Logic Pro Capsule Tank System (1)
	Logic Vapeleaf Cartridge/Capsule Package	Logic Pro Capsule Tank System (2)
	Logic Vapeleaf Tobacco Vapor System	Logic Power Tobacco e-Liquid Package
	Logic Pro Tobacco e-Liquid Package	Logic Power Rechargeable Kit
NJOY LLC	NJOY DAILY Rich Tobacco 4.5%	NJOY ACE POD Classic Tobacco 2.4%
	NJOY DAILY EXTRA Rich Tobacco 6%	NJOY ACE POD Classic Tobacco 5%
	NJOY DAILY EXTRA Menthol 6%	NJOY ACE POD Rich Tobacco 5%
	NJOY DAILY Menthol 4.5%	NJOY ACE POD Menthol 2.4%
	NJOY ACE Device	NJOY ACE POD Menthol 5%
R.J. Reynolds Vapor Company	Vuse Vibe Power Unit (1)	Vuse Replacement Cartridge Original 4.8% G2
	Vuse Vibe Tank Original 3.0%	Vuse Alto Power Unit
	Vuse Vibe Power Unit (2)	Vuse Alto Pod Golden Tobacco 5%
	Vuse Ciro Power Unit (1)	Vuse Alto Pod Rich Tobacco 5%
	Vuse Ciro Cartridge Original 1.5%	Vuse Alto Pod Golden Tobacco 2.4%
	Vuse Ciro Power Unit (2)	Vuse Alto Pod Rich Tobacco 2.4%
	Vuse Solo Power Unit	Vuse Alto Pod Golden Tobacco 1.8%
	Vuse Replacement Cartridge Original 4.8% G1	Vuse Alto Pod Rich Tobacco 1.8%

For an up-to-date list of authorized e-cigarettes, visit the Searchable Tobacco Products Database.

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

CTP-250

EXHIBIT 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF BEHRAM AGHA

I, Behram Agha, being duly sworn, depose, and state under oath as follows:

1. I own and operate 513 Five Thirteen Inc., which does business as Vaporzone, a retail store at 184 Broadway, Saugus, Massachusetts.

2. I run the store's daily operations. I know its sales, inventory, customers, payroll, and finances firsthand.

3. The Town of Saugus issued Vaporzone a Tobacco Product Sales Permit. The permit lets the store sell tobacco products, including electronic cigarettes and oral nicotine pouches.

4. On May 28, 2026, John R. Fralick, II, the Director of Public Health for the Town of Saugus Board of Health, sent my store a notice titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). A true copy is attached as **Exhibit A**.

5. The Notice directs retailers to "remove all electronic cigarettes and [oral nicotine pouches] on [their] shelves that have not received a Marketing Granted Order from the FDA."

6. The Notice states that only electronic cigarettes and oral nicotine pouches with an FDA Marketing Granted Order may be sold, and that "currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches" have received one.

7. The Notice warns that if I do not remove the products, the Board of Health will report the information to the FDA and issue a notice of violation of the Town's local tobacco regulation.

8. The Notice is a form letter addressed to "Tobacco Retailers" generally. It does not mention Vaporzone, my inventory, or any specific product on my shelves.

9. No one from the Board of Health inspected my store or its shelves before sending the Notice.

10. The Notice tells me to consult the FDA's online "Searchable Tobacco Products Database" to learn which products are authorized, but it does not identify which of my products, if any, fail that test.

11. The Notice set no deadline, offered no hearing, and gave me no way to contest it before the threatened enforcement.

12. Electronic cigarettes and oral nicotine pouches (the "Affected Products") account for about 80% of Vaporzone's total revenue.

13. The Affected Products earn my store about $16,000 each month. If I must pull them from my shelves, I lose that revenue.

14. I now hold about $36,000 in Affected Products inventory. I bought it in good faith and paid the Massachusetts excise tax on it. If I must remove it, it becomes unsellable, and I lose the full $36,000.

15. The threat of enforcement has already cut my customer foot traffic. Fewer customers come in, so my sales of other goods—food, drinks, and convenience items—have fallen too.

16. My rent, payroll, and operating costs continue whether or not I can sell the Affected Products. Losing 80% of my revenue while these costs stay fixed will quickly make the store unprofitable.

17. These losses threaten my ability to pay rent, payroll, and my other business obligations.

18. I employ two people. If enforcement proceeds, I will have to lay off both.

19. Enforcement also threatens my Tobacco Product Sales Permit and could force me to close Vaporzone for good.

20. The Notice does not identify any specific product that must be removed from my shelves. Instead, it simply orders me to clear my shelves of all of electronic cigarettes and nicotine pouches.

21. If I lose my customers, lay off my employees, forfeit my tax-paid inventory, and close the store, no later court order can undo that harm or rebuild the business and its goodwill.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 06 DAY OF 16 2026.

Signed by:
Behram Agha
C7D845AD735F49F...

Behram Agha

EXHIBIT A

TOWN OF SAUGUS

BOARD OF HEALTH
298 CENTRAL STREET, SUITE 9
SAUGUS, MASSACHUSETTS 01906

Public Health
Prevent. Promote. Protect.

Board of Health
John R. Fralick, III RS/REHS
Director of Public Health

Telephone: (781) 231-4120
(781) 231-4117
jfralick@saugus-ma.gov

TO: **Tobacco Retailers**
FROM: **Saugus Health Department**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 28, 2026**

Town of Saugus tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the **Town of Saugus** local tobacco regulation.

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF GIRISHKUMAR PATEL

I, Girishkumar Patel, being duly sworn, depose and state under oath as follows:

1. I own and operate Smita Smart LLC, which does business as Mansfield Vape and Smoke Shop at 266 North Main Street, Unit 2, Mansfield, Massachusetts.

2. I make this affidavit from personal knowledge. I manage the store's daily operations, sales, inventory, payroll, and finances.

3. My store holds a Tobacco and Nicotine Delivery Product Sales Permit issued by the Town of Mansfield, and I operate under that permit.

4. Electronic cigarettes, oral nicotine pouches, and vape e-liquid are the core of my business. They generate about 70% of my sales—roughly $35,000 each month. I now hold about $42,000 of this inventory on my shelves.

5. These products also bring in customers who buy other goods. People who come for vapor products and nicotine pouches also buy convenience items, beverages, and similar items while they are in the store. When they stop coming, those sales disappear too.

6. On February 18, 2026, the Mansfield Health Department issued a notice titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches." Amy Donovan-Palmer, the Town's Health Director and Agent, signed it. I received it at my store in April 2026. A copy is attached as **Exhibit A**.

7. The Notice states that only electronic cigarettes and oral nicotine pouches with a Marketing Granted Order, or "MGO," from the FDA may be sold, and that only a limited number of these products currently hold one.

8. The Notice orders me to remove from my shelves, by May 15, 2026, every electronic cigarette and oral nicotine pouch that lacks an MGO.

9. The Notice warns that if I miss that deadline, the Health Department will report my store to the FDA's illegal-tobacco portal for enforcement and may issue a notice of violation under the Town's tobacco regulations.

10. The Notice does not identify a single product on my shelves as unauthorized. It instead tells me to search the FDA's "Searchable Tobacco Products Database" and decide for myself which products to pull.

11. The Notice rests on a general letter from an FDA compliance official to local boards of health. It points to no order or finding that any product I sell violates federal or state law.

12. The Notice does not claim that my store has sold any flavored or otherwise prohibited product.

13. The Notice sets the Town's own May 15, 2026 deadline and threatens to report and cite my store, even though the FDA—not the Town—decides which of these products may be sold.

14. The harm has already begun. Since the Notice, my store's revenue has fallen by 60% to 70%, and it keeps dropping day by day. Customers who learn they cannot buy these products here are not coming back.

15. If the Town enforces the Notice, I will lose those sales for good. Foot traffic will keep falling, and my other sales will fall with it.

16. I expect my store to default on its business obligations within three to four months after enforcement, including its lease/rent obligations and payroll.

17. I would also have to cut my two employees' hours or pay, and I may have to lay them off.

18. I would be left holding about $42,000 in inventory I cannot sell, most of which I bought before the Notice.

19. I do not believe my store can survive the loss of 70% of its sales. Enforcement of the Notice threatens to close my store for good.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 15 DAY OF June 2026.

DocuSigned by:
7F94358F349D43B...
Girishkumar Patel

EXHIBIT A

Town of Mansfield
6 Park Row, Mansfield, Massachusetts 02048

Health Department
Amy Donovan-Palmer, MPH, RS, CPH/CHO
Health Director/Agent

TO: **Tobacco Retailers**

FROM: **Mansfield Health Department**

RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**

DATE: **February 18, 2026**

The Town of Mansfield's tobacco sales regulations require all holders of a Tobacco and Nicotine Delivery Product Sales Permit to inform employees selling tobacco products of all applicable federal, state and local laws, rules, regulations, and requirements. *See Regulation Affecting Smoking and the Sale, Vending, and Distribution of Tobacco and Nicotine Delivery Products*. In the attached letter to the Boards of Health of Tobacco Control Alliance, the Director of Compliance and Enforcement at the Food and Drug Administration's (FDA) Center for Tobacco Products states, "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders (MGO) from the FDA can be sold in the United States, including electronic cigarettes or oral nicotine pouches. Currently, only a limited number of electronic cigarettes and oral nicotine pouches have a MGO. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves **that have not received a MGO from the FDA**. If these products are not removed by **May 15, 2026** the Health Department will submit the information to the FDA's illegal tobacco portal for enforcement and may issue a notice of a violation of the Mansfield local tobacco regulation.

Additionally, please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, the sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts, even though this product has received a MGO from the FDA.

If you have any questions regarding this letter or the Town's tobacco regulations, please contact the Health Department.

Regards,

Amy Donovan-Palmer, MPH RS CPH/CHO
Health Director/Agent

EXHIBIT 4

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF AJIT CHAWDA

I, Ajit Chawda, being duly sworn, depose, and state under oath as follows:

1. I am the President of Ajit Corporation, which does business as Bluemoon Smoke & Vape Outlets at 2034 Massachusetts Avenue, Cambridge, Massachusetts 02139. I have personal knowledge of the facts stated in this affidavit.

2. Ajit Corporation holds a tobacco retailer permit issued by the City of Cambridge. My store checks identification on every sale to confirm that the buyer is at least 21, and it follows all Massachusetts and Cambridge tobacco laws.

3. My store sells tobacco, electronic-cigarette, and nicotine products. These products earn the store about $32,000 each month and account for about 65% of its total revenue.

4. In or around April 2026, I received the notice attached as **Exhibit A** (the "Notice"). The 6 City Tobacco Initiative issued the Notice on March 24, 2026. The Initiative is a collaborative of the health departments of Cambridge, Chelsea, Everett, Revere, Somerville, and Winthrop. Its Director, Bonny Carroll, signed the Notice, and it lists the Cambridge Public Health Department at 119 Windsor Street, Cambridge.

5. The Notice invokes the Family Smoking Prevention and Tobacco Control Act. It states that a retailer may sell only those products that the FDA lists as holding a Marketing Granted Order. It directs every retailer to remove all tobacco, electronic-cigarette, and nicotine products that lack a Marketing Granted Order by May 1, 2026.

6. The Notice requires each retailer to confirm a product's status through the FDA's Searchable Tobacco Products Database.

