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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF WASHINGTON

JORDAN SCHWARTZ, an individual;
JONATHAN MORAN, an individual;
SERENITY VAPORS, LLC, a Domestic
Limited Liability Company; **TORCHED
ILLUSIONS, LLC**, a Domestic Limited
Liability Company; **BELAL YAHYA**, an
individual; and **HOOKAH CAFE, LLC**,
doing business as **KING'S HOOKAH
LOUNGE**, a Domestic Limited Liability
Company,

Plaintiffs,

v.

WASHINGTON COUNTY; a political
subdivision of the State of Oregon; and **PAT
GARRETT**, in his official capacity as
Washington County Sheriff,

Defendants.

Case No. 22CV04836
**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**
Claims not subject to mandatory arbitration
Filing Fee: \$281.00
(ORS 21.135(1), (2)(a))

Plaintiffs Jordan Schwartz; Jonathan Moran; Serenity Vapors, LLC; Torched Illusions, LLC; Belal Yahya; and Hookah Café, LLC, dba King's Hookah Lounge ("Plaintiffs") allege as follows for their Complaint against the Washington County and the Chair for the Washington County Board of Commissioners sued in her official capacity ("Defendants"):

1.

Plaintiffs seek injunctive and declaratory relief pursuant to ORS 28.020 against Washington County's Ordinance No. 878 entitled: "An Ordinance to Prohibit Flavored Tobacco and Flavored Synthetic Nicotine, Prohibiting Coupon and Price promotions and Repealing

1 Ordinance 599" (hereinafter the "Ordinance" or "Ordinance No. 878").

2 **JURISDICTION AND VENUE**

3 2.

4 At all material times, Plaintiffs Jordan Schwartz ("Plaintiff Schwartz") and Plaintiff
5 Jonathan Moran ("Plaintiff Moran") were and are the owners of Plaintiff Serenity Vapors, LLC
6 ("Plaintiff Serenity Vapors"), which has three locations in Washington County, Oregon. These
7 locations are: 1300 Oak Street, Suite F, Hillsboro, Oregon 97123; 18683 SW Tualatin Valley
8 Highway, Aloha, Oregon 97003; and 13815 SW Pacific Highway, Unit #60, Tigard, Oregon
9 97223.

10 3.

11 At all material times, Plaintiff Torched Illusions, LLC ("Plaintiff Torched Illusions") and
12 was and is a domestic limited liability company in Oregon with two locations in Washington
13 County, Oregon. These locations are: 17935 SW Tualatin Valley Highway, Beaverton, Oregon
14 97006; and 12961 SW Pacific Highway, Tigard, Oregon 97223.

15 4.

16 At all material times, Plaintiff Belal Yahya was and is the owner of Plaintiff Hookah Café,
17 LLC dba King's Hookah Lounge ("Plaintiff King's Hookah Lounge"), which has one location in
18 Washington County, Oregon. This location is 8860 SW Hall Boulevard, Portland, Oregon 97223.

19 5.

20 At all material times, Defendant Washington County was and is a political subdivision of
21 the State of Oregon.

22 6.

23 Defendant Pat Garrett ("Defendant Garrett") is the Washington County Sheriff. Defendant

1 Garrett and the Washington County Sheriff's Department is tasked with code enforcement in
2 Washington County.

3 7.

4 This Court has jurisdiction pursuant to ORCP 4(A)(4) because all Defendants are engaged
5 in substantial and not isolated activities within the State of Oregon.

6 8.

7 This is the proper venue pursuant to ORS 14.050(2).

8 **GENERAL ALLEGATIONS**

9 9.

10 On or about November 2, 2021, the Washington County Board of Commissioners (the
11 "Board") adopted Washington County Ordinance 878, which repeals and replaces Washington
12 County Ordinance No. 599. The Board professes to have passed Ordinance No. 878 while sitting
13 as the Local Public Health Authority of Washington County.

14 10.

15 As a result of passing Ordinance No. 878 while purporting to sit as the Local Public Health
16 Authority of Washington County, Ordinance No. 878 states at 1(G) that "The Board further finds
17 that to protect the public health and safety of the people of Washington County and to make the
18 model work most effectively, this ordinance applies to all of Washington County under the Board
19 of Commissioners authority as the Local Public Health Authority in Washington County."

20 11.

