



JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE
9001 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-9001
WWW.NCDOJ.GOV

CONSUMER PROTECTION
TOLL-FREE IN NC:
877.566.7226
OUTSIDE OF NC: 919.716.6000
FAX: 919.716.6050

MEMORANDUM

TO: Financial Services
FROM: Kevin L. Anderson, Senior Deputy Attorney General
RE: Settlement Deposit Distribution
The Electric Tobacconist LLC
DATE: May 17, 2022


Kevin L. Anderson

The Electric Tobacconist LLC, a wire transfer in the amount of \$100,000.00 (one hundred thousand dollars) was deposited with Financial Services on May 17, 2022 into cost center 2140-2180.

This consent judgment settles North Carolina's allegations that The Electric Tobacconist LLC engaged in unfair or deceptive trade practices in violation of N.C. Gen. Stat. § 75-1.1 by designing e-cigarette products to appeal to youthful audiences, using marketing strategies it knew would attract minors, and failing to provide proper and statutorily mandated age-verification techniques for internet sales.

Under the court order signed April 18, 2022, Electric Tobacconist will pay a total of \$275,000 to be used, to the maximum extent practicable, to fund ENDS Cessation Programs, ENDS Prevention Programs, ENDS Research, and to cover the cost of litigation of the Attorney General's Office. The payments will be made over the next four years in the following schedule:

- \$100,000.00 by 5/19/2022
- \$58,333.33 on 4/19/2024
- \$58,333.34 by 4/19/2023
- \$58,333.33 on 4/19/2025

Additionally, Electric Tobacconist agreed to cease engaging in marketing activities that targeted underage users, monitor social media platforms to ensure that its products are not being promoted in a manner that could attract underage users, refrain from sponsoring any events in North Carolina, not offer flavored products unless and until they are approved by the Food and Drug Administration, and submit annual reports of all attempted purchases by underage users.

A copy of the sender transfer confirmation and court order are attached. If you have any questions, please contact Wendy Stevens at 716-6877.

cc: Kim D'Arruda
Jessica Sutton
Melvinna Adams
Wendy Stevens/ecig – Electric Tobacconist Settlement File

CHASE *for* BUSINESS

Printed from Chase for Business

- ✔ We've finished reviewing your payment instructions, and we're processing them.

Please go to [Payment Activity](#) to see an updated payment status; approvals might be required.

Pay to
NC Department of Justice
(...5847)
Ungrouped - Vendor

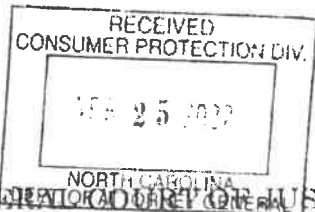
Pay from
PLAT BUS CHECKING (...5902)
Amount
100,000.00

Delivery method
Standard ACH
Arrives in 1 business day

Send on
May 16, 2022
Deliver by
May 17, 2022

Addendum
First Payment for North
Carolina Settlement 05/2022

Status	Transaction number
Funded	5335591611



STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 19 CVS 3836

STATE OF NORTH CAROLINA, ex rel.
JOSHUA H. STEIN, Attorney General,

Plaintiff,

v.

THE ELECTRIC TOBACCONIST LLC,

Defendant.

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CONSENT JUDGMENT

FINAL CONSENT JUDGMENT

Plaintiff, the State of North Carolina, by and through its Attorney General, Joshua H. Stein (the "State" or "Plaintiff"), has filed a Complaint for a permanent injunction, equitable monetary relief, and other relief in this matter pursuant to N.C.G.S. § 75-1.1 et seq., alleging that Defendant The Electric Tobacconist LLC, a Colorado limited liability company ("Electric Tobacconist"), violated the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-1.1 et seq. Plaintiff, with the advice and approval of its counsel, and Electric Tobacconist, with the advice and approval of its counsel, have agreed to the entry of this Final Consent Judgment ("Consent Judgment") by the Court without trial or resolution of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind.

IT IS HEREBY ORDERED THAT:

I. FINDINGS

1. The Parties (as defined below) agree that this Court has jurisdiction over the subject matter of this lawsuit and over the Parties with respect to this Action (as defined below) and Consent Judgment. This Consent Judgment shall not be construed or used as a waiver of any jurisdictional defense Electric Tobacconist may raise in any other proceeding.
2. The terms of this Consent Judgment shall be governed by the laws of the State of North Carolina.
3. Entry of this Consent Judgment is in the public interest and reflects a negotiated agreement among the Parties.
4. The Parties are willing to enter into this Consent Judgment to resolve Plaintiffs claims and Electric Tobacconist's defenses in the Action and thereby avoid significant expense, inconvenience, and uncertainty.