7. The Notice sets a firm deadline. It tells retailers to expect an onsite inspection on or after May 1, 2026, and it states that enforcement against unlawful products begins that day. The Notice gave my store about four weeks—from April 1 to May 1—to identify and remove the

affected products. However, the Notice does not identify what products my store must remove other than vaguely directing me to the FDA's Searchable Tobacco Products Database.

8. The Notice my store received refers to the regulations of the City of Somerville Board of Health and to flavored products "already banned in Somerville," even though my store operates in Cambridge. The Notice does not identify which of my store's specific products lack a Marketing Granted Order.

9. The Notice puts about $65,000 of inventory at my store at risk. That is the value of the affected products now on my shelves and in my stockroom—products I have already bought and paid for and that the Notice would force me to remove.

10. Removing these products has already reduced customer visits and cut the store's revenue. Many customers who come for these products also buy other items, so those sales have fallen too. My store has already lost revenue because of the Notice and the threatened enforcement.

11. Enforcement also exposes my store to onsite inspections, fines, product confiscation, and permit or licensing complications. Each of these threatens the store's tobacco permit and its ability to stay open.

12. If enforcement continues, my store cannot meet its fixed obligations. It risks defaulting on its lease, business loan, store mortgage, equipment financing, supplier obligations, and payroll.

13. My store employs two people. Continued enforcement puts both jobs at risk and would force me to cut their hours or lay them off.

14. The lost revenue, threatened defaults, and disruption to daily operations also damage the store's reputation. If these losses continue, my store may close permanently.

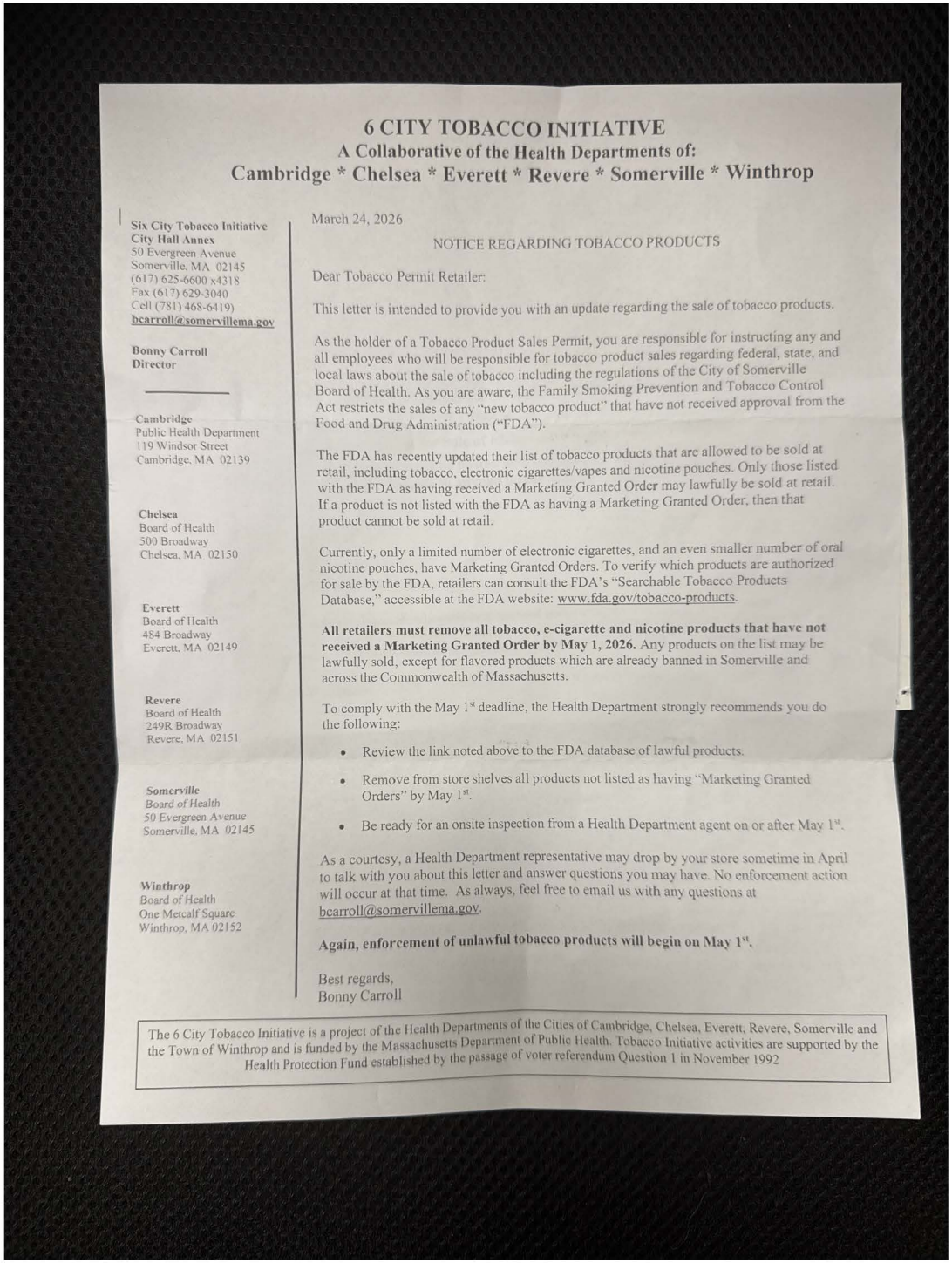
15. Enforcement would also push customers away from my store and toward other alternative stores in different cities, towns, or states that do permit sales of these products.

16. My store has always sold these products in good faith and believes they are lawful to sell. Forcing the store to remove most of its inventory now—before a court reviews the Notice—would cause losses my store cannot recover.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 22 DAY OF 6 2026.

DocuSigned by:
Ajit Chawda
D7EEE0A1B662497...
Ajit Chawda

EXHIBIT A



6 CITY TOBACCO INITIATIVE

A Collaborative of the Health Departments of:

Cambridge * Chelsea * Everett * Revere * Somerville * Winthrop

Six City Tobacco Initiative
City Hall Annex
50 Evergreen Avenue
Somerville, MA 02145
(617) 625-6600 x4318
Fax (617) 629-3040
Cell (781) 468-6419)
bcarroll@somervillema.gov

Bonny Carroll
Director

Cambridge
Public Health Department
119 Windsor Street
Cambridge, MA 02139

Chelsea
Board of Health
500 Broadway
Chelsea, MA 02150

Everett
Board of Health
484 Broadway
Everett, MA 02149

Revere
Board of Health
249R Broadway
Revere, MA 02151

Somerville
Board of Health
50 Evergreen Avenue
Somerville, MA 02145

Winthrop
Board of Health
One Metcalf Square
Winthrop, MA 02152

March 24, 2026

NOTICE REGARDING TOBACCO PRODUCTS

Dear Tobacco Permit Retailer:

This letter is intended to provide you with an update regarding the sale of tobacco products.

As the holder of a Tobacco Product Sales Permit, you are responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state, and local laws about the sale of tobacco including the regulations of the City of Somerville Board of Health. As you are aware, the Family Smoking Prevention and Tobacco Control Act restricts the sales of any "new tobacco product" that have not received approval from the Food and Drug Administration ("FDA").

The FDA has recently updated their list of tobacco products that are allowed to be sold at retail, including tobacco, electronic cigarettes/vapes and nicotine pouches. Only those listed with the FDA as having received a Marketing Granted Order may lawfully be sold at retail. If a product is not listed with the FDA as having a Marketing Granted Order, then that product cannot be sold at retail.

Currently, only a limited number of electronic cigarettes, and an even smaller number of oral nicotine pouches, have Marketing Granted Orders. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

All retailers must remove all tobacco, e-cigarette and nicotine products that have not received a Marketing Granted Order by May 1, 2026. Any products on the list may be lawfully sold, except for flavored products which are already banned in Somerville and across the Commonwealth of Massachusetts.

To comply with the May 1st deadline, the Health Department strongly recommends you do the following:

- Review the link noted above to the FDA database of lawful products.
- Remove from store shelves all products not listed as having "Marketing Granted Orders" by May 1st.
- Be ready for an onsite inspection from a Health Department agent on or after May 1st.

As a courtesy, a Health Department representative may drop by your store sometime in April to talk with you about this letter and answer questions you may have. No enforcement action will occur at that time. As always, feel free to email us with any questions at bcarroll@somervillema.gov.

Again, enforcement of unlawful tobacco products will begin on May 1st.

Best regards,
Bonny Carroll

The 6 City Tobacco Initiative is a project of the Health Departments of the Cities of Cambridge, Chelsea, Everett, Revere, Somerville and the Town of Winthrop and is funded by the Massachusetts Department of Public Health. Tobacco Initiative activities are supported by the Health Protection Fund established by the passage of voter referendum Question 1 in November 1992

EXHIBIT 5

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF NITIN PATEL

I, Nitin Patel, being duly sworn, depose, and state under oath as follows:

1. I own Ridhy Corporation, which operates as Gj-2 Smoke Shop at 228 Columbia Road in Hanover, Massachusetts. I manage the store day to day, and I make this affidavit from personal knowledge.

2. The Town of Hanover issued Gj-2 Smoke Shop its tobacco retailer permit, and the store holds that permit in good standing. When I applied, I signed a statement promising to inform my employees of the federal, state, and local tobacco laws that govern the store.

3. Gj-2 Smoke Shop sells electronic cigarettes, vapor products, and oral nicotine pouches. These products bring in about 60% of the store's total revenue—roughly $15,000 each month.

4. These products also drive the rest of the store's business. Customers who come in for e-cigarettes and nicotine pouches routinely buy other convenience items on the same trip. That foot traffic, and the impulse purchases that come with it, depend on keeping these products on the shelf.

5. On March 19, 2026, the Hanover Health Department issued a notice titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches." My store received it in April 2026. A copy is attached as **Exhibit A**. The Notice directs me to remove from my shelves, by June 15, 2026, every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

6. The Notice warns that if I do not remove these products, the Health Department will report my store to the FDA's illegal tobacco portal and may issue a notice that the store violated Hanover's local tobacco regulation.

7. Yet the Notice states on its face, twice, that it "is being provided for educational purposes only and is not to be construed as legal advice." It does not identify which products on

my shelves lack a Marketing Granted Order. Instead, it tells me to search the FDA's online database and decide for myself which products to pull. It points to no specific Hanover regulation that makes selling these products unlawful.

8. To comply with the Notice, I would have to remove about $25,000 worth of inventory from my shelves.

9. The threatened enforcement has already cost me money. I have lost more than $2,000 in revenue because of the Notice.

10. Pulling these products would cost far more than their own lost sales. Once customers have no reason to come in for e-cigarettes and nicotine pouches, the store will lose their companion purchases too. Customer traffic, impulse buys, and total daily sales will all fall, and I cannot measure those losses precisely.

11. I cannot absorb that loss. To stay open, I would have to cut payroll, which puts the jobs of my two employees at risk. The lost revenue would also leave the store unable to meet its regular business obligations, and the store would risk defaulting on them. This harm would begin the moment I remove the products.

12. I do not believe the store can survive the loss of about 60% of its revenue. If the Town enforces the Notice, Gj-2 Smoke Shop will not be able to keep operating profitably, and I expect it will have to close.

13. Gj-2 Smoke Shop is a small, independently owned store that supports my family and provides jobs for two employees. I hold a Hanover tobacco permit, and I sell these products openly as a licensed retailer. If the Town enforces the Notice before a court decides whether it may require this, I will lose my inventory, my customers, and my business—losses I could never recover.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 6 DAY OF 17 2026.