21 Ordinance No. 878 defines "Cigarette" as follows:

22 **A. Cigarette.** Any product that contains nicotine, is intended to be burned or heated
under ordinary conditions of use and consists or contains:

23 1. Any roll of tobacco wrapped in paper or in any substance not containing
tobacco;

1 Inhalant delivery system does not include any product that has been approved by the United
2 States Food and Drug Administration for sale as a tobacco cessation product or for any
3 other therapeutic purpose if the product is marketed and sold solely for the approved
purpose.

4 *See Wash. Cty. Code Ordinances, 878 (Exhibit A, 2.20(C)).*

5 14.

6 Ordinance 878 defines "Synthetic Nicotine Product" as follows:

7 **E. Synthetic Nicotine product.** Any product designed for human consumption where
8 the nicotine was created and produced in a laboratory and not derived from tobacco.

9 *See Wash. Cty. Code Ordinances, 878 (Exhibit A, 2.20(E)).*

10 15.

11 Ordinance 878 defines "Tobacco Product" as follows:

12 **F. Tobacco Product.** (1) Any product containing, made of, or derived from tobacco
13 or nicotine that is intended for human consumption or is likely to be consumed, whether
14 inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette,
15 a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) Any inhalant delivery system,
16 and any substances that may be aerosolized or vaporized by such device, whether or not
17 the substance contains tobacco or nicotine; or (3) Any component, part, or accessory of (1)
18 or (2), whether or not any of these contains tobacco or nicotine, including, but not limited
to, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

19 Tobacco product does not include any product that has been approved by the United States
20 Food and Drug Administration for sale as a tobacco cessation product or for any other
21 therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

22 *See Wash. Cty. Code Ordinances, 878 (Exhibit A, 2.20(F)).*

23 16.

24 Ordinance 878 purports to prohibit Flavored Products and flavored Synthetic Nicotine
25 Products, as defined in the Ordinance, as follows:

26 **B. Flavored products restricted.** No person shall sell, offer for sale, or otherwise
27 distribute any flavored tobacco product or flavored synthetic nicotine product.

1 See Wash. Cty. Code Ordinances, 878 (Exhibit A, 2.30(B)).

2 17.

3 Plaintiffs require that anyone entering their respective stores be at least 21 years old and
4 have signs posted at the entrance stating this requirement. Plaintiffs vigorously enforce their
5 restrictions prohibiting entry of underaged individuals.

6 18.

7 Plaintiffs have never been cited for selling their products to someone underaged.

8 19.

9 Plaintiffs do not offer any kind of self-service to their customers and all merchandise is
10 accessible by employees only.

11 20.

12 Plaintiff Serenity Vapors does not offer for sale any product that contains tobacco, the
13 common name for the plant *Nicotiana Tabacum* (the "Tobacco Plant").

14 21.

15 Plaintiff Torched Illusions does offer for sale products containing the Tobacco Plant.

16 22.

17 Plaintiffs Serenity Vapors and Torched Illusions offer for sale Vaping Liquids intended by
18 the manufacturer to imitate the taste of the Tobacco Plant. Those products are very unpopular. The
19 products are also generally considered by users of the Tobacco Plant (i.e., those who smoke
20 cigarettes or chew chewing tobacco) to be a poor imitation of the flavor. These products, when
21 selected, are most likely selected by a present tobacco smoker who wishes to use Vaping Liquids
22 as a smoking cessation product. However, products which attempt to imitate the taste of the
23 Tobacco Plant are unpopular, even among those wishing to use Vaping Liquids as a smoking

1 cessation product.

2 23.

3 Plaintiff King's Hookah Lounge offers for sale products that contain the Tobacco Plant as
4 Shisha is, in part, the Tobacco Plant.

5 24.

6 Plaintiff King's Hookah Lounge does not offer for sale any product that only contains the
7 Tobacco Plant as such products would not be considered Shisha and would not generally be used
8 with a Hookah.

9 25.

10 Vaping Liquids are consumable liquids which consist of vegetable glycerin, propylene
11 glycol, water, commercial food flavoring, and nicotine (if desired and at varying concentrations)
12 or cannabidiol ("CBD")¹ (if desired and at varying concentrations) ("Vaping Liquids"). Vaping
13 Liquids are typically sold in small glass or plastic bottles.

14 26.

