

At a Motion Part of the Supreme Court of the State of New York, held in and for the County of Albany, at the Courthouse located at 16 Eagle Street, Albany, New York on the 27 day of September, 2019.

PRESENT:

HON. Gerald W. Conolly,

A.J.S.C.

RECEIVED

SEP 30 2019

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In the Matter of

VAPOR TECHNOLOGY ASSOCIATION,  
BENEVOLENT ELIQUIDS INC. and  
PERFECTION VAPES, INC.,

Petitioners,

against

ANDREW M. CUOMO, Governor of the State of New York,  
THE NEW YORK DEPARTMENT OF HEALTH,  
HOWARD ZUCKER, M.D., Commissioner of  
The New York Department of Health, THE PUBLIC  
HEALTH AND HEALTH PLANNING COUNCIL,  
and NEW YORK STATE POLICE,

Index No. 906514-19  
Date Purchased:

ORDER TO SHOW CAUSE

Respondents.

For a Judgment Under Article 78 of the Civil Practice Law  
And Rules in the Nature of ANNULMENT, DECLARATORY  
JUDGMENT AND PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF.

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UPON the reading and filing of the Verified Petition herein dated September [], 2019  
(the "Petition") of Petitioners VAPOR TECHNOLOGY ASSOCIATION ("VTA"),  
BENEVOLENT ELIQUIDS INC. ("Benevolent"), and PERFECTION VAPES, INC.

("Perfection," together with VTA and Benevolent, collectively, "Petitioners"), by and through their attorneys, THOMPSON HINE LLP, the Affidavit of Anthony L. Abboud sworn to the 23<sup>rd</sup> day of September 2019, the Affidavit of M. Jonathan Glauser sworn to the 23<sup>rd</sup> day of September 2019, the Affidavit of Victor Canastraro sworn to the 23<sup>rd</sup> day of September 2019, the Affidavit of John Dunham sworn to the 23<sup>rd</sup> day of September 2019, the Affirmation of Richard De Palma, Esq. dated the 24<sup>th</sup> day of September 2019 and the Affirmation of Emergency of Richard De Palma, Esq. dated the 24<sup>th</sup> day of September 2019; and the exhibits annexed thereto, and all of the prior pleadings and proceedings heretofore had herein, and sufficient reason appearing therefrom,

LET Respondents ANDREW M. CUOMO in his capacity as Governor of the State of New York ("Governor Cuomo"), THE NEW YORK DEPARTMENT OF HEALTH (the "Department of Health"), HOWARD ZUCKER, M.D. in his capacity as the Commissioner of The New York Department of Health ("Commissioner Zucker"), THE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL (the "Council"), and NEW YORK STATE POLICE ("State Police," and together with Governor Cuomo, the Department of Health, Commissioner Zucker, and the Council, collectively, "Respondents") show cause at the Motion Part of this Court, at the Courthouse thereof, located at 16 Eagle Street, Albany, New York, on the 18 day of October, 2019 at 9:30 o'clock in the fore <sup>\*</sup>noon of that day, or as soon thereafter as counsel can be heard, why an Order, pursuant to Articles 63 and 78 of the New York Civil Practice Law and Rules, should not be made and entered: (i) preliminarily enjoining and preventing, pending a determination on the Petition, Respondents and all those acting in concert with them from enforcing the improperly enacted amendment to Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR")

\* No personal appearances unless directed by assigned Judge.

which added a new Subpart 9-3, titled "Prohibition on the Sale of Electronic Liquids with Characterizing Flavors" (the "Emergency Rule") in excess of their constitutional, statutory and administrative authority; and (ii) granting to Petitioners such other and further relief as the Court may deem just and proper; and it is further

~~ORDERED that, sufficient cause having been shown therefor, that upon the foregoing papers it appears that Petitioners have established prima facie a showing of likelihood of success on the merits, that absent immediate injunctive relief, Petitioners and other members of the Public located and resident within the State of New York will suffer irreparable injury, that a balancing of the equities justifies such relief and that Respondents will not be unduly prejudiced if injunctive relief is issued forthwith pending a hearing and determination of Petitioners' instant motion for a preliminary injunction, pending hearing and determination of Petitioners' motion for a preliminary injunction, Respondents and all those acting for, on their behalf, with and through and in concert with them, are hereby restrained and enjoined from enforcing the Emergency Rule in any way or manner; and it is further~~

GWK  
9/27/19

ORDERED that service of a copy of this Order, together with a copy of the papers upon which same is granted, upon the Respondents by delivery as follows:

- (i) on Respondent Andrew M. Cuomo (the "Governor") by delivery to the Office of the Governor of New York State, State Capitol Building, Albany, New York 12224;
- (ii) on Respondent The New York Department of Health by delivery to the Department of Health, Coming Tower, Empire State Plaza, Albany, New York 12237;
- (iii) on Respondent Howard Zucker, M.D. by delivery to the Commissioner of The New York Department of Health, Coming Tower, Empire State Plaza, Albany, New York 12237;

(iv) on Respondent The Public Health and Health Planning Council by delivery to The Public Health and Health Planning Council, Corning Tower, Empire State Plaza, Albany, New York 12237;

(iv) on Respondent New York State Police by delivery to at New York State Police, 1220 Washington Avenue, Building 22, Albany, New York 12226; and

(iv) on the Office of the Attorney General, Empire State Plaza, Justice Building, 2nd Floor, Albany, New York 12224

all so as to be in hand on or before 5 o'clock in the after noon of the 30 day of Sept., 2019, and that such service be deemed good and sufficient notice to Respondents of this Order and the application made herein; and it is further

**ORDERED** that answering affidavits and opposition papers, if any, shall be served on counsel for Petitioners all so as to be in hand on or before 5 o'clock in the after noon of the 10 day of Oct., 2019; and it is further

**ORDERED** that reply affidavits and papers, if any, shall be served on counsel for Respondents and the Office of the Attorney General all so as to be in hand on or before 5 o'clock in the after noon of the 16 day of Oct., 2019; and it is further

**ORDERED** that counsel for all parties are directed to appear on the return date set forth above.

ENTER:

Donald W. Connelly  
J.S.C.

D.A.S.

9-30-19

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