5. Pursuant to this Consent Judgment, and in consideration of the full release of claims and the other relief set forth herein, Electric Tobacconist will, on the terms and conditions set forth herein, among other things, commit to limits as specifically defined herein on its marketing, advertising, distribution, sale, and offering of Electric Tobacconist Products (as defined below) in North Carolina and provide resources for the State to reduce and prevent underage usage of ENDS (as defined below) through cessation programs, education, research, and data collection.

6. Electric Tobacconist is entering into this Consent Judgment solely for the purpose of concluding this matter, and nothing contained herein may be taken as or construed to be an admission or concession of any alleged violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Electric Tobacconist expressly denies. No part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Electric Tobacconist.

7. This Consent Judgment shall not be construed or used as a waiver or limitation of any defense otherwise available to Electric Tobacconist in any other matter, or of Electric Tobacconist's right to defend itself from, or make any arguments in, any other regulatory, governmental, private individual, or class claims, suits, or investigations relating to the subject matter or terms of this Consent Judgment. This Consent Judgment is made without trial or resolution of any contested issue of fact or law or finding of liability. Notwithstanding the foregoing, Plaintiff may enforce the terms of this Consent Judgment.

8. No part of this Consent Judgment shall create a private cause of action or confer any right on any third party for violation of any federal or state statute except that Plaintiff may enforce the terms of this Consent Judgment. It is the intent of the Parties that this Consent

Judgment shall not be binding or admissible in any other matter, including, but not limited to, any other regulatory, governmental, private individual, or class claims, suits, or investigations, other than in connection with the enforcement of this Consent Judgment (including the Release). This Consent Judgment is not enforceable by any persons or entities besides Plaintiff, Electric Tobacconist, and this Court.

9. The Court approves the terms of this Consent Judgment and hereby adopts them as its own determination of this matter and the Parties' respective rights and obligations.

II. DEFINITIONS

10. For purposes of this Consent Judgment, the following terms shall have the following meanings:

- a. "Action" means *State of North Carolina ex rel. Joshua H. Stein v. The Electric Tobacconist LLC*, 19 CVS 3836 (Durham Cty. Super. Ct.).
- b. "Advertising Channel" means the location of the marketing or advertisement, including, but not limited to, movies, live performances, print media, radio, broadcast media, streaming media, Social Media Platforms, virtual reality platforms, internet-based chat and messaging applications, television, theatrical performances, video games, and websites; provided that an Advertising Channel shall not include Outdoor Advertising or marketing or advertising on Electric Tobacconist Owned Websites.
- c. "Claims" means any and all claims, demands, actions, suits, causes of action, damages, and liabilities and monetary impositions of any nature, as well as costs, expenses and attorneys' fees, whether known or unknown,

suspected or unsuspected, accrued or unaccrued, whether legal, equitable, statutory, regulatory, or administrative. For the avoidance of doubt, Claims does not include allegations of criminal liability.

- d. **"Complaint"** means the complaint filed by Plaintiff in the Action.
- e. **"Covered Conduct"** means any and all of the following:
 - i. All conduct related to age verification, product quantity limits, nicotine content, flavors, or the size, shape, operation, or appearance of the product in the design, manufacture, marketing, advertising, product description, promotion, distribution, sale, or offer of Electric Tobacconist Products.
 - ii. All conduct that could have induced a person, including an Underage Individual, to use or purchase Electric Tobacconist Products.
 - iii. All conduct that could have allowed a person, including an Underage Individual, to use or purchase Electric Tobacconist Products without allegedly adequate age verification, product quantity limits, or other limitations or procedures.
 - iv. Any other conduct related to the allegations by Plaintiff in the Complaint or otherwise asserted by Plaintiff in the Action that does not fall within subparagraphs (i)-(iii).
 - v. All conduct that may have violated federal, state, local laws, regulations, or rules, or that could give rise to any common law

cause of action, relating to the conduct described in subparagraphs (i) – (iv).

- vi. For the avoidance of doubt, Covered Conduct does not include any conduct relating to an undisclosed non-nicotine ingredient hazard in Pods resulting in personal injury to a consumer; any conduct giving rise to criminal, antitrust, tax-related, or state or federal securities-related violations; or any conduct after the Effective Date other than continuing to sell Electric Tobacconist Products in a manner consistent with North Carolina law and this Consent Judgment.
- vii. As used herein, “conduct” includes, without limitation, any act, failure to act, practice, omission, statement, or representation.
- f. “Device” means any ENDS device sold or marketed by Electric Tobacconist in the United States.
- g. “Effective Date” means the date this Consent Judgment is entered by the Court.
- h. “Electric Tobacconist Owned Websites” means electrictobacconist.com and any other website operated by Electric Tobacconist under an Electric Tobacconist brand.
- i. “Electric Tobacconist Products” means any ENDS product sold by Electric Tobacconist in the United States, including a closed-pod, liquid-based ENDS product composed of one or all of the following components: Device, Pods, Packs, and/or a charger. For the avoidance of doubt,

Electronic Tobacconist Products includes ENDS that contain no nicotine.