15 Vaping Liquids are consumed by atomizing the Vaping Liquid using a heated coil inside
16 an E-Cigarette. This produces a vapor the user inhales.

17 27.

18 Plaintiffs Serenity Vapors and Torched Illusions sell Vaping Liquids containing nicotine
19 levels ranging from zero milligrams per milliliter to 50 milligrams per milliliter.

20 ///

21

22 _____

23 ¹ "CBD" or "Cannabidiol" is "a crystalline, nonintoxicating cannabinoid C₂₁H₃₀O₂ found in cannabis and hemp that is sometimes used medicinally." See Merriam-Webster Dictionary, Cannabidiol (Last Accessed Jan. 6, 2022, 4:23 PM), <https://www.merriam-webster.com/dictionary/cannabidiol>

1 28.

2 Plaintiffs Serenity Vapors and Torched Illusions sell Vaping Liquids containing CBD
3 levels ranging from zero milligrams per milliliter to 1,200 milligrams per milliliter.

4 29.

5 None of Plaintiff Serenity Vapors' products contain the Tobacco Plant or taste like the
6 Tobacco Plant without the addition of artificial flavoring.

7 30.

8 Hookah is a water pipe used to burn a specially made form of the Tobacco Plant called
9 Shisha which is mixed with fruit or molasses sugar for flavoring.

10 31.

11 Smoking Hookah is a common religious and cultural practice in areas of Asia and the
12 Middle East. Smoking Hookah is a cultural and religious tradition dating back over a millennium.

13 32.

14 Vaping Liquids and Shisha come in thousands of flavors.

15 33.

16 Vaping has "the potential to benefit adults who smoke and who are not pregnant if used as
17 a complete substitute for regular cigarettes and other smoked tobacco products," as recognized by
18 the Centers for Disease Control and Prevention.²

19 34.

20 Vaping is safer than smoking the Tobacco Plant because vaping does "not burn tobacco
21

22 ² Centers for Disease Control and Prevention, *About Electronic Cigarettes (E-Cigarettes)*, CDC
23 https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html (accessed
November 18, 2021).

1 and do[es] not produce tar or carbon monoxide, two of the most damaging elements in tobacco
2 smoke."³ In fact, "tobacco smoke contains more than 7,000 chemicals, more than 70 of which are
3 known carcinogens. Smoking will kill half of all long-term users. E-cigarettes do not contain tar
4 or carbon monoxide – 2 of the most harmful elements in tobacco smoke. They may contain some
5 chemicals also found in tobacco smoke, but at much lower levels."⁴

6 35.

7 Vaping has helped thousands of smokers quit smoking.⁵

8 36.

9 Plaintiff Serenity Vapors' and Torched Illusions' customers are often former smokers who
10 prefer vaping for its lower health risks and the fact that the vapor is less offensive than the smell
11 of cigarette smoke because it dissipates quickly and has a more pleasant smell due to the flavoring.

12 37.

13 Plaintiff King Hookah's customers are primarily members of the Asian and Middle Eastern
14 communities for whom smoking a Hookah bears religious and cultural significance. This is
15 especially true for Plaintiff King Hookah's Middle Eastern-American and Indian-American
16 customers.

17 38.

18 Other of Plaintiff King Hookah's customers enjoy the social atmosphere and value the
19

20 ³ National Health Service (UK), *Using e-cigarettes to stop smoking*, NHS
21 <https://www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking/> (accessed
January 7, 2022).

22 ⁴ National Health Service (UK), *10 myths about stop smoking treatments*, NHS
23 <https://www.nhs.uk/live-well/quit-smoking/10-myths-about-stop-smoking-treatments/> (accessed
January 7, 2022).

⁵ National Health Service, *supra* note 3.

1 cultural experience offered by smoking Hookah and Hookah lounges themselves.

2 39.

3 Plaintiffs Schwartz, Moran, and Yahya have all invested substantial time and resources
4 into growing their respective businesses.

5 40.

6 The sale of vaping and Hookah products, including e-cigarettes, Vaping Liquids, Shisha,
7 Hookahs, Inhalant Devices, etc. are not prohibited by the State of Oregon, subject to regulations
8 and taxes (*i.e.* ORS 431A.175–183).

9 **INJURIES TO PLAINTIFFS**

10 41.

11 Ordinance No. 878 will prohibit Plaintiffs Serenity Vapors and Torched Illusions from
12 selling most products currently offered for sale.