Signed by:
N. N. Patel
586D475F244A411...
Nitin Patel

EXHIBIT A

DEPARTMENT OF
COMMUNITY DEVELOPMENT/MUNICIPAL INSPECTIONS
TOWN OF HANOVER
TOWN HALL, 550 HANOVER STREET, HANOVER, MA 02339 • 781-826-5000

PHONE
HEALTH: EXT: 1024
CONSERVATION: EXT: 1020
PLANNING: EXT: 1026
BUILDING: EXT: 1009

FAX
HEALTH: (781) 826-5289
CONSERVATION: (781) 826-5950
PLANNING: (781) 826-5950
BUILDING: (781) 826-5950

This information is being provided for educational purposes only and it not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

TO: **Tobacco Retailers**
FROM: **Hanover Health Department**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **March 19, 2026**

Hanover tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus AND **Zyn Chill are a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.**

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA by **June 15, 2026**. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the **Hanover** local tobacco regulation.

This information is provided for educational purposes only and is not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF KUMRAJ GURUNG

I, Kumraj Gurung, being duly sworn, depose, and state under oath as follows:

1. I own D&K Smoke Shop LLC, which does business as D&K Smoke at 147 Highland Avenue, Unit D, Somerville, Massachusetts. I run the store myself, day to day.

2. The City of Somerville issued my store a tobacco-retailer permit. Under that permit, I sell tobacco, electronic-cigarette, and nicotine products, including the products this case concerns.

3. On March 26, 2026, I received a notice dated March 24, 2026 from the Somerville Board of Health (the "Notice"). A true copy of the Notice is attached as **Exhibit A**. The Board sent the Notice through the 6 City Tobacco Initiative — a collaborative of the health departments of Cambridge, Chelsea, Everett, Revere, Somerville, and Winthrop — and its director, Bonny Carroll, signed it.

4. The Notice declares that only products the FDA lists as having a Marketing Granted Order may be sold at retail, and that any product without that order cannot be sold.

5. The Notice orders me to remove from my shelves, by May 1, 2026, every tobacco, electronic-cigarette, and nicotine product that has not received an FDA Marketing Granted Order.

6. The Notice warns that a Health Department agent may inspect my store on or after May 1, 2026, and that enforcement of "unlawful tobacco products" will begin that day.

7. The Notice does not tell me which products I must remove. Instead, it directs me to search the FDA's "Searchable Tobacco Products Database" at www.fda.gov/tobacco-products and to decide for myself which of my products lack a Marketing Granted Order.

8. The Notice does not identify a single product on my shelves that lacks a Marketing Granted Order.

9. The Notice gave me about five weeks — from March 24 to May 1, 2026 — to search the database, sort my inventory, and clear my shelves.

10. The products the Notice targets generate about 60% of my store's revenue, or roughly $20,000 each month.

11. If I pull these products, I stand to lose about $35,000 in inventory that I have already bought and paid for.

12. I have already lost about $10,000 in sales because of the Notice and the threat of enforcement.

13. Removing these products will drive my customers away. They come to my store for these products, and many have already asked me why I can no longer stock what they need. When they leave, I also lose the convenience, food, beverage, and lottery sales they would otherwise make.

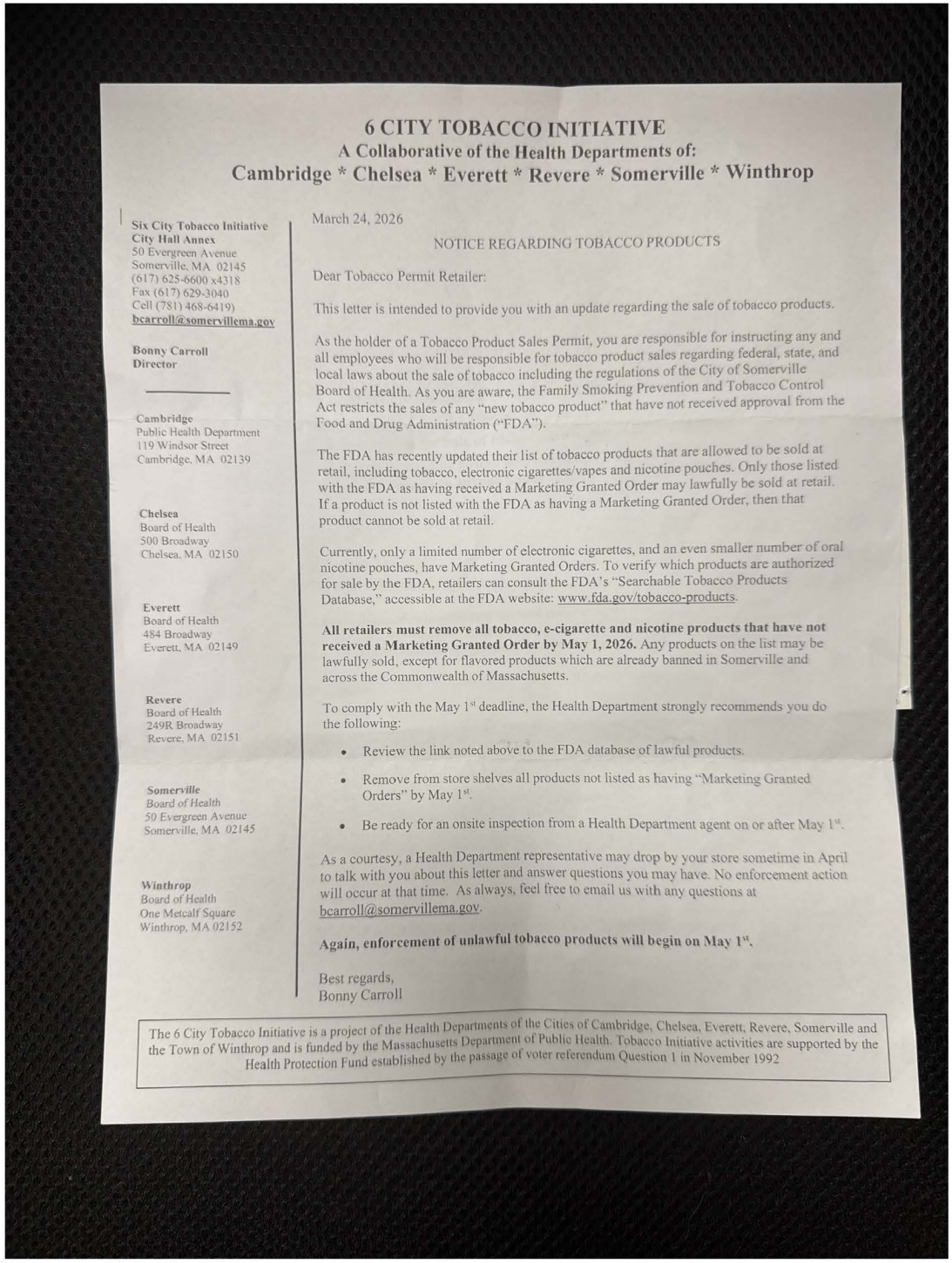
14. Enforcement would put me at risk of defaulting on my store lease, business loan, line of credit, equipment financing, supplier and vendor obligations, and payroll.

15. The store is my primary source of income. I do not believe my store can stay open or operate at a profit if the Notice is enforced.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 16 DAY OF 2026 2026.

DocuSigned by:
KUMRAJ GURUNG
C9E4B2952C5C443...
Kumraj Gurung

EXHIBIT A



6 CITY TOBACCO INITIATIVE

A Collaborative of the Health Departments of:

Cambridge * Chelsea * Everett * Revere * Somerville * Winthrop

Six City Tobacco Initiative
City Hall Annex
50 Evergreen Avenue
Somerville, MA 02145
(617) 625-6600 x4318
Fax (617) 629-3040
Cell (781) 468-6419)
bcarroll@somervillema.gov

Bonny Carroll
Director

Cambridge
Public Health Department
119 Windsor Street
Cambridge, MA 02139

Chelsea
Board of Health
500 Broadway
Chelsea, MA 02150

Everett
Board of Health
484 Broadway
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Revere
Board of Health
249R Broadway
Revere, MA 02151

Somerville
Board of Health
50 Evergreen Avenue
Somerville, MA 02145

Winthrop
Board of Health
One Metcalf Square
Winthrop, MA 02152

March 24, 2026

NOTICE REGARDING TOBACCO PRODUCTS

Dear Tobacco Permit Retailer:

This letter is intended to provide you with an update regarding the sale of tobacco products.

As the holder of a Tobacco Product Sales Permit, you are responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state, and local laws about the sale of tobacco including the regulations of the City of Somerville Board of Health. As you are aware, the Family Smoking Prevention and Tobacco Control Act restricts the sales of any "new tobacco product" that have not received approval from the Food and Drug Administration ("FDA").

The FDA has recently updated their list of tobacco products that are allowed to be sold at retail, including tobacco, electronic cigarettes/vapes and nicotine pouches. Only those listed with the FDA as having received a Marketing Granted Order may lawfully be sold at retail. If a product is not listed with the FDA as having a Marketing Granted Order, then that product cannot be sold at retail.

Currently, only a limited number of electronic cigarettes, and an even smaller number of oral nicotine pouches, have Marketing Granted Orders. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

All retailers must remove all tobacco, e-cigarette and nicotine products that have not received a Marketing Granted Order by May 1, 2026. Any products on the list may be lawfully sold, except for flavored products which are already banned in Somerville and across the Commonwealth of Massachusetts.

To comply with the May 1st deadline, the Health Department strongly recommends you do the following:

- Review the link noted above to the FDA database of lawful products.
- Remove from store shelves all products not listed as having "Marketing Granted Orders" by May 1st.
- Be ready for an onsite inspection from a Health Department agent on or after May 1st.

As a courtesy, a Health Department representative may drop by your store sometime in April to talk with you about this letter and answer questions you may have. No enforcement action will occur at that time. As always, feel free to email us with any questions at bcarroll@somervillema.gov.

Again, enforcement of unlawful tobacco products will begin on May 1st.

Best regards,
Bonny Carroll

The 6 City Tobacco Initiative is a project of the Health Departments of the Cities of Cambridge, Chelsea, Everett, Revere, Somerville and the Town of Winthrop and is funded by the Massachusetts Department of Public Health. Tobacco Initiative activities are supported by the Health Protection Fund established by the passage of voter referendum Question 1 in November 1992

EXHIBIT 7

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF JIGNESH PATEL

I, Jignesh Patel, being duly sworn, depose, and state under oath as follows:

1. I own Rihaan Corp., which does business as Jay's Smoke Shop at 207 North Street, Salem, Massachusetts. I make this affidavit from personal knowledge and could testify to these facts if called as a witness.

2. Jay's Smoke Shop holds a tobacco product sales permit issued by the City of Salem. I employ two people at the store, and its income supports my family.

3. On May 5, 2026, the Salem Board of Health sent me a notice titled "Marketing Granted Order for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). A true copy is attached as **Exhibit A**. David Greenbaum, the Board's Health Agent, signed it.

4. The Notice tells me I may sell electronic cigarettes and oral nicotine pouches only if the FDA has issued a Marketing Granted Order for them. It directs me to remove from my shelves every such product that lacks that order.

5. The Notice sets a deadline of July 1, 2026. If I do not remove the targeted products by that date, the Board says it will report my store to the FDA's illegal-tobacco portal and may issue a notice of violation.

6. The Notice does not say that the FDA has banned these products or ordered me to remove them. It quotes the FDA only as warning that unauthorized products are "generally ... at risk of enforcement action," and it points retailers to the FDA's online database of authorized products.