Electric Tobacconist Products does not include products sold by a competitor, even if the competitor offers for sale the same brand of vaping product as Electric Tobacconist.

- j. **"ENDS"** means electronic nicotine delivery systems.
- k. **"ENDS Cessation Programs"** means evidence-based or evidence-informed programs that provide cessation assistance to North Carolina residents who were exposed to ENDS while Underage Individuals, run by independent, third-party qualified professionals and service providers with significant experience in nicotine cessation.
- l. **"ENDS Education Programs"** means evidence-based or evidence-informed public education or prevention programs that are designed to prevent or reduce use of ENDS by Underage Individuals and are run by independent, third-party qualified professionals and service providers with significant experience in nicotine education, including but not limited to school-based, community-based, or youth-focused programs or strategies that have demonstrated effectiveness in preventing use of ENDS by Underage Individuals.
- m. **"ENDS Research"** means evidence-based or evidence-informed research in support of preventing ENDS use by Underage Individuals by independent third parties with significant experience in nicotine research. Such research includes but is not limited to (1) monitoring, surveillance, data collection, and evaluation of ENDS Cessation Programs and ENDS

- Education Programs; (2) research on other efforts to prevent or deter ENDS use by Underage Individuals; and (3) qualitative and quantitative research regarding public health risks associated with the use of ENDS.
- n. **"FDA"** means the United States Food and Drug Administration.
- o. **"Federal Age-Verification Requirements"** means the requirements for verifying a purchaser's age pursuant to 21 C.F.R. § 1140.14.
- p. **"Health Claim"** means a claim or representation about Electric Tobacconist Products that suggests that Electric Tobacconist Products reduce harm or a comparison between the health effects of Electric Tobacconist Products and the health effects associated with commercially marketed tobacco products.
- q. **"Outdoor Advertising"** means (1) billboards, (2) signs and placards in arenas, stadiums, and shopping malls, and (3) any other advertisements placed (A) outdoors, or (B) on the inside surface of a window facing outward.
- r. **"Packs"** means a package of Pods sold as one unit by Electric Tobacconist.
- s. **"Pods"** means any disposable pods prefilled with a liquid solution containing nicotine at different concentrations and different flavorings that consumers use as part of any closed-pod, liquid-based, ENDS sold by Electric Tobacconist in the United States.
- t. **"Parties" or "Party"** means Plaintiff and Electric Tobacconist, individually and collectively.

- u. **"Released Claims"** has the meaning ascribed to it in paragraph 35.
- v. **"Released Parties"** means Electric Tobacconist and each and all of the past and present principals, partners, officers, directors, supervisors, employees, stockholders, members, insurers, attorneys, agents, contractors, representatives, and assigns of Electric Tobacconist, but only to the extent that the person or entity was acting in such capacity on behalf of Electric Tobacconist.
- w. **"Releasers"** means the Plaintiff and the Attorney General, as well as (1) any State department, agency, institution, commission, bureau, or other governmental or public entity to the full extent of the State's and the Attorney General's power to release Claims; (2) the successors of any of the foregoing; and (3) persons or entities acting in a *parens patriae*, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State.
- x. **"Social Media Platform"** means an internet-based public platform through which users are able to create and/or share content that is accessible to members of the public, and includes sites such as Facebook, Instagram, Snapchat, TikTok, Twitter, Clubhouse, Pinterest, Tumblr, Google+, and YouTube.
- y. **"Therapeutic Claim"** means a claim or representation in which Electric Tobacconist Products have properties that are diagnostic, curative, mitigating, treatment-oriented, or can prevent disease, (including that

using Electric Tobacconist Products can help the user transition off of nicotine use), including as defined in 21 U.S.C. § 321(g)(1).

z. **"Underage Individuals"** means North Carolina residents who are under the legal age to purchase ENDS products in North Carolina.

aa. **"Verified"** means determined to be 21 years or older through the use of reliable and independent age-verification service(s) that compares the customer's name, address, and date of birth with independent, competent, and reliable data sources, such as official government records.

Specifically, "Verified" requires: (1)(a) that each customer submit a government identification, or (b) that the name, address, and date of birth provided by the customer are compared with information obtained from official government records or similar independent, competent, and reliable data sources, and (2) for the sale of Electric Tobacconist Products only, that the billing address on the method of payment matches the shipping address for that order.