13 42.

14 Ordinance No. 878 will prohibit Plaintiff King's Hookah Lounge from selling any of its
15 products currently offered for sale.

16 43.

17 As with most small businesses in the State of Oregon and across the United States,
18 Plaintiffs' businesses and livelihoods have been severely impacted by the Covid-19 Pandemic and
19 the lockdown measures employed by the State of Oregon in response to the Covid-19 Pandemic.

20 44.

21 Absent Ordinance No. 878, Plaintiffs would be able to seek a Tobacco Retailer License
22 pursuant to Senate Bill (SB) 587 (2021) (Or Laws 2021, ch. 586) (hereinafter referenced textually
23 as "SB 587") and offer for sale those products prohibited by Ordinance No. 878.

1 45.

2 Each Plaintiff has applied for their Tobacco Retailer License pursuant to SB 587 and have
3 either been licensed already or expect to receive their license shortly.

4 **INJUNCTIVE RELIEF ALLEGATIONS**

5 46.

6 Plaintiffs and their customers are harmed by Ordinance No. 878 because the Ordinance
7 will prohibit the sale of all products, or nearly all products, currently offered by Plaintiffs at their
8 respective businesses.

9 47.

10 Plaintiffs' respective customers will be harmed by Ordinance No. 878 because they will
11 have no other location to purchase these products in Washington County.

12 48.

13 Ordinance No. 878 violates or is inconsistent with SB 587. *See Or Laws 2021, ch. 586.*

14 49.

15 Ordinance No. 878 is preempted by Oregon Statute SB 587. *See Or Laws 2021, ch. 586.*

16 50.

17 Ordinance No. 878 violates provisions of the Oregon Constitution and other Oregon laws.

18 51.

19 If not enjoined by this Court, Defendants and their agents, representatives, and employees
20 will administer, implement, and enforce Ordinance No. 878. This will violate or be inconsistent
21 with SB 587 and subject Plaintiffs to recourse which is unconstitutional under the Oregon
22 Constitution and other Oregon laws.

23 ///

1 52.

2 This course of conduct will cause Plaintiffs to suffer irreparable injury. This irreparable
3 injury includes the permanent closure of Plaintiffs' respective businesses and the loss of all
4 investment by Plaintiff in those businesses. Plaintiffs have no plain, speedy, and adequate remedy
5 at law for such injury. Accordingly, injunctive relief is appropriate.

6 **FIRST CLAIM FOR RELIEF**

7 **Declaratory Judgment; ORS 28.020**

8 **COUNT ONE**

9 **(SB 587 Expressly Preempts WCO 878)**

10 53.

11 Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–52 as
12 though fully set forth here.

13 54.

14 The Oregon Legislature passed SB 587 which was signed into law by Governor Brown on
15 or about July 19, 2021. The operative date of SB 587 was January 1, 2022. *See Or Laws 2021, ch.*
16 *586.*

17 55.

18 SB 587 creates a statewide tobacco retail license.

19 56.

20 SB 587 does not prohibit the sale of Flavored Products.

21 57.

22 SB 587 provides, at Section 17(2)(a) that:

- 23 (2) Each local public health authority may:
(a) Enforce, pursuant to an ordinance enacted by the governing body of the local public

1 health authority, standards for regulating the retail sale of tobacco products and inhalant
2 delivery systems for purposes related to public health and safety in addition to the standards
3 described in paragraph (b) of this subsection, including qualifications for engaging in the
4 retail sale of tobacco products or inhalant delivery systems that are in addition to the
5 qualifications described in section 5 of this 2021 Act;

6 *See Or Laws 2021, ch. 586, § 17(2)(a).*

7 58.

8 SB 587 does not provide local public health authorities with the authority to prohibit the
9 retail sale of any product regulated by SB 587.

10 59.

11 SB 587 provides a continuity provision at Section 18 which provides that:

12 SECTION 18. Continuity. A city or local public health authority that, on or before January
13 1, 2021, and pursuant to an ordinance adopted by the governing body of the city or local
14 public health authority, enforced standards described in section 17 (2)(a) of this 2021 Act
15 and required that a person that makes retail sales of tobacco products or inhalant delivery
16 systems in an area subject to the jurisdiction of the city or local public health authority hold
17 a license or other authorization issued by the city or local public health authority may
18 continue to enforce the standards and require the license or other authorization on and after
19 the operative date specified in section 24 of this 2021 Act.