7. To my knowledge, the FDA is still reviewing premarket applications for many of the products the Notice targets, and the FDA has taken no enforcement action against my store.

8. Before issuing the Notice, the Salem Board of Health did not consider how the Notice would affect local stores like mine.

9. Enforcing the Notice would destroy my business. The products it targets generate about 59% of my store's revenue—about $30,000 each month.

10. I now hold about $20,000 in affected inventory that the Notice would force me to pull from my shelves and that I could not sell at full value.

11. Without that revenue, I cannot pay my rent, my utilities, the payroll for my two employees, the least, business and mortgage loans for the store. I anticipate defaults shortly after enforcement of the Notice. Ultimately, it will cause me to have to close the store.

12. If I close, I will lose the customers and goodwill I have built over years, and I do not expect to recover them or reopen.

13. The products the Notice targets are lawful adult-use nicotine products, and I sell them only to adults.

14. I understand that the Board sent similar notices to other Salem permit holders. Based on my conversations with them, I believe the Notice could force about half of roughly 48 local license holders in our area to close.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 16th DAY OF June 2026.

Signed by:
Jignesh Patel
5E3CA932640E4DD...
Jignesh Patel

EXHIBIT A

CITY OF SALEM, MASSACHUSETTS
BOARD OF HEALTH
98 WASHINGTON STREET, 3RD FLOOR
SALEM, MA 01970
TEL. (978) 741-1800
health@salem.com

DOMINICK PANGALLO
MAYOR

Public Health
Prevent. Promote. Protect.

DAVID GREENBAUM, RS, CHO
HEALTH AGENT

TO: **Tobacco Retailers**
FROM: **Salem Board of Health**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 5, 2026**

The Salem Board of Health tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your Salem Board of Health tobacco product sales permit, **you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA**. If these products are not removed **July 1, 2026**, the Salem Board of Health will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the **Salem Board of Health** local tobacco regulation.

For the Board of Health:

David Greenbaum
Health Agent

EXHIBIT 8

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF NILESH PATEL

I, Nilesh Patel, being duly sworn, state as follows:

1. I own Nilkant 136 Inc., which does business as City Smoke Shop at 136 Andover Street, Danvers, Massachusetts.

2. I manage the store every day. I order its products, track its sales, and oversee its finances, so I know the facts in this affidavit from personal knowledge.

3. The Town of Danvers issued City Smoke Shop a tobacco retailer permit, and the store sells tobacco products under that permit.

4. On or about May 28, 2026, the Danvers Board of Health sent my store the notice attached as **Exhibit A** (the "Notice"). The Notice is dated May 28, 2026, and is titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches."

5. The Notice orders my store to remove from its shelves, by July 1, 2026, every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

6. The Notice warns that if my store does not remove these products, the Board of Health will report my store to the FDA's "illegal tobacco portal" and may cite my store for violating the Danvers tobacco regulation.

7. The Notice does not identify a single product on my shelves that lacks a Marketing Granted Order. It instead directs me to a federal FDA database and leaves it to me to determine each product's federal authorization status.

8. The Notice acknowledges that only "a limited number" of electronic cigarettes and "an even smaller number" of oral nicotine pouches have received Marketing Granted Orders.

9. The Notice also states that it "is provided for educational purposes only and is not to be construed as legal advice."

10. Electronic cigarettes, vapor products, and oral nicotine pouches generate about half of my store's total revenue — roughly $25,000 each month.

11. The Notice puts about $50,000 of my current inventory at risk. If I must pull these products from my shelves, I cannot sell them, and I expect to lose their full value.

12. Removing these products will also turn away the customers who come in to buy them. Many of those customers also buy other goods, so the store will lose sales of beverages, snacks, lottery tickets, and other convenience items.

13. My customers are already buying these products in neighboring towns and in New Hampshire, where the products remain available to them. The Notice will speed that shift and push lawful adult sales out of Danvers without reducing overall demand.

14. The lost revenue threatens my payroll. If sales fall as I expect, I will not have the money to pay my employees, and I will have to cut their hours or let them go.

15. Without this revenue, I also cannot cover the store's rent, utilities, and other operating costs.

16. Enforcement of the Notice also exposes my store to inspections, penalties, permit and license actions, product seizures, and federal reporting.

17. These actions would damage the reputation and goodwill that I have built with my customers over years of operating in Danvers.

18. Together, these harms put my store at risk of closing for good. No award of money damages could restore the customers, employees, goodwill, and business that I would lose.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 06 DAY OF 16 2026.

DocuSigned by:
nilesh patel
57CE28FA27244D8...
Nilesh Patel

EXHIBIT A

Docusign Envelope ID: C849A8CD-1E19-8A51-81D2-EF5BCA4CC92C

Town of Danvers
Board of Health

Frank Giacalone, R.S. | Director of Public Health
1 Sylvan Street, Danvers, Massachusetts 01923 | p: 978-777-0001 | ext 3095
f. 978-777- 1025 www.danversma.gov | fgiacalone@danversma.gov

Public Health
Prevent. Promote. Protect.

TO: **Tobacco Retailers**
FROM: **Danvers Board of Health**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 28, 2026**

DANVERS tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA by **JULY 1, 2026**. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the Danvers local tobacco regulation.

This information is provided for educational purposes only and is not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

EXHIBIT 9

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF BASSAM ZEAITER

I, Bassam Zeaiter, being duly sworn, depose, and state under oath as follows:

1. I own and run Medford Sam's Gas LLC, which does business as Medford Sams Gas, at 1 Mystic Avenue, Medford, Massachusetts.

2. My store is a gas station and convenience store. Besides gasoline, I sell food, snacks, groceries, lottery tickets, and other everyday items, along with tobacco and nicotine products. My customers rely on the store as a one-stop shop.

3. The City of Medford issued my store a tobacco retailer permit, which I hold in good standing.

4. Five employees depend on the store for their hours and pay.

5. On March 10, 2026, I received a notice dated March 4, 2026 from the Medford Board of Health. Mary Ann O'Connor, the Board's Director of Public Health, signed it. A true and accurate copy is attached as **Exhibit A** (the "Notice").

6. The Notice orders every tobacco permit holder in Medford to remove, by May 1, 2026, all electronic cigarettes, vapes, and nicotine pouches that do not appear on the FDA's list of products with Marketing Granted Orders.

7. The Notice directs me to be ready for an on-site inspection by a Health Department representative on May 1, 2026.

8. The Notice warns that, after May 1, if I have not removed the products, the Health Department will report my store to the FDA's "illegal tobacco portal" and may issue a notice of violation under the Medford tobacco regulation.

9. The products the Notice targets earn my store about $28,000 each month, roughly 25% of its total revenue.

10. The Notice has already cost me money. Since it arrived, I have lost about $7,500 in sales.

11. If the Town enforces the Notice, about $25,500 in monthly tobacco and related sales is at risk, along with about $4,500 in inventory I would have to pull from my shelves.

12. The harm will not stop with those products. Customers come to my store because it sells what they need in one stop. When they learn that I no longer carry the tobacco and nicotine products they want, they will buy their gasoline, food, snacks, and groceries somewhere else.

13. Losing this revenue puts my rent and utility payments at immediate risk.

14. It also threatens my five employees. If sales fall as I expect, I will have to cut their hours or lay some of them off.

15. Being reported to the FDA's "illegal tobacco portal" and cited for a violation would brand my store as a seller of illegal tobacco. That label would drive customers away and damage the reputation I have built over years.

16. Together, these losses threaten whether my store can stay open and keep operating at a profit.

17. The Notice does not come from the FDA. It comes from the Medford Board of Health. The FDA has not ordered me to remove any product from my store.

18. The Notice admits that only a limited number of electronic cigarettes, and an even smaller number of nicotine pouches, appear on the FDA's list. The list attached to the Notice is dated March 2026 and, by its own terms, keeps changing.

19. The FDA materials attached to the Notice also state that the listed products are not "FDA approved" and are not safe.

20. Massachusetts and Medford already ban flavored tobacco products, and I follow that ban. The Notice reaches beyond that ban and would force me to remove unflavored products that I have sold lawfully for years.

21. Enforcing the Notice now would cut off about a quarter of my revenue, put my lease and utilities at risk, and threaten five jobs. The Town would lose little by waiting. The products the Notice targets stay on sale across the country, and the FDA list the Notice relies on keeps changing.

22. Without an order stopping enforcement of the Notice, I will lose this revenue, these customers, and possibly my business before this case can be decided, and I cannot recover those losses from the Town.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 06 DAY OF 15, 2026.

Signed by:
4217D3EB7D88427...
Bassam Zeaiter

EXHIBIT A

Docusign Envelope ID: FAA33E43-BECC-83E2-8367-67DCBD6D216B

City of Medford
BOARD OF HEALTH

City Hall - Room 311
85 George P Hassett Drive
Medford, Massachusetts 02155

Telephone
(781) 393-2560
FAX: (781) 393-2562
TDD: (781) 393-2516

Mary Ann O'Connor
Director
Board of Health

NOTICE REGARDING NICOTINE PRODUCTS

March 4, 2026

Dear Tobacco Permit Retailer,

The FDA recently updated their list of products that are allowed to be sold at retail, including tobacco, electronic cigarettes/vapes and nicotine pouches. Lawful products are listed with the FDA as having Marketing Grandet Orders and may be sold at retail. If a product is not listed with the FDA as having a Marketing Granted Order, then that product cannot be sold at retail.

Currently, only a limited number of electronic cigarettes/vapes, and even a smaller number of oral nicotine pouches, have Marketing Granted Orders. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's website at: www.fda.gov/tobacco-products

The Medford Board of Health recently voted that all retailers must comply with the new FDA Marketing Granted Orders by May 1, 2026, by removing all electronic cigarettes/vapes and nicotine pouches not listed in the FDA database. Any products on the list may be lawfully sold, except for flavored products which are already subject to a local and state ban.

To comply with the new FDA Marketing Granted Orders by the Board of Health's May st deadline, the Health Department strongly recommends you do the following:
Review the link noted above to the FDA database of lawful products.

Remove from store shelves all products not listed as having "Marketing Granted Orders by May 1st.

Be ready for onsite inspection from a Health Department representative on May 1st.

Remember, at no time can a flavored product be sold in Medford (per local and state law).

As a courtesy, a Health Department representative may drop by your store sometime in April to talk with you about this letter and answer questions you may have. No enforcement action will occur at that time. As always, feel free to email me with any questions at moconnor@medford-ma.gov.

Again, after May 1st if these products are not removed, the Health Department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the Medford local tobacco regulation.

Regards,

MaryAnn O'Connor

MaryAnn O'Connor
Director of Public Health

E-Cigarettes Authorized by the FDA

These are the only e-cigarettes that may be lawfully sold in the United States.