III. CONDUCT PROVISIONS

Promotional Activities

11. In connection with marketing or sales activities in North Carolina or directed at consumers in North Carolina, Electric Tobacconist shall not:

- a. Use content (including but not limited to cartoons, caricatures, gifs, videos, images, vape tricks, phrases, drawings, or photographs) that, in the exercise of reasonable diligence by Electric Tobacconist, is known or believed by Electric Tobacconist to appeal to, or to be likely to appeal to,

Underage Individuals in any marketing or advertising materials for Electric Tobacconist Products in North Carolina; provided that Electric Tobacconist may reproduce on its website, and email to those who have been age-verified in accordance with this Consent Judgment, images of products (including packaging and labels) for products that it sells, so long as (1) the images are of products that are not offered for sale in North Carolina or (2) with respect to products that are offered for sale in North Carolina, (a) the images do not, on their face, appeal to Underage Individuals and (b) those images, in the exercise of reasonable diligence, are not known or believed by Electric Tobacconist to appeal to Underage Individuals.

- b. Use marketing or advertising for Electric Tobacconist Products within North Carolina that, in the exercise of reasonable diligence by Electric Tobacconist, is known or believed by Electric Tobacconist to appeal to, or to be likely to appeal to, Underage Individuals provided that Electric Tobacconist may reproduce on its website, and email to those who have been age-verified in accordance with this Consent Judgment, images of products (including packaging and labels) for products that it sells, so long as (1) the images are of products that are not offered for sale in North Carolina or (2) with respect to products that are offered for sale in North Carolina, (a) the images do not, on their face, appeal to Underage Individuals and (b) those images, in the exercise of reasonable diligence,

are not known or believed by Electric Tobacconist to appeal to Underage Individuals.

- c. Publish any marketing or advertising material for Electric Tobacconist Products on any Social Media Platform, provided that Electric Tobacconist shall be permitted to use any Social Media Platform for which, according to data sources generally considered by the industry to be competent and reliable, 85% or more of the individuals comprising the audience of that Social Media Platform are not Underage Individuals, for non-promotional communications including about governmental restrictions on Electric Tobacconist and the e-cigarette industry (including court orders), Electric Tobacconist practices and procedures, disruption in supply-chains, age-verification practices that are in accordance with this Consent Judgment, and shipping policies and costs. A generic description of Electric Tobacconist's business as a retailer of ENDS products that is otherwise in conformance with this Consent Judgment shall not violate this Paragraph 11(c).
- d. Retain or encourage individuals or third parties, through payment or other consideration (including non-monetary consideration or discounted or free product), to promote Electric Tobacconist Products on an individual's personal account, or any account controlled in whole or in part by that individual, on any Social Media Platform

- e. Retain or encourage individuals or third parties, through payment or other consideration (including non-monetary consideration or discounted or free product), to promote Electric Tobacconist Products:
 - i. On any Social Media Platform, or
 - ii. In person in North Carolina, unless the operator of the location of the in-person promotion represents to Electric Tobacconist that in connection with such promotion it will undertake reasonable industry standard measures to prohibit access by Underage Individuals and Electric Tobacconist has a good-faith belief that the operator is adhering to such representation.
- f. Create, advertise, or market any hashtags related to any Electric Tobacconist brand for use on any Social Media Platform.
- g. Provide Electric Tobacconist Products in quantity configurations that, when sold, are at virtually no cost to consumers residing within North Carolina.
- h. Send direct-to-consumer marketing materials for Electric Tobacconist Products to any individuals residing within North Carolina who are not Verified.
- i. Include individuals residing within North Carolina who are not Verified on Electric Tobacconist's marketing distribution lists for Electric Tobacconist Products.
- j. Use any individual under the age of thirty-five (35) in any marketing or advertising materials for Electric Tobacconist Products.

- k. Market or advertise Electric Tobacconist Products in Advertising Channels to consumers in North Carolina unless, according to data sources generally considered by the industry to be competent and reliable, 85% or more of the individuals comprising the audience of the Advertising Channel are not Underage Individuals. This provision does not apply to marketing or advertising on any online website that either requires an individual residing in North Carolina to confirm they are not an Underage Individual, or that requires an individual residing in North Carolina to agree to be Verified, on the website's splash page before being able to further access the website.