20 *See Or Laws 2021, ch. 586, § 18.*

21 60.

22 Ordinance No. 878 was not passed or effective on or before January 1, 2021.

23 61.

Ordinance No. 878 is expressly preempted by SB 587.

COUNT TWO

(SB 587 Impliedly Preempts WCO 878)

62.

Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–61 as

1 though fully set forth here.

2 63.

3 Strictly as an alternative to Count One, Plaintiffs assert that Ordinance No. 878 is impliedly
4 preempted by SB 587.

5 **COUNT THREE**

6 **(WCO 878 Cannot Apply to Incorporated Cities within Washington County)**

7 64.

8 Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–63 as
9 though fully set forth here.

10 65.

11 ORS 203.040 ("Inapplicability of ordinances inside incorporated city") provides that:

12 Except by consent of the governing body or the electors of a city and except in cities not
13 regularly operating as such through elected governmental officials, ordinances adopted
14 under ORS 203.030 to 203.075 in exercise of the police power shall not apply inside an
15 incorporated city.

15 *See* ORS 203.040.

16 66.

17 The Washington County Charter, at Chapter II, Section 23, provides that:

18 Section 23. COUNTY POWERS INSIDE INCORPORATED CITIES. It is expressly
19 declared that city governments within the County are empowered by Charter and by the
20 Oregon Constitution and laws of the State to provide services and regulatory measures
21 necessary to the general welfare of the people within the city. This Charter shall not be
22 construed to preempt the police power vested in a city under the Oregon Constitution or
23 State law. No ordinance enacted in the exercise of the police powers of the County shall
apply inside an incorporated city, except in a city not regularly operating as such through
elected governmental officials or as otherwise provided by State law. Nothing in this
Section 23 is intended to prevent the County from entering into contractual arrangements
for the performance of special services within any city.

1 See Wash. Cty. Charter, ch. II, § 23.

2 67.

3 Plaintiff Serenity Vapor owns three locations in Washington County. Two of these
4 locations are in incorporated cities.

5 68.

6 Plaintiff Torched Illusions own two locations in Washington County, one of which is
7 located in an incorporated city.

8 69.

9 Plaintiff King's Hookah Lounge owns one location in Washington County. This location is
10 in an incorporated city.

11 70.

12 Plaintiffs assert that Ordinance No. 878 cannot apply to their respective locations located
13 within incorporated cities.

14 **COUNT FOUR**

15 **(WCO 878 is Violates Or. Const. Art. VI, Sec. 10)**

16 71.

17 Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–70 as
18 though fully set forth here.

19 72.

20 Article VI, Sec. 10 of the Oregon Constitution states, in its relevant part, as follows: "A
21 county charter may provide for the exercise by the county of authority over matters of county
22 concern." See Or. Const. Art. VI, Sec. 10.

23 ///

1 73.

2 The Oregon legislature has specifically authorized the statewide sale of all products for
3 which a license under SB 587 is required.

4 74.

5 It is a matter of state concern, and not county concern, whether to prohibit or permit the
6 sale of products for which one is required to obtain a license under SB 587.

7 **COUNT FIVE**
8 **(WCO 878 is Arbitrary and Capricious)**

9 75.

10 Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–74 as
11 though fully set forth here.

12 76.

13 Ordinance No. 878 lacks any rational relation between its stated goals and the action of
14 preventing the illicit sale of Flavored Products to persons under the age of 21 in Washington
15 County.

16 77.

17 The Ordinance targets products sold by Plaintiffs and other similarly situated vendors,
18 ignoring other products which also cannot legally be sold to persons under the age of 21 and which
19 contain identical or substantially similar flavors (e.g., marijuana products and alcoholic
20 beverages).

21 78.

22 The sale of Flavored Products, Inhalant Delivery Systems, Synthetic Nicotine Products,
23 Tobacco Products, Vaping Liquids, and other products to persons under the age of 21 is already

1 prohibited.

2 79.

3 The sale of flavored marijuana products, including flavored marijuana vaporizers ("Weed
4 Pens") may not be affected by this Ordinance.

5 80.

6 The products identified above at Paragraph 79 contain delta-9-tetrahydrocannabinol
7 ("THC"), which is the main psychoactive component of marijuana that causes people who smoke,
8 consume, or otherwise use marijuana to feel high.