(Last Updated: March 2026)

Manufacturer	Product Name	
Glas Inc.	Glas G² DEVICE	BLONDE TOBACCO 50 MG/ML Pod
JUUL Labs Inc.	JUULpods (Menthol 3.0%)	JUULpods (Menthol 5.0%)
	JUULpods (Virginia Tobacco 3.0%)	JUULpods (Virginia Tobacco 5.0%)
	JUUL Device	
Logic Technology Development LLC	Logic Regular Cartridge/Capsule Package	Logic Pro Capsule Tank System (1)
	Logic Vapeleaf Cartridge/Capsule Package	Logic Pro Capsule Tank System (2)
	Logic Vapeleaf Tobacco Vapor System	Logic Power Tobacco e-Liquid Package
	Logic Pro Tobacco e-Liquid Package	Logic Power Rechargeable Kit
NJOY LLC	NJOY DAILY Rich Tobacco 4.5%	NJOY ACE POD Classic Tobacco 2.4%
	NJOY DAILY EXTRA Rich Tobacco 6%	NJOY ACE POD Classic Tobacco 5%
	NJOY DAILY EXTRA Menthol 6%	NJOY ACE POD Rich Tobacco 5%
	NJOY DAILY Menthol 4.5%	NJOY ACE POD Menthol 2.4%
	NJOY ACE Device	NJOY ACE POD Menthol 5%
R.J. Reynolds Vapor Company	Vuse Vibe Power Unit (1)	Vuse Replacement Cartridge Original 4.8% G2
	Vuse Vibe Tank Original 3.0%	Vuse Alto Power Unit
	Vuse Vibe Power Unit (2)	Vuse Alto Pod Golden Tobacco 5%
	Vuse Ciro Power Unit (1)	Vuse Alto Pod Rich Tobacco 5%
	Vuse Ciro Cartridge Original 1.5%	Vuse Alto Pod Golden Tobacco 2.4%
	Vuse Ciro Power Unit (2)	Vuse Alto Pod Rich Tobacco 2.4%
	Vuse Solo Power Unit	Vuse Alto Pod Golden Tobacco 1.8%
	Vuse Replacement Cartridge Original 4.8% G1	Vuse Alto Pod Rich Tobacco 1.8%

For an up-to-date list of authorized e-cigarettes, visit the Searchable Tobacco Products Database.

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

CTP-250

Nicotine Pouch Products Authorized by the FDA

Nicotine Pouch Products Authorized by the FDA

Below is an up-to-date list of all nicotine pouch products authorized by the FDA. These are the only nicotine pouch products that may be lawfully sold in the United States.

Manufacturer	Product	
Helix Innovations LLC	on! PLUS nicotine pouches 6 mg Mint	on! PLUS nicotine pouches 9 mg Mint
	on! PLUS nicotine pouches 6 mg Tobacco	on! PLUS nicotine pouches 9 mg Tobacco
	on! PLUS nicotine pouches 6 mg Wintergreen	on! PLUS nicotine pouches 9 mg Wintergreen
Swedish Match USA, Inc.	ZYN Chill 3 mg	ZYN Menthol 3 mg
	ZYN Chill 6 mg	ZYN Menthol 6 mg
	ZYN Cinnamon 3 mg	ZYN Peppermint 3 mg
	ZYN Cinnamon 6 mg	ZYN Peppermint 6 mg
	ZYN Citrus 3 mg	ZYN Smooth 3 mg
	ZYN Citrus 6 mg	ZYN Smooth 6 mg
	ZYN Coffee 3 mg	ZYN Spearmint 3 mg
	ZYN Coffee 6 mg	ZYN Spearmint 6 mg
	ZYN Cool Mint 3 mg	ZYN Wintergreen 3 mg

Feedback

ZYN Cool Mint 6 mg ZYN Wintergreen 6 mg

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

For a list of tobacco products that may be legally marketed, visit the FDA's Searchable Tobacco Product Database (https://www.accessdata.fda.gov/scripts/searchtobacco/).

FDA also maintains an up-to-date list of all authorized e-cigarettes (/tobacco-products/market-and-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends-authorized-fda). To download or print these lists, visit the FDA Tobacco Education Resource Library (TERL) (https://digitalmedia.hhs.gov/tobacco/print_materials/search).

Was this page helpful? * (required)

Yes

No

Submit

An official form of the United States government. Provided by Touchpoints

EXHIBIT 10

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF SUNNY PATEL

I, Sunny Patel, being duly sworn, depose, and state under oath as follows:

1. I own Aarohi Inc., which does business as Chrispy's Liquors and Lottery at 335 Rantoul Street, Beverly, Massachusetts. I run the store myself, and I have personal knowledge of the facts below. If called, I could testify to them.

2. My store holds a tobacco retailer permit from the City of Beverly, and I keep that permit in good standing.

3. On May 1, 2026, the Beverly Health Department issued a notice to tobacco retailers titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). A true copy is attached as **Exhibit A**.

4. The Notice's letterhead identifies Laura C. Ricci, the City's Director of Public Health, and the Beverly Board of Health.

5. The Notice tells retailers: "Only products with Marketing Granted Orders can be sold in the United States." It explains that a Marketing Granted Order from the FDA is necessary for an electronic cigarette or oral nicotine pouch to be sold lawfully.

6. The Notice quotes the FDA's Director of Compliance and Enforcement: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action."

7. The Notice directs retailers to confirm which products the FDA has authorized through the FDA's "Searchable Tobacco Products Database" at www.fda.gov/tobacco-products.

8. The Notice is addressed to "Tobacco Retailers" as a group. It does not name my store.

9. No one from the City has pointed to any product on my shelves as unauthorized. The Notice does not claim that I have sold any unlawful product.

10. By the City's own Notice, many electronic cigarettes and nicotine pouches hold Marketing Granted Orders and remain lawful to sell. A blanket order to clear these products would pull lawful goods from my shelves.

11. The Notice rests on federal standards. It quotes the FDA, points retailers to the FDA's database, and warns of FDA "enforcement action" — not enforcement by the City.

12. Electronic cigarettes and oral nicotine pouches make up about 25% of my store's total sales.

13. Those products earn my store about $5,000 each month.

14. I now hold about $10,000 in electronic cigarettes and nicotine pouches. When the City enforces the Notice, I will have to pull all of it from my shelves.

15. My customers buy these products and lottery tickets and liquor on the same visit. If they stop coming, my lottery and liquor sales will fall with them.

16. My store employs two people. When the City enforces the Notice, I will have to lay off both.

17. The lost sales would leave me unable to stay current on my business loan, my line of credit, and my store mortgage. I would default on each.

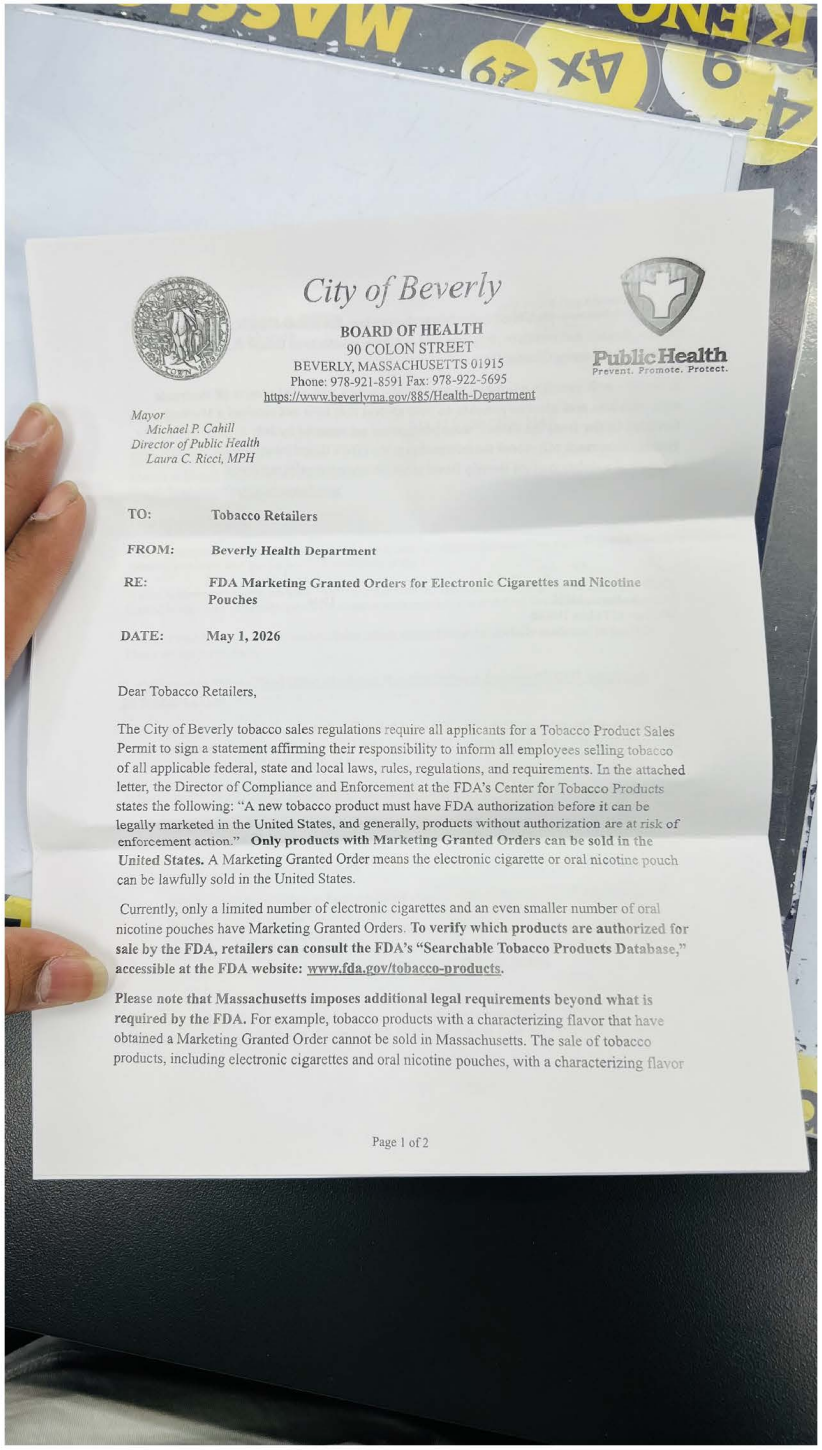
18. Together, these losses threaten my store's survival. Enforcement will force Chrispy's to close.

19. I have run Chrispy's under a valid City permit and have followed the rules that come with it.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 06 DAY OF 17, 2026.

DocuSigned by:
F2122D68D718403...
Sunny Patel

EXHIBIT A



City of Beverly

BOARD OF HEALTH
90 COLON STREET
BEVERLY, MASSACHUSETTS 01915
Phone: 978-921-8591 Fax: 978-922-5695
https://www.beverlyma.gov/885/Health-Department

Public Health
Prevent. Promote. Protect.

Mayor
Michael P. Cahill
Director of Public Health
Laura C. Ricci, MPH

TO: **Tobacco Retailers**

FROM: **Beverly Health Department**

RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**

DATE: **May 1, 2026**

Dear Tobacco Retailers,

The City of Beverly tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." **Only products with Marketing Granted Orders can be sold in the United States.** A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders. **To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.**

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor

Page 1 of 2

EXHIBIT 11

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF PADMARSHRI PATEL

I, Padmarshri Patel, being duly sworn, depose and state as follows:

1. I own TRP Convenience Inc. The company operates as EZ Shop, a convenience store at 451 Chestnut Street, Lynn, Massachusetts 01902. I run the store's daily operations, and I know its sales, inventory, and customers from personal experience.

2. The City of Lynn issued EZ Shop a permit to sell tobacco products. EZ Shop has sold tobacco products under that permit.

3. On May 7, 2026, Rick Nelson of the City of Lynn Inspectional Services Department sent EZ Shop a notice from the City of Lynn Health Department. The notice is titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches." (the "Notice"). A true and accurate copy of the Notice is attached as **Exhibit A**.