12. Electric Tobacconist shall take reasonable efforts to monitor Social Media Platforms to identify content that: (1) encourages or promotes Underage Individuals to purchase specifically from Electric Tobacconist any Electric Tobacconist Products; (2) encourages or promotes anyone to purchase specifically from Electric Tobacconist any Electric Tobacconist Product through the use of content that would otherwise be impermissible by Electric Tobacconist under the terms of this Consent Judgment if such content had been used by Electric Tobacconist directly. In determining whether these monitoring efforts are reasonable, consideration shall be given to whether the social media content includes an express reference to "Electric Tobacconist," "electrictobacconist.com" or any logo or trademark owned by Electric Tobacconist. Electric Tobacconist shall take reasonable steps to request the removal of any content posted by a third-party that falls within the scope of this Paragraph. . This Paragraph does not impose any obligation on Electric Tobacconist to monitor how a competitor (i.e., another retailer) promotes or offers any products for sale, even if the competitor offers for sale

the same brand of vaping product as Electric Tobacconist. The Parties agree that compliance with this Paragraph does not create any liability for Electric Tobacconist for content posted by a third party or for the failure of a third party to remove posted content after being requested by Electric Tobacconist. Electric Tobacconist shall maintain records sufficient to document its compliance with this Paragraph.

13. Electric Tobacconist shall not place or cause to be placed Outdoor Advertising at any location that at the time of the placement, or renewal of the placement, of the Outdoor Advertising is within 1,000 feet of any elementary, middle, or high school or public playground in North Carolina.

14. Electric Tobacconist shall not place or cause to be placed any marketing or advertising materials in public transportation facilities in North Carolina, including, but not limited to, public buses or bus stations, public trains or train stations, and airports.

Sponsorships & Youth Education

15. Electric Tobacconist shall not sponsor any sports, entertainment (including, but not limited to, musical, artistic, social, or cultural), or charity events held in North Carolina; provided that:

- a. Electric Tobacconist may provide financial support to non-profit or charitable entities, and
- b. Electric Tobacconist may sponsor and/or provide financial support for charity events in North Carolina so long as:
 - i. Electric Tobacconist does not require Electric Tobacconist Products branding to be displayed at the event,

- ii. Electric Tobacconist does not reference the event (or any individual's involvement in such event) in any marketing or advertising activities, and
- iii. Electric Tobacconist does not promote Electric Tobacconist products at the event and does not provide payment or consideration of any kind to any individual to promote Electric Tobacconist Products at the event.

16. Without express prior permission from the North Carolina Attorney General's Office, Electric Tobacconist shall not (1) directly fund or operate any youth education campaigns or youth prevention activities in North Carolina, or (2) provide materials on youth education programs or events. For the purpose of this Paragraph, permission shall be deemed granted if the North Carolina Attorney General does not respond in writing to Electric Tobacconist's request for permission within thirty (30) days from the date of the request.

Internet Sales

17. Electric Tobacconist shall not offer, market, sell, distribute, deliver, or in any manner provide Electric Tobacconist Products in any flavors other than tobacco in North Carolina through Electric Tobacconist Owned Websites or other online sales portal to customers (including, but not limited to, distributors, wholesalers, or retailers) unless and until the FDA authorizes an Electric Tobacconist Product to be marketed and sold in flavors other than tobacco.

18. Unless such flavored product has received FDA authorization permitting its marketing and sale, if Electric Tobacconist offers, markets, sells, distributes, delivers or in any manner provides Electric Tobacconist Products in flavors other than tobacco to consumers

outside North Carolina through Electric Tobacconist Owned Websites or other online sales portal to customers (including, but not limited to, distributors, wholesalers, or retailers), Electric Tobacconist must state plainly and noticeably on every webpage, posting or email on or in which it offers or markets these non-tobacco-flavored products that they are not available to consumers in North Carolina.

19. Electric Tobacconist shall not sell Electric Tobacconist Products to Underage Individuals in violation of federal or North Carolina law.

20. Electric Tobacconist shall not offer, sell, deliver, or in any manner directly provide Electric Tobacconist Products to any consumers within North Carolina who are not verified in a manner consistent with North Carolina statutory requirements, which are currently set forth in N.C. Gen. Stat. § 14-313(b) – (b2).

21. In furtherance of this:

- a. For all sales of Electric Tobacconist Products to North Carolina residents on an Electric Tobacconist Owned Website, no online sales shall be made to an individual who is not Verified.
- b. For all sales of Electric Tobacconist Products to North Carolina residents on an Electric Tobacconist Owned Website, all payments must be made by credit card only. No money order, cryptocurrency payments, or cash payments may be used.
- c. For all sales of Electric Tobacconist Products to North Carolina residents on an Electric Tobacconist Owned Website, Electric Tobacconist shall continue to recommend to credit card companies (through Electric Tobacconist's third-party payment gateways or processors) that the words

"TOBACCO PRODUCT" be printed on the consumer's credit card statement.