9 81.

10 Flavored Weed Pens containing THC are available for purchase and sale in Washington
11 County in the following advertised flavors: Jungle Juice, Lemongrass RXO Cartridge, Purple
12 Dream, Sagan Beach, Spaceship Driver, Sticky Buns, White Slurricookies, Cherry Blossom, Agent
13 Orange, Animal Cookies, Blue Magoo, Cookies and Cream, Gorilla Sunset, Orange Creamsicle,
14 Orange Gelato, Sunset Sherbet, Blackberry, Blue Raspberry, Blueberry, Green Apple, Mango,
15 Strawberry, Tropical, Blueberry Muffin, Dream Queen, Forbidden Chem Cookies, Jager, Lemon
16 Sherbet, Lemongrass, Papaya Sherbet, Pixie Kush, Purple Muffin, Slurricane, Vin Diesel, Purple
17 Punch, and Orange Cake Pop.⁶

18 82.

19 Marijuana Flower (the smokeable, trichome-enriched part of the cannabis plant) containing
20 THC is available for purchase and sale in Washington County in the following advertised names
21 or flavors: Frosted Tangie, Cherry Chem, Pina Grande, Gold Tsunami, Gorilla Cookies, Rocky
22 Mountain Moonshine, Strawberry Cough, Blue Cheese, Green Dragon, Lemon Kush – Bottom,

23

⁶ <https://www.chalicefarms.com/shop-marijuana-dispensary-tigard> (Last Accessed 11/23/2021).

1 Strawberry OG, Gnome Treats, Lime, Platinum Garlic Butter, Wedding Cake x Banana Punch,
2 Floruit, Strawberry Tek, Zerbert, Blue Magoo, Grape Gatsby, Mystery Machine, Forbidden Fruit,
3 Papaya Punch, Wedding Cake, Tropicana Cookies, Black Widow, Sour Amnesia, and Jager
4 Cinex.⁷

5 83.

6 Cannabis Edibles (food and drink products containing decarboxylated cannabinoids and
7 large amounts of THC) are available for purchase and sale in Washington County in the following
8 forms and flavors: **Fruit Chews** (Lemon Ginger, Kiwi Strawberry, Acai Berry, Marionberry
9 Lemon, Mango Serrano, Tangerine Blast, Tropical Blast, Blueraspberry, Green Apple and
10 Strawberry, Raspberry and Lemonade, and Green Apple) **Chocolates** (Cookies & Cream Blast,
11 Milk Chocolate Blast, Mocha Chocolate Blast,), **Chocolate Bars** (Milk Chocolate Sea Salt, Dark
12 Chocolate Bar, Chocolate Turtle, Super Bon Bons, Chocolate Orange Fudge), **Gummies**
13 (Watermelon and Rainbow, Peach Prosecco, Relax Raspberry, Pomegranate Mojito) **Infused**
14 **Honey** (Pineapple), **Cookies** (Peanut Butter Cookie, Chocolate Chip, and Confetti Sprinkles),
15 **Mints** (Peppermint, Relax Cinnamon Mints, Ginger Mints), **and Drinks** (Lime Seltzer, Mandarin
16 Lime Soda, Passion Fruit Seltzer, Blue Raspberry, Grape, Passion Fruit, and Pink Lemonade).⁸

17 84.

18 Alcoholic beverages are sold at convenience stores throughout Washington County in the
19 following flavors: **Mike's Hard Lemonade** (Hard Lemonade, Hard Black Cherry Lemonade,
20 Hard Strawberry Lemonade, Hard Mango, Hard Pineapple Strawberry, Hard Cranberry, Hard
21

22

23

⁷ <https://www.chalicefarms.com/shop-marijuana-dispensary-tigard> (Last Accessed 11/23/2021)

⁸ <https://www.chalicefarms.com/shop-marijuana-dispensary-tigard> (Last Accessed 11/23/2021)

1 Peach, Hard Raspberry, and Blackberry Pear),⁹ **Twisted Tea** (Original, Half & Half, Slightly
2 Sweet, Blueberry, Light, Peach, Mango, Blackberry, and Raspberry),¹⁰ **White Claw Hard Seltzer**
3 (Black Cherry, Mango, Watermelon, Natural Lime, Ruby Grapefruit, Raspberry, Lemon,
4 Tangerine, Strawberry, Blackberry, and Pineapple).¹¹

5 85.