4. The Notice tells tobacco retailers that only electronic cigarettes and oral nicotine pouches with an FDA Marketing Granted Order may be sold in the United States. It states that, so far, only a limited number of electronic cigarettes, and an even smaller number of oral nicotine pouches, have received that order.

5. The Notice directs EZ Shop to remove from its shelves every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA. It warns that, if EZ Shop does not remove these products, the Health Department will report the store to the FDA's illegal-tobacco portal and may issue a notice of violation of the City's tobacco regulation.

6. The Notice is addressed generally to "Tobacco Retailers," not to EZ Shop. It identifies no specific product on EZ Shop's shelves as unauthorized. Instead, it tells each retailer to check every product against the FDA's online database. The Notice also states, twice, that it "is being provided for educational purposes only and is not to be construed as legal advice." Electronic cigarettes, vapor products, and oral nicotine pouches are central to EZ Shop's business. I estimate that these products generate about 35% of the store's total revenue, or about $15,000 each month.

7. If EZ Shop must remove these products, it will lose about $3,000 in inventory that it has already purchased. I estimate that amount, and the store cannot recover it.

8. The harm reaches beyond the products themselves. Many customers come to EZ Shop to buy electronic cigarettes, vapor products, or nicotine pouches, and while there they also buy dairy, snacks, beverages, lottery tickets, and other items. If these customers stop coming, EZ Shop loses those sales too, and its overall foot traffic falls.

9. This harm has already begun. Since the Notice arrived, EZ Shop's sales have already fallen by an estimated $2,000 to $4,000.

10. These losses also threaten EZ Shop's ability to meet its fixed obligations. The store must keep paying its business loan, its mortgage, its equipment financing, and its suppliers and vendors. If enforcement of the Notice strips away roughly a third of the store's revenue, EZ Shop risks falling behind on these payments and defaulting on one or more of them.

11. To absorb the lost revenue, EZ Shop may have to cut employee hours or lay off employees. The store cannot keep its current payroll if a third of its sales disappear.

12. Taken together, these harms threaten EZ Shop's ability to stay open. The store operates on thin margins, and the loss of its tobacco and nicotine sales, its collateral sales, and its foot traffic would put its survival as a going concern in doubt.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 19 DAY OF June 2026.

Signed by:
7998435723A2444...
Padmarshri Patel

EXHIBIT A

CITY OF LYNN
INSPECTIONAL SERVICES DEPARTMENT
Room 405, Lynn City Hall, Lynn, MA 01901 Tel: (781) 598-4000 Email: permitting@lynnma.gov

This information is being provided for educational purposes only and it not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

TO: **Tobacco Retailers**
FROM: **City of Lynn Health Department**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 2026**

City of Lynn tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the City of Lynn local tobacco regulation.

This information is provided for educational purposes only and is not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

EXHIBIT 12

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF KUNJ PATEL

I, Kunj Patel, being duly sworn, depose, and state under oath as follows:

1. I own 201 Chebacco Market, Inc., which does business as Chebacco Market at 201 Western Avenue, Essex, Massachusetts 01929. I make this affidavit from personal knowledge, and I could competently testify to these facts if called.

2. My store holds a tobacco product sales permit issued by the Town of Essex.

3. My store is a neighborhood convenience store. It sells tobacco and nicotine products, beer, liquor, lottery tickets, and everyday convenience goods.

4. On May 6, 2026, the Essex Board of Health sent my store a notice titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches." A true and accurate copy is attached as **Exhibit A**.

5. The notice orders me to remove from my shelves every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

6. The notice warns that if I do not remove those products, the Board of Health will report my store to the FDA's "illegal tobacco portal" and may issue a notice that my store violated the Essex tobacco regulation.

7. The notice states that "strict enforcement" of this requirement begins on July 1, 2026.

8. The notice tells retailers that only a limited number of electronic cigarettes, and an even smaller number of oral nicotine pouches, currently hold Marketing Granted Orders.

9. The notice states three times that it "is being provided for educational purposes only and is not to be construed as legal advice," and it tells retailers to consult their own attorney for legal advice.

10. The only Essex regulation the notice identifies is a rule requiring permit applicants to sign a statement affirming their responsibility to inform employees of applicable federal, state,

and local laws. The notice does not identify a single product in my store as unauthorized, and it points to no sale to a minor, no customer complaint, and no inspection finding at my store.

11. About a year before this notice, an Essex health inspector came to my store and told me to remove all vape products. I asked for a letter explaining the order. The inspector never gave me one.

12. I removed the products. For about a year, my store lost those sales while nearby stores kept selling the same vape products.

13. The products the notice targets generate about 30% of my store's total revenue—roughly $8,000 each month.

14. Removing the products would also strand inventory that I have already bought and paid for, worth about $3,500. I could neither sell it nor return it.

15. More than 40% of my customers come in mainly to buy tobacco and nicotine products. While there, they also buy beer, liquor, lottery tickets, and other items. I estimate that these customers collectively spend about $1,500 per day at my store.

16. If I cannot sell the targeted products, I expect many of these customers to shop at nearby stores that still carry them, and to take their beer, liquor, lottery, and convenience purchases with them. That is what happened during the year after the inspector's 2025 order.

17. When enforcement begins on July 1, 2026, I expect to cut payroll and lay off two of my employees.

18. I do not know whether enforcement would put me in default on a specific business obligation. But the lost revenue and reduced traffic would make it harder to meet payroll and ordinary expenses, and would threaten my ability to keep the store open and operating profitably.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 17 DAY OF 6 2026.

Signed by:
KUNJ PATEL
2B3C125907A0430...

Kunj Patel

EXHIBIT A

BOARD OF HEALTH
Town Hall 30 Martin Street, Essex, MA 01929-1219
Telephone (978) 768-7614 email: boh@essexma.org

Public Health
Prevent. Promote. Protect.

This information is being provided for educational purposes only and it not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

TO: **Tobacco Retailers**
FROM: **Essex Board of Health**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 6, 2026**

The Town of Essex regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA. If these products are not removed, the Board of Health will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the Essex local tobacco regulation. Strict enforcement of this requirement will begin on July 1, 2026.

This information is provided for educational purposes only and is not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

Nicotine Pouch Products Authorized by the FDA

Nicotine Pouch Products Authorized by the FDA

Below is an up-to-date list of all nicotine pouch products authorized by the FDA. These are the only nicotine pouch products that may be lawfully sold in the United States.

Manufacturer	Product	
Helix Innovations LLC	on! PLUS nicotine pouches 6 mg Mint	on! PLUS nicotine pouches 9 mg Mint
	on! PLUS nicotine pouches 6 mg Tobacco	on! PLUS nicotine pouches 9 mg Tobacco
	on! PLUS nicotine pouches 6 mg Wintergreen	on! PLUS nicotine pouches 9 mg Wintergreen
Swedish Match USA, Inc.	ZYN Chill 3 mg	ZYN Menthol 3 mg
	ZYN Chill 6 mg	ZYN Menthol 6 mg
	ZYN Cinnamon 3 mg	ZYN Peppermint 3 mg
	ZYN Cinnamon 6 mg	ZYN Peppermint 6 mg
	ZYN Citrus 3 mg	ZYN Smooth 3 mg
	ZYN Citrus 6 mg	ZYN Smooth 6 mg
	ZYN Coffee 3 mg	ZYN Spearmint 3 mg
	ZYN Coffee 6 mg	ZYN Spearmint 6 mg
	ZYN Cool Mint 3 mg	ZYN Wintergreen 3 mg
	ZYN Cool Mint 6 mg	ZYN Wintergreen 6 mg

Feedback

Top ()

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

For a list of tobacco products that may be legally marketed, visit the FDA's Searchable Tobacco Product Database (https://www.accessdata.fda.gov/scripts/searchtobacco/).

FDA also maintains an up-to-date list of all authorized e-cigarettes (/tobacco-products/marketand-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-deliverysystems-ends-authorized-fda). To download or print these lists, visit the FDA Tobacco Education Resource Library (TERL) (https://digitalmedia.hhs.gov/tobacco/print_materials/search).

Was this page helpful? * (required)

Yes

No

Submit

An official form of the United States government. Provided by Touchpoints

E-Cigarettes, "Vapes" and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA

This list is up-to-date.

E-Cigarettes Authorized by the FDA

Feedback

There are 39 e-cigarettes authorized by the FDA. These are the only e-cigarettes that may be lawfully sold in the United States. On 12/20/25, FDA experienced a related web error that did not change this list but was corrected the same day.

Manufacturer	Product	
JUUL Labs Inc.	JUULpods (Menthol 3.0%)	JUULpods (Menthol 5.0%)
	JUULpods (Virginia Tobacco 3.0%)	JUULpods (Virginia Tobacco 5.0%)
	JUUL Device	
Logic Technology Development LLC	Logic Regular Cartridge/Capsule Package	Logic Pro Capsule Tank System (1)
	Logic Vapeleaf Cartridge/Capsule Package	Logic Pro Capsule Tank System (2)

Manufacturer	Product

	Logic Vapeleaf Tobacco Vapor System	Logic Power Tobacco e-Liquid Package
	Logic Pro Tobacco e-Liquid Package	Logic Power Rechargeable Kit
NJOY LLC	NJOY DAILY Rich Tobacco 4.5%	NJOY ACE POD Classic Tobacco 2.4%
	NJOY DAILY EXTRA Rich Tobacco 6%	NJOY ACE POD Classic Tobacco 5%
	NJOY DAILY EXTRA Menthol 6%	NJOY ACE POD Rich Tobacco 5%
	NJOY DAILY Menthol 4.5%	NJOY ACE POD Menthol 2.4%
	NJOY ACE Device	NJOY ACE POD Menthol 5%
R.J. Reynolds Vapor Company	Vuse Vibe Power Unit (1)	Vuse Replacement Cartridge Original 4.8% G2
	Vuse Vibe Tank Original 3.0%	Vuse Alto Power Unit
	Vuse Vibe Power Unit (2)	Vuse Alto Pod Golden Tobacco 5%
	Vuse Ciro Power Unit (1)	Vuse Alto Pod Rich Tobacco 5%
	Vuse Ciro Cartridge Original 1.5%	Vuse Alto Pod Golden Tobacco 2.4%
	Vuse Ciro Power Unit (2)	Vuse Alto Pod Rich Tobacco 2.4%
	Vuse Solo Power Unit	Vuse Alto Pod Golden Tobacco 1.8%
	Vuse Replacement Cartridge Original 4.8% G1	Vuse Alto Pod Rich Tobacco 1.8%

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

For a list of tobacco products that may be legally marketed, visit the FDA's Searchable Tobacco Product Database (https://www.accessdata.fda.gov/scripts/searchtobacco/).

FDA also maintains an up-to-date list of all authorized nicotine pouch products (/tobacco-products/market-and-distribute-tobaccoproduct/nicotine-pouch-products-authorized-fda). To download or print these lists, visit the FDA Tobacco Education Resource Library (TERL) (https://digitalmedia.hhs.gov/tobacco/print_materials/search).

Was this page helpful? * (required)

Yes

No

Submit



U.S An official form of the United States government. Provided by Touchpoints flag

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF PARESH PATEL

I, Paresh Patel, being duly sworn, depose, and state under oath as follows:

1. I own Ohmharsh Corp., which operates as the AM PM Convenience Store at 489 Bearses Way, Hyannis, Massachusetts.

2. My store sells everyday convenience goods, including food, beverages, and lottery tickets. It also sells electronic cigarettes, vapor products, and oral nicotine pouches to adult customers.