- d. Electric Tobacconist shall implement a process for placing a phone call after 5:00 pm ET to individuals who purchase Electric Tobacconist Products from an Electric Tobacconist Owned Website within the preceding 24 hours of shipment to an address within North Carolina. Such phone calls will inform the individual of the recently placed order prior to shipping the product. The telephone call may be a person-to-person call or a recorded message. Electric Tobacconist is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

22. Electric Tobacconist shall limit sales to North Carolina residents of Electric Tobacconist Products on an Electric Tobacconist Owned Website to no more than two (2) Devices per month, ten (10) Devices per calendar year, and fifteen (15) Packs per month of any brand's e-liquid product, or 150 ml of bottled e-liquid product per month, for online sales.

23. Prior to distributing Electric Tobacconist Products to North Carolina residents through any consumer warranty program, Electric Tobacconist shall first confirm that the individual requesting the warranty replacement is Verified.

24. Prior to enrolling North Carolina residents in any auto-shipment program, Electric Tobacconist shall first confirm that the individual to be enrolled in the auto-shipment program is Verified.

25. On or before January 30th of each calendar year, Electric Tobacconist shall deliver a report to the North Carolina Attorney General and the Director of Tobacco Prevention of the

North Carolina Department of Health and Human Services' Division of Mental Health summarizing all attempted purchases from Electric Tobacconist of Electric Tobacconist Products by any Underage Individual during the preceding calendar year, including the name, North Carolina address, phone number, email address, date of birth provided to Electric Tobacconist by the Underage Individual, and Electric Tobacconist Products attempted to be purchased by each such Underage Individual. Electric Tobacconist will provide additional information about any of these attempted purchases by Underage Individuals upon request by the North Carolina Attorney General.

**Health Claims, Comparisons to Traditional Cigarettes, and
Nicotine Content and Disclosures**

26. Electric Tobacconist shall not make any Health Claims in marketing or advertising materials in North Carolina related to Electric Tobacconist Products, unless the FDA authorizes such claims or representations.

27. Electric Tobacconist shall not make any Therapeutic Claims in marketing or advertising materials in North Carolina related to Electric Tobacconist Products, unless the FDA authorizes such claims or representations.

28. Electric Tobacconist shall not make any claims or representations in marketing or advertising materials in North Carolina comparing the quantification of the amount of nicotine in Electric Tobacconist Products to that found in combustible cigarettes or any other ENDS, unless the FDA authorizes such claims or representations.

Monitoring and Compliance

29. Electric Tobacconist shall, after diligent inquiry, annually certify compliance with this Consent Judgment to the North Carolina Attorney General's Office on or before January 30th of each calendar year.

IV. MONETARY PAYMENT

30. Electric Tobacconist shall pay a total sum of \$275,000.00 to Plaintiff, subject to the following terms and conditions:

a. Timing of Installment Payments:

- i. Electric Tobacconist shall pay \$100,000 within 30 days of the Effective Date, and
- ii. The second installment of \$58,333.34 shall be paid on the second anniversary of the Effective Date;
- iii. The third installment of \$58,333.33 shall be paid on the third anniversary of the Effective Date; and
- iv. The fourth and final installment of \$58,333.33 shall be paid on the fourth anniversary of the Effective Date.

b. It is the intent of Plaintiff and Electric Tobacconist that the \$275,000.00 payment be used, to the maximum extent practicable, to fund ENDS Cessation Programs, ENDS Prevention Programs, ENDS Research, and to cover the costs of litigation of the Attorney General's Office.

c. The ENDS Cessation Programs, ENDS Education Programs, and ENDS Research funded pursuant to this Consent Judgment may not use any of the funding provided under this Consent Judgment directly or indirectly to disparage, or to support any Claims by any person or entity against, Electric Tobacconist, or other person or entity associated with Electric Tobacconist, including by using the funding to replace other funds reallocated to such uses.

31. For the avoidance of doubt, Electric Tobacconist shall have no obligation to fund ENDS Cessation Programs, ENDS Education Programs, ENDS Research, or the North Carolina Depository beyond making the payments described in Paragraph 30.

V. NOTICE

32. All notices required to be provided to a Party shall be sent electronically and by first class mail, postage pre-paid, as follows, unless a Party gives notice of a change to the other Party:

a. For Electric Tobacconist:

Bruce Gibson
CEO
The Electric Tobacconist
2555 55th Street
Suite 100
Boulder, CO 80301
bruce@electrictobacconist.com

With a copy to:

Agustin E. Rodriguez
Partner
Troutman Pepper Hamilton Sanders LLP
1001 Haxall Point
Richmond, VA 23219
agustin.rodriguez@troutman.com

b. For Plaintiff:

Kevin Anderson
Senior Deputy Attorney General
Director, Consumer Protection Division
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
kander@ncdoj.gov