6 Liquor Stores sell liquor in the following forms and flavors throughout Washington
7 County: **Seagrams Gin** (Apple and Lime), **Smirnoff Vodka** (Blueberry, Cherry, Coconut,
8 Cranberry, Grape, Green Apple, Lime, Mango, Orange, Passion Fruit, Peach, Pineapple, Pink
9 Lemonade, Raspberry, Red White & Berry, Root Beer Float, Grapefruit, Sours Berry Lemon,
10 Sours Fruit Punch, Sours Green Apple, Strawberry, Twist of Citrus, Watermelon, and Whipped
11 Cream) **Skyy Vodka** (Watermelon, Blood-Orange, Cherry, Citrus, Georgia Peach, Pineapple,
12 Raspberry, and Strawberry), **Absolute Vodka** (Pear, Citron, Mandarin, Raspberry, Cherry
13 Cranberry, Mango, Peach, and Berry), **Burnett's Vodka** (Blueberry, Chery, Citrus, Coconut,
14 Cranberry, Grape, Lime, Limeade, Mango, Orange, Peach, Pear Pineapple, Pink Lemonade,
15 Pomegranate, Raspberry, Grapefruit, Sour Apple, Strawberry, Watermelon, Whipped Cream, and
16 Orange Cream), **Bacardi Rum** (Pineapple, Banana, Coconut, Dragon Berry, Lime, Mango,
17 Raspberry, and Tropical), **Malibu Rum** (Coconut, Lime Mango, Passion Fruit, Pineapple,
18 Strawberry, Tropical Banana, Watermelon, Strawberry Daiquiri, and Pina Colada), and **Jose**
19 **Cuervo Tequila** (Lime Margarita, Mango Margarita, Strawberry Lime, Watermelon, and White

20

21

22 ⁹ <https://www.mikeshard.com/flavors/> (Last Accessed 11/23/2021)

23 ¹⁰ <https://www.twistedtea.com/products> (Last Accessed 11/23/2021)

¹¹ <https://www.whiteclaw.com/flavors/> (Last Accessed 11/23/2021).

1 Peach).¹²

2 86.

3 Alcohol and THC are intoxicating substances.

4 87.

5 Nicotine is not an intoxicating substance.

6 88.

7 It is unsafe and unlawful for anyone to operate a motor vehicle under the influence of
8 alcohol or THC.

9 89.

10 It is not unlawful for persons in lawful possession of products containing nicotine to
11 operate a motor vehicle while under the influence of nicotine.

12 90.

13 The Ordinance arbitrarily and capriciously prohibits Flavored Products containing nicotine
14 while allowing for the continued sale and advertisement of substantially similar products
15 containing THC such as Weed Pens.

16 91.

17 The Ordinance arbitrarily and capriciously prohibits Flavored Products containing nicotine
18 while allowing for the continued sale and advertisement of alcoholic beverages and products
19 containing THC with similar available flavors which are attractive to children.

20 92.

21 The Ordinance arbitrarily and capriciously prohibits Flavored Products which imitate
22

23 _____
¹² <https://www.oregonliquorsearch.com> (Last Accessed 11/23/2021) Address: 13528 NW Cornell Rd, Portland, OR 97229

1 flavors such as chocolate, cocoa, mint, honey, fruit, candy, and dessert while allowing for the
2 continued sale and advertisement of actual chocolates, mints, fruit chews, candies, and desserts
3 containing THC.

4 **COUNT SIX**

5 **(WCO 878 Privileges and Immunities)**

6 93.

7 Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1–92 as
8 though fully set forth here.

9 94.

10 The Privileges and Immunities Clause in the Oregon Constitution provides that “[n]o law
11 shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon
12 the same terms, shall not equally belong to all citizens.” Or. Const. Art 1, § 20.

13 95.

14 Plaintiffs belong to a class of vendors who sell products regulated by SB 587.

15 96.

16 The Ordinance treats those who sell Flavored Products differently from those who engage
17 in the sale of equally or, in in some instances, more dangerous products which are not flavored.

18 97.

19 The Ordinance treats Plaintiffs and other similarly situated individuals differently from
20 those who sell similar regulated substances and products (e.g., alcohol and marijuana products)
21 intended for sale only to those who are over the age of 21 and which contain identical, nearly
22 identical, or more enticing flavors and aromas which may appeal to minors.