3. The Town of Barnstable issued my store a tobacco-retailer permit that authorizes these sales.

4. On or about January 12, 2026. The Town of Barnstable's Public Health Division sent a notice to my store titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). A true and accurate copy is attached as **Exhibit A**.

5. The Notice states that only electronic cigarettes and oral nicotine pouches with an FDA Marketing Granted Order may be sold in the United States.

6. The Notice directs me to remove from my shelves every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

7. The Notice warns that if I do not remove these products, the health department will report my store to the FDA's "illegal tobacco portal" and may issue a notice of violation of the Town's tobacco regulation.

8. The Notice tells me to consult the FDA's "Searchable Tobacco Products Database" to confirm which products are authorized.

9. The Notice states on its face that it "is being provided for educational purposes only and is not to be construed as legal advice."

10. The Notice does not identify a single product in my store as lacking a Marketing Granted Order.

11. The Notice does not describe any inspection of my store and does not cite any specific violation.

12. The Notice does not claim that I ever sold these products to a minor or broke any age-restriction law. I sell them only to adult customers.

13. My store earns about $7,000 each month from sales of these products.

14. The Notice puts about $3,500 of my current inventory at immediate risk of removal.

15. Removing these products would also cost me customers and cut my other sales—convenience items, food, beverages, and lottery tickets—because many customers buy these products on the same trip.

16. My store has already lost about $4,000 in revenue because of the Notice and the threatened enforcement.

17. If the Town enforces the Notice, I will lose more customers and more business.

18. The Town has not identified any unlawful or unauthorized product in my store, and the Notice describes itself as educational only. Nor does it identify any independent state or local authority for the Town to enforce FDA Marketing Granted Order status.

19. The Notice tells me to pull legal products from my shelves and threatens a federal referral and a violation notice, yet it does not identify anything I have sold unlawfully. In my view, that demand reaches too far into my right to sell legal products to adult customers that are permitted under state and local laws.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 17 DAY OF June 2026.

DocuSigned by:
65E4D4708244444A...

Paresh Patel

EXHIBIT A

Town of Barnstable
Inspectional Services
Public Health Division

200 Main Street, Hyannis MA 02601

Office: 508-862-4644
FAX: 508-790-6304

Thomas A. McKean, RS, CHO

January 12, 2026

This information is being provided for educational purposes only and it not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

TO: **Tobacco Retailers**
FROM: **Town of Barnstable Health Division**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **January 2026**

Town of Barnstable tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, **you must remove all electronic cigarettes and oral nicotine pouches from your shelves that have not received a Marketing Granted Order from the FDA**. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the Town of Barnstable local tobacco regulation.

EXHIBIT 14

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF PARESH PATEL

I, Paresh Patel, being duly sworn, depose, and state under oath as follows:

1. I own Saru Corp., which does business as The Corner Store at 233 Sandwich Street, Plymouth, Massachusetts.

2. The Corner Store holds a tobacco product sales permit issued by the Town of Plymouth.

3. In February 2026, the Plymouth Public Health Division sent me a notice titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). A true and accurate copy of the Notice is attached as **Exhibit A**.

4. The Notice orders me to remove from my shelves every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

5. The Notice warns that if I do not remove those products, the Plymouth Health Department will report my store to the FDA's illegal tobacco portal and may issue a notice that my store violated the Plymouth tobacco regulation.

6. The Notice does not identify a single product on my shelves that lacks a Marketing Granted Order from the FDA. It does not name the Plymouth regulation I am supposed to have violated. Instead, it tells me to search the FDA's online database myself and decide which products to pull.

7. The Notice states on its face that it "is being provided for educational purposes only and is not to be construed as legal advice." It then orders me to remove products and threatens to report my store and issue a violation if I refuse.

8. The Notice rests on the FDA's statement that products without authorization are "generally ... at risk of enforcement action." It does not state that any product I sell is unlawful or that the FDA has ordered any of my products removed.

9. The electronic cigarettes and nicotine pouches covered by the Notice make up about 10% of The Corner Store's total revenue.

10. Those products earn the store about $8,500 in sales each month.

11. Since the Notice issued and the Town threatened enforcement, I have already lost about $4,500 in business.

12. Customers who come in for these products also buy other goods, such as drinks, snacks, and lottery tickets. When those customers stop coming, my average sale per customer drops by about half.

13. If the Town enforces the Notice, I will have to pull the affected products from my shelves and lose the money I already spent to stock them.

14. A report to the FDA's illegal tobacco portal and a notice of violation would brand The Corner Store as an unlawful seller and put its tobacco permit at risk.

15. The Corner Store is a small, independent business, and the income from these products helps keep it open. I have already lost sales of lawful products, and my store cannot absorb further losses.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 17 DAY OF June 2026.

DocuSigned by:
65E4D470824444A...
Paresh Patel

EXHIBIT A

TOWN OF PLYMOUTH
PUBLIC HEALTH
HEALTH AND HUMAN SERVICES
26 Court Street, Plymouth, Massachusetts 02360
508-747-1620 • Fax 508-830-4062

This information is being provided for educational purposes only and it not to be construed as legal advice. For legal advice, please contact your attorney. For information on Marketing Granted Orders, contact the FDA's Center for Tobacco Products.

TO: **Tobacco Retailers**
FROM: **Plymouth Public Health Division**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **February 2026**

Plymouth tobacco sales regulations require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws, rules, regulations, and requirements. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and an even smaller number of oral nicotine pouches have Marketing Granted Orders To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law. For instance, Zyn Citrus is a flavored tobacco product and therefore cannot be sold in Massachusetts even though this product has received a Marketing Granted Order.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA. If these products are not removed, the health department will submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of the Plymouth local tobacco regulation.

Any questions regarding the flavored/unflavored status of any products not listed may be e-mailed to Cape Cod Regional Tobacco Control Program Director Bob Collett (bcollett@capecod.gov) for clarification.

EXHIBIT 15

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF HARDIK PATEL

I, Hardik Patel, being duly sworn, depose, and state under oath as follows:

1. I own and manage Vivaan LLC, which does business as One Stop Convenience at 76 Holliston Street, Medway, Massachusetts. I make this affidavit from my own knowledge of the store's operations, finances, and inventory.

2. One Stop Convenience is a neighborhood convenience store. We sell groceries, food, beverages, and lottery tickets, along with tobacco products that include electronic cigarettes and oral nicotine pouches. Two people work for me at the store.

3. Vivaan LLC holds a Tobacco Product Sales Permit issued by the Town of Medway.

4. On May 8, 2026, I received a notice from the Medway Board of Health dated May 6, 2026, and titled "FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches" (the "Notice"). Derek Kwok, the Town's Health Director, signed the Notice and addressed it to One Stop Convenience at my store's address. A true copy of the Notice is attached as **Exhibit A**.

5. The Notice directs me to remove from my shelves, within 30 days, every electronic cigarette and oral nicotine pouch that has not received a Marketing Granted Order from the FDA.

6. The Notice warns that if I do not remove those products within 30 days, the Medway Board of Health may report my store to the FDA's "illegal tobacco portal" and may issue a notice of violation under Medway's local tobacco regulation.

7. The Notice does not identify a single product on my shelves that lacks a Marketing Granted Order. It directs me to search the FDA's online database and decide for myself which of my products I must remove.

8. No one from the Town of Medway or its Board of Health has told me that any specific product I sell violates federal, state, or local law.

9. The Notice rests on a letter from the FDA dated December 5, 2025—five months before the Notice. The FDA addressed that letter to Joan Hamlett of the Boards of Health Tobacco Control Alliance, not to my store or to me.

10. Electronic cigarettes and oral nicotine pouches make up about 10% of my store's total revenue. I estimate that those products earn the store about $7,000 each month.

11. If I pull these products, I will lose about $4,000 in inventory that I have already bought and paid for.

12. The harm does not stop with those products. Customers who come in for electronic cigarettes and nicotine pouches also buy groceries, food, beverages, and lottery tickets while they are in the store. When those customers stop coming, the store loses those sales too.

13. I cannot recover that lost traffic. Once customers go elsewhere to buy these products, they tend to buy their groceries and lottery tickets there as well.

14. The loss of this revenue puts the store at risk of falling behind on its obligations, including rent, business loans, supplier accounts, and payroll.

15. Two people work at my store. If the store loses this revenue, I will have to cut their hours, and I may have to lay them off.

16. If the Board of Health reports my store to the FDA's "illegal tobacco portal" or issues a notice of violation, that record will brand my store as a seller of illegal tobacco. It could also put my Tobacco Product Sales Permit and my accounts with suppliers at risk.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 18 DAY OF Jun 2026.

Signed by:
Hardik Patel
F338134C47974D5...
Hardik Patel

EXHIBIT A

Docusign Envelope ID: 03D7101E-AD8E-8C2A-8301-DF76B6B02188

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS

BOARD OF HEALTH

Medway Town Hall
155 Village Street
Medway, MA 02053
Phone (508) 533-3206

TO: **Tobacco Retail Establishments**
RE: **FDA Marketing Granted Orders for Electronic Cigarettes and Nicotine Pouches**
DATE: **May 6, 2026**

Dear One Stop Convenience (76 Holliston Street, Medway, MA)

The *Regulation of the Medway Board of Health Restricting the Sale of Tobacco Products* require all applicants for a Tobacco Product Sales Permit to sign a statement affirming their responsibility to inform all employees selling tobacco of all applicable federal, state and local laws. Furthermore, section R(1) in the aforementioned regulation require that the sale or distribution of tobacco products must comply with all applicable federal, state, and local laws and regulations. In the attached letter, the Director of Compliance and Enforcement at the FDA's Center for Tobacco Products states the following: "A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action." Only products with Marketing Granted Orders can be sold in the United States. A Marketing Granted Order means the electronic cigarette or oral nicotine pouch can be lawfully sold in the United States.

Currently, only a limited number of electronic cigarettes and oral nicotine pouches have Marketing Granted Orders. To verify which products are authorized for sale by the FDA, retailers can consult the FDA's "Searchable Tobacco Products Database," accessible at the FDA website: www.fda.gov/tobacco-products and www.accessdata.fda.gov/scripts/searchtobacco/.

Please note that Massachusetts imposes additional legal requirements beyond what is required by the FDA. For example, tobacco products with a characterizing flavor that have obtained a Marketing Granted Order cannot be sold in Massachusetts. The sale of tobacco products, including electronic cigarettes and oral nicotine pouches, with a characterizing flavor other than tobacco is prohibited under Massachusetts law.

To comply with your local tobacco product sales permit, you must remove all electronic cigarettes and oral nicotine pouches on your shelves that have not received a Marketing Granted Order from the FDA. If these products are not removed within 30 days of this notice, the health department may submit the information to the FDA's illegal tobacco portal and may issue a notice of a violation of Medway's local tobacco regulation.

Sincerely,

Derek Kwok, REHS/RS
Health Director
Town of Medway

U.S. FOOD & DRUG ADMINISTRATION

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
www.fda.gov

12/5/2025

VIA ELECTRONIC MAIL

Joan E. Hamlett, Director
Boards of Health Tobacco Control Alliance
Email: leominsterbohtca@hotmail.com

Dear Director Hamlett:

This correspondence is to follow up on our email and telephone conversations regarding new tobacco products that can be lawfully marketed in the U.S.

A new tobacco product must have FDA authorization before it can be legally marketed in the United States, and generally, products without authorization are at risk of enforcement action.

