

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

EONSMOKE, LLC,

GREGORY GRISHAYEV,

MICHAEL TOLMACH

Defendants.

Civil Action No. 1984CV01728

**FINAL JUDGMENT BY CONSENT**

Plaintiff, the Commonwealth of Massachusetts (the “Commonwealth”), by and through its Attorney General, Maura Healey, and Defendants, Eonsmoke, LLC (“Eonsmoke”), Gregory Grishayev (“Grishayev”), and Michael Tolmach (“Tolmach”) (together, the “Defendants,” and with the Commonwealth, the “Parties”), agree to the entry of this Final Judgment by Consent (“Final Judgment”) and its provisions in order to resolve this litigation in advance of further adjudication.

WHEREAS, the Commonwealth filed its Complaint against Defendant Eonsmoke on May 29, 2019 in Suffolk Superior Court (the “Complaint”). Thereafter the Commonwealth served Defendants with the Commonwealth’s First Amended Complaint (“Amended Complaint”). On November 23, 2020, the Court allowed the Commonwealth’s motion to amend the complaint. The Commonwealth alleges in the Amended Complaint that the Defendants

undertook a coordinated advertising campaign intentionally targeted at consumers who were not of the minimum legal purchase age to purchase tobacco products, and then directly sold e-cigarettes to these underage consumers by means of Eonsmoke's website, without conducting any age verification at the time of sale or delivery in violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2, and the Attorney General's e-cigarette regulations, 940 C.M.R. 21.04(4)(a).

WHEREAS, the Court has entered default judgments against the Defendants. As a result, the allegations of the Commonwealth's Amended Complaint have been deemed admitted by the Court for purposes of establishing liability against the Defendants.

WHEREAS, the Parties consent to the entry of this Final Judgment in order to amicably resolve the Commonwealth's Amended Complaint and avoid the cost and uncertainty of litigation.

WHEREAS, the Defendants waive all rights to appeal or otherwise challenge or contest the validity of the Final Judgment;

WHEREAS, the Defendants acknowledge that this Court has subject matter jurisdiction over this case and personal jurisdiction over them, and agree to the entry of this Final Judgment in the above-captioned case to fully and finally resolve the allegations and claims raised in the lawsuit against them;

NOW, THEREFORE, upon consent of the Parties, it is hereby adjudged, ordered and decreed, as follows:

**I. PARTIES**

1. Plaintiff in this action is the Commonwealth of Massachusetts represented by the Office of the Attorney General.

2. The Defendant is Eonsmoke, LLC, a limited liability company with a principal place of business in New Jersey. The co-owners of Eonsmoke, LLC are named separately as individual defendants, Gregory Grishayev and Michael Tolmach.

3. The Defendant Gregory Grishayev is a natural person residing in West New York, New Jersey.

4. The Defendant Michael Tolmach is a natural person residing in Los Angeles, California.

**II. JURISDICTION AND VENUE**

5. This Court has jurisdiction over the subject matter of this action pursuant to G.L. c. 93A, § 4 and G.L. c. 12, § 10, and over Defendants pursuant to G.L. c. 223A, § 3.

6. Venue in this court is proper pursuant to G. L. c. 223, § 5, and G.L. c. 93A, § 4.

**III. MONETARY PAYMENT**

7. Defendant Eonsmoke, LLC, on or before fourteen (14) days from the date this Consent Judgment is entered, shall pay the Commonwealth \$50,000,000. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment, in any amount, allocation, or apportionment:

- a. For payments to or for consumers, including use by the Attorney General in the facilitation of the relief under this Final Judgment; and/or
- b. To the General Fund of the Commonwealth of Massachusetts; and/or

- c. To the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or
- d. For programs or initiatives designed to address youth nicotine addiction and/or harmful effects on Massachusetts consumers of unfair or deceptive practices.

8. Defendants Gregory Grishayev and Michael Tolmach, on or before fourteen (14) days from the date this Consent Judgment is entered, shall pay the Commonwealth \$750,000. At her sole discretion, and so long as permitted by law, the Attorney General shall distribute this payment, in any amount, allocation, or apportionment:

- a. For payments to or for consumers, including use by the Attorney General in the facilitation of the relief under this Final Judgment; and/or
- b. To the General Fund of the Commonwealth of Massachusetts; and/or
- c. To the Local Consumer Aid Fund established pursuant to M.G.L. c. 12, § 11G; and/or
- d. For programs or initiatives designed to address youth nicotine addiction and/or harmful effects on Massachusetts consumers of unfair or deceptive practices.

This monetary payment amount reflects the Defendants Grishayev and Tolmach's ability to pay based on their financial circumstances as determined by the Commonwealth.

9. For avoidance of doubt, the Defendants shall have no right to direct, nor any responsibility as to the use or application of funds by the Attorney General.

10. For the avoidance of doubt, concerning Paragraph 7 hereinabove, Eonsmoke, LLC is solely responsible for the monetary payment to the Commonwealth. Concerning Paragraph 8 hereinabove, Defendants Grishayev and Tolmach are jointly and severally liable for the monetary payment to the Commonwealth.

