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9 ACE SMOKE SHOP
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CA SMOKE & VAPE
ASSOCIATION, INC., D/B/A CARR,
and ACE SMOKE SHOP,

Plaintiffs,

v.

COUNTY OF LOS ANGELES, and
HILDA L. SOLIS, MARK RIDLEY-
THOMAS, SHEILA KUEHL,
JANICE HAHN, and KATHRYN
BARGER, EACH IN HIS OR HER
OFFICIAL CAPACITY AS A
MEMBER OF THE BOARD OF
SUPERVISORS,

Defendants.

Case No.: 2:20-cv-4065

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs, CA SMOKE & VAPE ASSOCIATION, INC., D/B/A CARR
2 (“CARR”), and one of its members, ACE SMOKE SHOP, a partnership, (“ACE”
3 together with CARR, collectively, “Plaintiffs”), by and through their undersigned
4 counsel, submit this Complaint for Declaratory Judgment and Injunctive relief
5 against Defendants – County of Los Angeles, The Board of Supervisors of the
6 County of Los Angeles, (“the Board”) and the individual members of the Board of
7 Supervisors, each in his or her official capacity (all Defendants collectively referred
8 to as “LA County”) – and allege as follows:
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12 INTRODUCTION

13 1. Plaintiffs, seek to enjoin the County of Los Angeles from enforcing its
14 recently enacted ordinance, amending and adding various sections to Title 7 –
15 Business Licenses, and Title 11 – Health and Safety, of the Los Angeles County
16 Code (the “Ordinance,” attached hereto as Exhibit 1), requiring businesses to
17 obtain two additional licenses, imposing tobacco product standards, and prohibiting
18 the sale of and the possession with intent to sell “flavored tobacco products,”
19 including menthol, within the County of Los Angeles. *Id.* The great majority of
20 vapor products and devices sold in LA County would be prohibited under this
21 Ordinance. Nader Decl. ¶¶ 9-10.¹
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27 ¹ The declarations of Nader Farargi (“Nader Decl.”), Samir Elmoghrabi (“Samir Decl.”),
28 Jacob Grair (“Jacob Decl.”), and John Dunham (“Dunham Decl.”) are filed concurrently
with Plaintiff’s Complaint.

1 2. LA County claims the purpose of the Ordinance is to curb tobacco use
2 amongst minors and to protect the public health from vaping illnesses. Yet the
3 Ordinance exempts vaping products that contain tetrahydrocannabinol (“THC”),
4 which, according to the Food and Drug Association (“FDA”), is the primary source
5 linked to the outbreak of recent illnesses.² Similarly, the Ordinance makes no
6 distinction between the black-market vaping products at the center of that outbreak,
7 and the FDA regulated products produced by legitimate manufacturers.³ Instead, the
8 Ordinance implements a blanket prohibition on the sale of flavored tobacco
9 products to all persons, threatening to destroy an entire industry and the livelihoods
10 of Los Angeles County residents.

11 3. The Ordinance defines “characterizing flavor” as “a taste or aroma,
12 other than the taste or aroma of tobacco, imparted either prior to or during
13 consumption of a tobacco product or any byproduct produced by the tobacco
14 product, including, but not limited to, tastes or aromas relating to menthol, mint,
15 wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic
16 beverage, herb, or spice. Characterizing flavor includes flavor in any form, mixed
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25 ² FDA, *Lung Illnesses Associated with Use of Vaping Products* (revised April. 13, 2020),
26 [https://www.fda.gov/news-events/public-health-focus/lung-illnesses-associated-use-](https://www.fda.gov/news-events/public-health-focus/lung-illnesses-associated-use-vaping-products)
27 [vaping-products](https://www.fda.gov/news-events/public-health-focus/lung-illnesses-associated-use-vaping-products).

28 ³ Lena Sun, *What we know about mysterious vaping linked illnesses*, The Washington Post
(January 10, 2020), available at
<[https://www.washingtonpost.com/health/2019/09/07/what-we-know-about-mysterious-](https://www.washingtonpost.com/health/2019/09/07/what-we-know-about-mysterious-vaping-linked-illnesses-deaths/)
[vaping-linked-illnesses-deaths/](https://www.washingtonpost.com/health/2019/09/07/what-we-know-about-mysterious-vaping-linked-illnesses-deaths/)>.

1 with or otherwise added to any tobacco product or nicotine delivery device,
2 including electronic smoking devices.” Gov. Code, § 11.35.020(c).

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4 4. Plaintiffs seek relief on the grounds that the federal statutory law
5 preempts the Ordinance under the Supremacy Clause of the United States
6 Constitution.

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8 5. Plaintiffs also seek relief on the grounds that the Ordinance is invalid
9 under the Fourteenth Amendment of the Constitution.

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11 6. Plaintiffs will be irreparably harmed by the Ordinance’s imminent
12 enforcement, as they will be forced to shut down their business operations entirely.

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14 7. The Ordinance will destroy Los Angeles County’s 48 million dollar
15 nicotine vapor product industry, and damage the livelihoods of the 450 workers that
16 it employs.

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18 8. The Ordinance will likely precipitate a public-health crisis, as vapor-
19 products users turn either to combustible cigarettes or to black-market sources to
20 obtain vapor products.

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22 9. The balance of the equities favors Plaintiffs, as they merely seek to
23 preserve the status quo while Defendants pursue stricter regulation of “flavored”
24 tobacco products.

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1 **JURISDICTION AND VENUE**

2 10. This action arises under and pursuant to the Constitution of the United
3 States, including the Supremacy Clause, U.S. Const., art. VI, § 3; U.S. Const., art.
4 XIV § 1; and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988.
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6 11. Because this Action arises under the Constitution and laws of the
7 United States, this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1367.
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9 12. This Court is authorized to grant declaratory and injunctive relief
10 pursuant to 28 U.S.C. §§ 2201 and 2202.
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12 13. Venue for this Complaint is proper in the Central District of California
13 pursuant to 28 U.S.C. § 1391 because the events giving rise to the suit occurred in
14 this District, the Defendants reside in this District, the Defendants adopted Los
15 Angeles County Code sections 7.83 and 11.35 in this District, and Defendants seek
16 to enforce sections 7.83 and 11.35 against Plaintiffs in this District.
17

18 **PARTIES**

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20 14. CARR is a local non-profit industry trade association, comprised of
21 wholesalers, manufacturers of nicotine-containing flavored e-liquids, and primarily
22 brick-and-mortar retailers. CARR has members located in the County of Los
23 Angeles, that are subject to the recently enacted Ordinance, and sell, *inter alia*,
24 nicotine products containing flavored e-liquids, and other tobacco products. The
25 great majority of Los Angeles County CARR members have an inventory
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