23 ///

1 98.

2 The Ordinance results in Plaintiffs being treated differently from other identically situated
3 vendors who have or will seek a tobacco retailer license pursuant to SB 587.

4 99.

5 The right to pursue any legitimate trade, occupation, or business is a natural, essential, and
6 inalienable right protected by the Oregon Constitution.

7 100.

8 The Ordinance prohibits Plaintiffs from pursuing their legitimate trade, occupation, and
9 business.

10 **ATTORNEY FEES**

11 101.

12 If Plaintiffs are determined to be the prevailing parties, they are entitled to recover their
13 court costs and reasonable attorney fees pursuant to *De Young v. Brown*, 368 Or 64 (2021); *Armatta*
14 *v. Kitzhaber*, 327 Or 250 (1998); *Deras v. Myers*, 272 Or 47 (1975), in an amount to be determined
15 by the Court because they will have vindicated the rights of the public.

16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs request judgment against Defendants as follows:

19 1. For entry of Judgment against Defendants;

20 2. On Plaintiffs' First Claim for Relief, Count 1, for a Declaration under the Oregon
21 Uniform Declaratory Judgment Act that Washington County Ordinance No. 878 has been
22 preempted by State Law through SB587;

23 3. On Plaintiff's First Claim for Relief, Count 2, as an alternative to the relief sought

1 through Count 1, a Declaration under the Oregon Uniform Declaratory Judgment Act that
2 Washington County Ordinance No. 878 has been preempted by State Law through SB587;

3 4. On Plaintiff's First Claim for Relief, Count 3, a Declaration under the Oregon
4 Uniform Declaratory Judgment Act that Washington County Ordinance No. 878 only applies to
5 unincorporated Washington County and does not apply, absent action by the respective
6 incorporated cities, to an incorporated city;

7 5. On Plaintiff's First Claim for Relief, Count 4, a Declaration under the Oregon
8 Uniform Declaratory Judgment Act that Washington County Ordinance No. 878 is
9 unconstitutional because it violates Article VI, Section 10 of the Oregon Constitution;

10 6. On Plaintiff's First Claim for Relief, Count 5, a Declaration under the Oregon
11 Uniform Declaratory Judgment Act that Washington County Ordinance No. 878 is
12 unconstitutional because it is arbitrary and capricious;

13 7. On Plaintiff's First Claim for Relief, Count 6, a Declaration under the Oregon
14 Uniform Declaratory Judgment Act that Washington County Ordinance No. 878 is
15 unconstitutional because it violates the Privileges and Immunities clause of the Oregon
16 Constitution;

17 8. On All Counts of Plaintiffs' First Claim for Relief, for entry of a permanent
18 injunction against Defendants prohibiting them from enforcing Ordinance No. 878.

19 ///

20 ///

21 ///


22 ///

23 ///


1 **VERIFICATION**

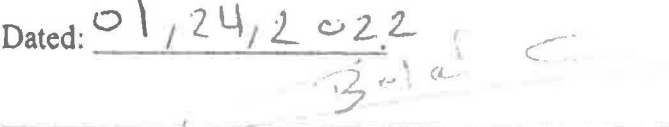
2 WE, the undersigned, individually and on behalf of our respective businesses also named
3 as Plaintiffs to this action, declare under penalty of perjury that we have read the foregoing
4 Complaint for Declaratory and Injunctive Relief, and the matters and things stated therein are true
5 to the best of our knowledge and belief.

6 Dated: 1/26/21

7 
8 _____
9 Jordan Schwartz
10 Individually and on behalf of Serenity Vapors, LLC

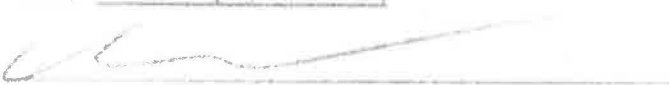
11 Dated: 1/26/2021

12 
13 _____
14 Jonathan Moran
15 Individually and on behalf of Serenity Vapors, LLC

16 Dated: 01/24/2022
17 

18 _____
19 Belal Yahya
20 Individually and on behalf of Hookah Café, LLC (dba King's Hookah Lounge)

21 Dated: 2/4/22

22 
23 _____
24 Matt Rosado
25 On behalf of Torched Illusions, LLC