#### IV. PERMANENT INJUNCTIVE RELIEF

11. Defendant Eonsmoke, LLC and the company's officers, agents, servants, employees, attorneys, successors and assigns, and all other persons and entities acting under its direction or control, directly or indirectly, are hereby permanently enjoined from engaging in the following conduct:

- a. Selling, distributing, causing to be sold or distributed, offering for sale, marketing or advertising any Tobacco Product online or through any other means to consumers in Massachusetts.

12. Defendants Gregory Grishayev and Michael Tolmach, and any business venture in which either Grishayev or Tolmach 1) are named officers or directors, and/or 2) are owners, and/or 3) hold a substantial financial interest, and/or 4) direct or oversee business operations, are hereby permanently enjoined from engaging in the following conduct:

- a. Selling, distributing, causing to be sold or distributed, offering for sale, marketing or advertising any Tobacco Product online or through any other means to consumers in Massachusetts, except as provided for in paragraph 12.

13. If Defendants Grishayev and/or Tolmach seek, directly or indirectly, to sell, distribute, market, or advertise any Tobacco Product online or through any other means to consumers in Massachusetts, Defendants must provide the Attorney General's Office with no fewer than ninety days' written notice. Notice shall include documentation sufficient to establish 1) that the product(s) has been approved by the United States Food and Drug Administration for sale and use and that the product(s) will be marketed and sold or prescribed exclusively for the approved purpose, and 2) that the sale of the product(s) complies with Massachusetts law, including but not limited to 940 C.M.R. 21.04(4)(a). Such notice shall be sent to:

Massachusetts Attorney General's Office  
Attention: Consumer Protection Division  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108

14. Definitions:

- a. "Tobacco Product" is defined as a product containing or made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, electronic cigarettes, electronic cigars, electronic pipes, electronic nicotine delivery systems or any other similar products that rely on vaporization or aerosolization regardless of nicotine content in the product; provided, however, that "Tobacco Product" shall also include any component, part or accessory of a tobacco product.

15. Nothing enumerated herein shall relieve Defendants of the obligation to comply with all applicable Federal and state laws and regulations.

**V. ADDITIONAL PROVISIONS**

16. Continuing Jurisdiction. The Parties to this Final Judgment consent to the continuing jurisdiction of the Suffolk County Superior Court for the purpose of enforcing or modifying the terms of this Final Judgment. Prior to initiating any such enforcement proceeding, the party seeking enforcement must provide written notice to the other party of its intent to initiate such a proceeding and provide the other party twenty-one (21) days in which to cure any alleged breach of the Final Judgment. Nothing herein shall be construed to limit the Attorney General's authority provided under the laws of the Commonwealth of Massachusetts including,

but not limited to, G.L. c. 93A, §§ 2, 4 related to enforcing this Final Judgment or other actions outside of facts or allegations presented in the Complaint.

17. Governing Law. The provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

18. Severability. The provisions of this Final Judgment shall be severable, and should any provisions be declared by a Court of competent jurisdiction to be unenforceable, the other provisions of this Final Judgment shall remain in full force and effect.

19. Conduct Not Condoned. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of Defendants' acts or practices, and Defendants shall make no representations to the contrary.

20. Entire Agreement. This Final Judgment contains the complete agreement between the Commonwealth and Defendants. No promises, representations, or warranties other than those set forth in this Final Judgment have been made between the Attorney General and Defendants. This Final Judgment supersedes all prior communications, discussions, or understandings, if any, between the Attorney General of the Commonwealth and Defendants, whether oral or in writing.

21. Modification. No waiver, modification, or amendment of the terms of this Final Judgment shall be valid or binding unless made in writing, agreed to by all Parties, and approved by the Court, and then only to the extent specifically set forth in such written waiver, modification or amendment.

22. Requirements Maintained. It is the intention of the Parties that the provisions of this Final Judgment do not contravene Defendants' obligation to comply with all applicable state and Federal laws and regulations.

23. Release. Subject to paragraph 23 below, upon entry of this Final Judgment and in consideration of the Defendants' compliance with its terms, the Commonwealth shall release the Defendants and their officers, directors, affiliates, predecessors, successors and assigns (collectively, the "Released Parties") from the following: all civil claims, causes of action, damages, restitution, fines, costs and penalties, and other relief arising from or related to the claims alleged in the Amended Complaint pursuant to G.L. c. 93A, § 2, as to conduct occurring on or before the effective date of the Final Judgment.

24. This Final Judgment does not resolve, settle, or release any other actual or potential claims against the Defendants, or their officers, directors, affiliates, predecessors, successors and assigns, including without limitation claims arising from conduct occurring after the effective date of the Final Judgment; claims by any agency, board, authority or instrumentality other than the Attorney General; claims by any person or entity other than the Attorney General; claims that may be brought by the Attorney General against any other person or party; any claims that are not civil in nature; or any claims by third parties, including individual consumers.

**APPROVED AND ORDERED:**

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Justice of the Superior Court

Dated: \_\_\_\_\_