VI. ENFORCEMENT

33. For the purposes of resolving disputes with respect to compliance with Section III of this Consent Judgment, should Plaintiff have a reasonable basis to believe that Electric Tobacconist has engaged in a practice that may have violated the terms of this Consent Judgment, Plaintiff shall notify Electric Tobacconist in writing of the specific objection, and identify with particularity the provision of this Consent Judgment that the practice appears to violate, and state with particularity Plaintiff's bases for believing a violation has occurred. The Parties agree to confer in good faith regarding the alleged violation and, absent exigent circumstances necessitating expedited action in less time, Electric Tobacconist shall have a reasonable period of not less than twenty-one (21) days to provide a written response to Plaintiff and/or a proposed resolution to cure the alleged violation. Plaintiff may then accept the explanation and/or proposed resolution, or may take action to enforce the terms of this Consent Judgment (which, for the avoidance of doubt, shall remain in full force and effect). Plaintiff shall not unreasonably withhold a determination that Electric Tobacconist has cured the alleged violation.

34. Notwithstanding Paragraph 33, Plaintiff may take any action if it reasonably determines that, because of the specific practice, a threat to the health or safety of the public requires immediate action.

VII. RELEASE

35. Releasors hereby release and forever discharge the Released Parties from any and all Claims that Plaintiff has or could have asserted based on, arising out of, or in any way related to the Covered Conduct prior to the Effective Date, including, without limitation, any and all Claims that Plaintiff has or could have asserted in the Action ("Released Claims"); provided,

however, that the Released Claims shall not include any Claims to enforce the terms of this Consent Judgment.

36. The release in Paragraph 35 is intended by the Parties to be broad and shall be interpreted so as to give the Released Parties the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the State and the Attorney General to release claims. This Consent Judgment shall be a complete bar to any Released Claims.

37. Notwithstanding any term of this Consent Judgment, any and all of the following forms of liability are specifically reserved and not released under Paragraph 35:

- a. Any criminal liability.
- b. Any Claims by any Releasor as an investor for liability for state or federal securities violations.
- c. Any liability for state or federal tax violations.
- d. Any Claims (1) for conduct after the Effective Date, other than continuing to sell Electric Tobacconist Products in a manner consistent with North Carolina law and this Consent Judgment, (2) for conduct that is not Covered Conduct, or (3) against any parties who are not Released Parties.

VIII. FINAL JUDGMENT

38. Final judgment is hereby entered on all claims in the Action.

39. All motions in the Action not subject to a previously entered written order are hereby deemed withdrawn.

40. Each Party shall bear its own costs except as expressly set forth herein.

IX. MISCELLANEOUS

41. **Term:** The term of Section III shall be as follows:

- a. The provisions of Paragraphs 11(a), 11(b), 17, 19–20, 26–28 shall not expire.
- b. The remaining provisions of Section III of this Consent Judgment shall expire December 31, 2027.
- c. In interpreting and enforcing the provisions of Section III of this Consent Judgment, the State will not take the position that any generally applicable North Carolina or federal law or regulation requires conduct by Electric Tobacconist different than the conduct the State requires from any manufacturer or other seller of ENDS products.

42. **Denial and No Admission:** Electric Tobacconist denies it and/or its employees, officers, directors, subsidiaries, founders, and/or owners have violated any statute, regulation, decision, or other source of law in connection with the Covered Conduct. The Parties are entering into this Consent Judgment for the purpose of compromising and to avoid the time, expense, burden, and uncertainty associated with continuing litigation, and to address the Plaintiff's concerns with Electric Tobacconist's historical business practices with respect to Electric Tobacconist Products. It is expressly agreed that this Consent Judgment is not admissible in any proceeding (except in a dispute between Plaintiff and Electric Tobacconist regarding compliance with this Consent Judgment), and it is also expressly agreed and understood that nothing contained in this Consent Judgment may be taken as or construed to be an admission or concession of any liability, wrongdoing, or violation of any source of law, or of any other matter of fact or law. This Consent Judgment is not intended to be used or admissible

in any unrelated administrative, civil, or criminal proceeding. Electric Tobacconist does not waive any defenses it may raise elsewhere in other litigation or matters.

43. Private Action: This Consent Judgment shall not confer any rights upon, and is not enforceable by, any persons or entities besides Plaintiff and the Released Parties. Plaintiff may not assign or otherwise convey any right to enforce any provision of this Consent Judgment.