Public resources are available to determine which products can be lawfully marketed in the U.S. These resources include:

1: E-Cigarettes, "Vapes" and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA | FDA

> To date, FDA has issued marketing granted orders for 39 tobacco- and menthol-flavored e-cigarette products and devices. These are the only e-cigarette products that may be lawfully marketed in the U.S. at this time.

2: Nicotine Pouch Products Authorized by the FDA | FDA

> To date, FDA has authorized 20 nicotine pouch products; these are the only nicotine pouch products that may be lawfully marketed in the U.S.

3: Searchable Tobacco Products Database

> FDA's Searchable Tobacco Products Database provides entries for tobacco products that may be legally marketed because they are 1) new tobacco products authorized through one of **three pathways to market**, 2) established through a voluntary determination program as **pre-existing tobacco products** (commercially marketed as of Feb. 15, 2007), or 3) provisional tobacco products that were **removed from review**.

FDA has not adopted a broad policy of enforcement discretion regarding tobacco products without marketing authorization. The pendency of an application does not create a legal safe

harbor to sell that product. (this information can likewise be found online, at Advisory and Enforcement Actions Against Industry for Unauthorized Tobacco Products | FDA)

I trust this information is useful to your organization in enforcing the requirements of the Commonwealth of Massachusetts.

If you have any questions regarding this letter, you may contact me directly at John.Verbeten@fda.hhs.gov or contact CTP at CTPCompliance@fda.hhs.gov.

Sincerely,



John Verbeten
Director, Office of Compliance and Enforcement
Center for Tobacco Products

cc: Ms. Cheryl Sbarra, Massachusetts Association of Health Boards
sbarra@mahb.org

EXHIBIT 16

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OHMHARSH CORP. d/b/a AMPM Convenience Store; AAROHI INC. d/b/a Chrispy's Liquors and Lottery; AJIT CORPORATION d/b/a Bluemoon Smoke & Vape Outlets; NILKANT 136 INC. d/b/a City Smoke Shop; 201 CHEBACCO MARKET, INC. d/b/a Chebacco Market; VISHVESHWARA CORP d/b/a Halifax Cigar & Smoke Shop; RIDHY CORPORATION d/b/a Gj-2 Smoke Shop; TRP CONVENIENCE INC d/b/a EZ Shop; SMITA SMART LLC d/b/a Mansfield Vape and Smoke Shop; MEDFORD SAM'S GAS LLC d/b/a Medford Sams Gas; SARU CORP. d/b/a The Corner Store; RIHAAN CORP. d/b/a Jay's Smoke Shop; D&K SMOKE SHOP LLC d/b/a D&K Smoke; TTEEN CORPORATION d/b/a Station Avenue Convenience; VIVAAN LLC d/b/a One Stop Convenience; and 513 FIVE THIRTEEN INC d/b/a Vaporzone,

Plaintiffs,

v.

ROBBIE GOLDSTEIN, in his official capacity as COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH; TOWN OF BARNSTABLE; CITY OF BEVERLY; CITY OF CAMBRIDGE; TOWN OF DANVERS; TOWN OF ESSEX; TOWN OF HALIFAX; TOWN OF HANOVER; CITY OF LYNN; TOWN OF MANSFIELD; CITY OF MEDFORD; TOWN OF PLYMOUTH; CITY OF SALEM; CITY OF SOMERVILLE; TOWN OF YARMOUTH; TOWN OF MEDWAY; and TOWN OF SAUGUS,

Defendants.

Civil Action No.

AFFIDAVIT OF VISHAL SHUKLA

I, Vishal Shukla, state the following under oath and from my own personal knowledge:

1. I own TTEEN Corporation, which does business as Station Avenue Convenience at 457 Station Avenue, Yarmouth, Massachusetts 02664. I know the facts in this affidavit from my own personal knowledge, and I can testify to them if called.

2. My store holds a tobacco retailer permit issued by the Town of Yarmouth.

3. Station Avenue Convenience is a small neighborhood store. I sell food, drinks, lottery tickets, everyday convenience goods, and tobacco and nicotine products to adult customers.

4. On April 10, 2026, Sara Provos of the Town of Yarmouth Health Department emailed me and other Yarmouth retailers (the "Notice"). A true copy of the Notice is attached as **Exhibit A**.

5. The Notice attached FDA guidance listing the e-cigarettes and nicotine pouches the FDA has authorized. The guidance describes these as the only such products that "may be lawfully sold in the United States."

6. Since I received the Notice, I have already lost about $3,000 in sales.

7. If the Town enforces the Notice, I will have to pull about $3,500 of inventory from my shelves.

8. The products the Notice targets earn my store about $5,000 each month.

9. Those products make up about 4% of my store's total revenue.

10. Customers who come in for these products also buy other goods, such as food, drinks, and lottery tickets. Removing the products will cut that foot traffic and reduce those other sales too.

11. This lost revenue threatens my ability to keep the store operating profitably.

12. I cannot recover these lost sales or win back the customers I turn away once enforcement begins.

13. The Notice does not identify any legal authority for the Town of Yarmouth to order removal of these products from my shelves.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY ON THIS 18 DAY OF June, 2026.

DocuSigned by:
VISHAL SHUKLA
A28CDF47A38D4E8...
Vishal Shukla

EXHIBIT A

On Friday, April 10, 2026, 8:35 AM, Provos, Sara <SProvos@yarmouth.ma.us> wrote:

Dear Yarmouth Retailers,

As a reminder, information regarding FDA-authorized E-cigarettes and nicotine pouches was distributed to all Yarmouth retailers in January.

Please be advised that **Zyn Chill**, which is classified as a flavored product, must be removed from shelves immediately. This requirement has been in effect since April 1st.

We have attached the original guidance for your reference. We appreciate your cooperation in adhering to these regulations.

If you have any questions or require clarification, please feel free to contact our office.

Thank you,

Town of Yarmouth

Health Department
508-398-2231

E-Cigarettes, "Vapes" and Other Electronic Nicotine Delivery Systems (ENDS) Authorized by the FDA

E-Cigarettes Authorized by the FDA

This list is up-to-date. There are 41 e-cigarettes authorized by the FDA. These are the only e-cigarettes that may be lawfully sold in the United States. On 12/20/25, FDA experienced a related web error that did not change this list but was corrected the same day.

* Flavored products are NOT legal in MA *

Manufacturer	Product	
Glas Inc.	Glas G² DEVICE	BLONDE TOBACCO 50 MG/ML Pod
JUUL Labs Inc.	~~JUULpods (Menthol 3.0%)~~	~~JUULpods (Menthol 5.0%)~~
	JUULpods (Virginia Tobacco 3.0%)	JUULpods (Virginia Tobacco 5.0%)
	JUUL Device	
Logic Technology Development LLC	Logic Regular Cartridge/Capsule Package	Logic Pro Capsule Tank System (1)
	Logic Vapeleaf Cartridge/Capsule Package	Logic Pro Capsule Tank System (2)
	Logic Vapeleaf Tobacco Vapor System	Logic Power Tobacco e-Liquid Package
	Logic Pro Tobacco e-Liquid Package	Logic Power Rechargeable Kit

Feedback

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Manufacturer	Product	
NJOY LLC	NJOY DAILY Rich Tobacco 4.5%	NJOY ACE POD Classic Tobacco 2.4%
	NJOY DAILY EXTRA Rich Tobacco 6%	NJOY ACE POD Classic Tobacco 5%
	~~NJOY DAILY EXTRA Menthol 6%~~	NJOY ACE POD Rich Tobacco 5%
	~~NJOY DAILY Menthol 4.5%~~	~~NJOY ACE POD Menthol 2.4%~~
	NJOY ACE Device	NJOY ACE POD Menthol 5%
R.J. Reynolds Vapor Company	Vuse Vibe Power Unit (1)	Vuse Replacement Cartridge Original 4.8% G2
	Vuse Vibe Tank Original 3.0%	Vuse Alto Power Unit
	Vuse Vibe Power Unit (2)	Vuse Alto Pod Golden Tobacco 5%
	Vuse Ciro Power Unit (1)	Vuse Alto Pod Rich Tobacco 5%
	Vuse Ciro Cartridge Original 1.5%	Vuse Alto Pod Golden Tobacco 2.4%
	Vuse Ciro Power Unit (2)	Vuse Alto Pod Rich Tobacco 2.4%
	Vuse Solo Power Unit	Vuse Alto Pod Golden Tobacco 1.8%
	Vuse Replacement Cartridge Original 4.8% G1	Vuse Alto Pod Rich Tobacco 1.8%

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they “FDA approved.” All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn’t start.

In general:

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- FDA intends to update www.fda.gov/authorizedecigs (http://www.fda.gov/authorizedecigs) with new products the day of an e-cigarette authorization. This is the first place any new authorized e-cigarettes will be listed.
- FDA's Searchable Tobacco Products Database (https://www.accessdata.fda.gov/scripts/searchtobacco/) is the most comprehensive listing of tobacco products that can be legally sold. FDA intends to add newly authorized e-cigarettes the day after an authorization.
- The downloadable flyer version (https://digitalmedia.hhs.gov/tobacco/print_materials/CTP-250?locale=en) of the authorized e-cigarettes list will be updated as expediently as possible, typically within 1-2 business days.

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Nicotine Pouch Products Authorized by the FDA

Nicotine Pouch Products Authorized by the FDA

Below is an up-to-date list of all nicotine pouch products authorized by the FDA. These are the only nicotine pouch products that may be lawfully sold in the United States.

Manufacturer	Product	
Helix Innovations LLC	~~on! PLUS nicotine pouches 6 mg Mint~~	~~on! PLUS nicotine pouches 9 mg Mint~~
	on! PLUS nicotine pouches 6 mg Tobacco	on! PLUS nicotine pouches 9 mg Tobacco
	~~on! PLUS nicotine pouches 6 mg Wintergreen~~	~~on! PLUS nicotine pouches 9 mg Wintergreen~~
Swedish Match USA, Inc.	~~ZYN Chill 3 mg~~	~~ZYN Menthol 3 mg~~
	~~ZYN Chill 6 mg~~	~~ZYN Menthol 6 mg~~
	~~ZYN Cinnamon 3 mg~~	~~ZYN Peppermint 3 mg~~
	~~ZYN Cinnamon 6 mg~~	~~ZYN Peppermint 6 mg~~
	~~ZYN Citrus 3 mg~~	ZYN Smooth 3 mg
	~~ZYN Citrus 6 mg~~	ZYN Smooth 6 mg
	~~ZYN Coffee 3 mg~~	~~ZYN Spearmint 3 mg~~
	~~ZYN Coffee 6 mg~~	~~ZYN Spearmint 6 mg~~
	~~ZYN Cool Mint 3 mg~~	~~ZYN Wintergreen 3 mg~~

Feedback

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ZYN Cool Mint 6 mg	ZYN Wintergreen 6 mg
[redacted]	

While these products are authorized to be sold in the United States, it does not mean these products are safe, nor are they "FDA approved." All tobacco products are harmful and potentially addictive. Those who do not use tobacco products shouldn't start.

For a list of tobacco products that may be legally marketed, visit the FDA's Searchable Tobacco Product Database (https://www.accessdata.fda.gov/scripts/searchtobacco/).

FDA also maintains an up-to-date list of all authorized e-cigarettes (/tobacco-products/market-and-distribute-tobacco-product/e-cigarettes-vapes-and-other-electronic-nicotine-delivery-systems-ends-authorized-fda). To download or print these lists, visit the FDA Tobacco Education Resource Library (TERL) (https://digitalmedia.hhs.gov/tobacco/print_materials/search).

Was this page helpful? * (required)

Yes

No

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