44. Conflict with Other Laws: Nothing in this Consent Judgment shall impose an obligation on Electric Tobacconist that conflicts with Electric Tobacconist's obligations under federal, state, or local law, rule, regulation, or guidance. In the event there is a conflict between this Consent Judgment and the requirements of federal, state, or local laws, such that Electric Tobacconist cannot comply with this Consent Judgment without violating these requirements, Electric Tobacconist shall document such conflicts and notify Plaintiff that it intends to comply with the requirements to the extent necessary to eliminate the conflict. Within thirty (30) days after receipt of a notification from Electric Tobacconist referenced above, Plaintiff may request a meeting to discuss the steps Electric Tobacconist has implemented to resolve the conflict, and Electric Tobacconist shall comply with any such reasonable request.

45. The provisions of this Consent Judgment are applicable only to actions taken (or omitted to be taken) in North Carolina or directed at North Carolina consumers. For the avoidance of doubt, the marketing, advertising, or sale of Electric Tobacconist Products intended solely for consumers outside the United States shall not be deemed actions taken (or omitted to be taken) in North Carolina or directed at North Carolina Consumers.

46. This Consent Judgment applies only to Electric Tobacconist in its corporate capacity and acting through its respective successors and assigns, directors, officers, employees, agents, subsidiaries, divisions, or other internal organizational units of any kind or any other

entities acting in concert or participation with them. The remedies, penalties, and sanctions that may be imposed or assessed in connection with a violation of this Consent Judgment (or any order issued in connection herewith) shall only apply to Electric Tobacconist, and shall not be imposed or assessed against any employee, officer, or director of Electric Tobacconist, or against any other person or entity as a consequence of such violation, and there shall be no jurisdiction under this Consent Judgment to do so.

47. This Consent Judgment is binding on the Parties' successors and assigns.

48. Except as expressly set forth herein, this Consent Judgment shall not be modified (by this Court, by any other court, or by any other means) without the consent of Plaintiff and Electric Tobacconist.

49. Calculation of time limitations will run from the Effective Date and be based on calendar days, except to the extent otherwise provided in this Consent Judgment. .

50. Electric Tobacconist represents that, as of the Effective Date, it is not insolvent and intends to meet the injunctive and monetary obligations set forth in this Consent Judgment.

51. This Consent Judgment shall not be construed or used as a waiver or any limitation of any defense otherwise available to Electric Tobacconist in any pending or future legal, regulatory, or administrative action or proceeding, or Electric Tobacconist's right to defend itself from, or make any arguments in, any individual or class claims or suits.

52. Except to the extent as otherwise provided in this Consent Judgment, including but not limited to Paragraph 31, each party shall bear its own attorneys' fees and costs arising out of, related to, or in connection with entry of this Consent Judgment.

53. Except for the provisions in Section VII, if any provision of this Consent Judgment shall, for any reason, be held illegal, invalid, or unenforceable, in whole or in part,

such illegality, invalidity, or unenforceability shall not affect any other provision or clause of this Consent Judgment and this Consent Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable provision, in whole or in part, had not been contained herein.

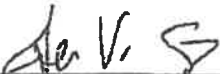
This the 18th day of April, 2022.

A handwritten signature in black ink, appearing to be "C. B. Smith", written over a horizontal line.

SUPERIOR COURT JUDGE PRESIDING

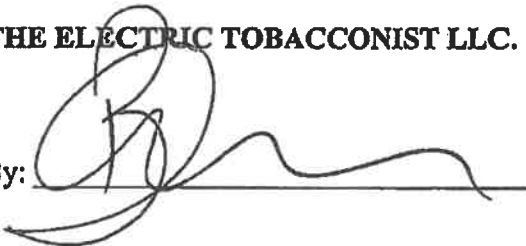
CONSENTED TO BY:

**THE STATE OF NORTH CAROLINA, BY AND THROUGH ITS ATTORNEY
GENERAL, JOSHUA H. STEIN**

By: 
Jessica V. Sutton
Special Deputy Attorney General

Date: 4/12/22


THE ELECTRIC TOBACCONIST LLC.

By: 

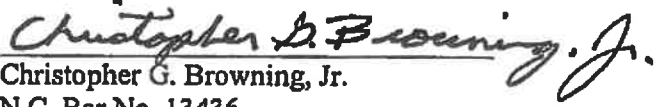
Date: 3/29/22

REVIEWED AND APPROVED BY:

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chris.browning@troutman.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing Order in the above captioned action on all parties by depositing a copy hereof in a postpaid wrapper in a post office depository under the exclusive care and custody of the United Postal Service, addressed as follows:

D'ARRUDA, KIMBERLEY, A
P.O. BOX 629
RALEIGH, NC 27602

BROWNING, CHRISTOPHER, G, JR
805 CHURCH AT NORTH HILLS ST., STE. 1200
RALEIGH, NC 27609.

This the 17th day of April, 2022.

Simon Mack
ASSISTANT DEPUTY CLERK OF SUPERIOR COURT