

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CLAY

SEVENTH JUDICIAL DISTRICT

Case Type: Civil

Minnesota Board of Pharmacy,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**SUMMONS**Northland Vapor Moorhead, LLC, Northland  
Vapor Bemidji, LLC, and Wonky Confections,  
LLC,

Defendants.

**THIS SUMMONS IS DIRECTED TO: ABOVE-NAMED DEFENDANTS, NORTHLAND VAPOR MOORHEAD, LLC, NORTHLAND VAPOR BEMIDJI, LLC, AND WONKY CONFECTIONS, LLC, THROUGH THEIR REGISTERED AGENT/MANAGER, BRETT ERPELDING, 115 8TH STREET SOUTH, MOORHEAD, MN 56560-2808.**

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a written response called an Answer within 21 days of the date on which you received this Summons pursuant to Minn. R. Civ. P. 12.01. You must send a copy of your Answer to the person who signed this Summons located at:

Hans A. Anderson, Assistant Attorney General  
Minnesota Attorney General's Office  
445 Minnesota Street, Suite 1400  
St. Paul, MN, 55101-2131

**3. YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

**4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

**5. LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

**6. ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the

Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: December 5, 2022

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Hans A. Anderson  
HANS A. ANDERSON  
Assistant Attorney General  
Atty. Reg. No. 0390994

NICHOLAS LIENESCH  
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ATTORNEYS FOR PLAINTIFF  
MINNESOTA BOARD OF PHARMACY

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CLAY

SEVENTH JUDICIAL DISTRICT

Case Type: Civil

Minnesota Board of Pharmacy,

Court File No. \_\_\_\_\_

Plaintiff,

vs.

**COMPLAINT**Northland Vapor Moorhead, LLC, Northland  
Vapor Bemidji, LLC, and Wonky Confections,  
LLC,

Defendants.

Plaintiff, the Minnesota Board of Pharmacy (“Board”), for its Complaint against Defendants, Northland Vapor Moorhead, LLC, Northland Vapor Bemidji, LLC, and Wonky Confections, LLC, (“Defendants”), hereby states and alleges, as follows:

### INTRODUCTION

1. The Board brings this lawsuit against Defendants for an order of condemnation and destruction of adulterated edible cannabinoid products and for an order enjoining Defendants from violating Minnesota’s edible cannabinoid laws.

### PARTIES

2. The Board of Pharmacy is a state agency, empowered under Minnesota Statutes section 151.72 to regulate the sale of cannabinoids derived from hemp, including edible cannabinoid products, in the State of Minnesota. The Board is authorized to embargo and seek the destruction of adulterated and/or misbranded cannabinoid products and to seek an order enjoining

violations of Minnesota's edible cannabinoid laws. *See* Minn. Stat. §§ 151.38, 151.72, subd. 6, and 214.11.

3. Defendants are manufacturers and retailers of edible cannabinoid products. Defendants are incorporated to do business in the State of Minnesota and have their business address located at 115 8th Street South, Moorhead, Minnesota; their retail sites located at 115 8th Street South, Moorhead, Minnesota and 1500 Bemidji Avenue North, Bemidji, Minnesota; and their manufacturing warehouse facility located at 2721 20th Avenue South, Moorhead, Minnesota.

### **JURISDICTION**

4. This Court has jurisdiction over the subject matter of this action pursuant to Minnesota Statutes sections 151.38, 151.72, and 214.11.

5. This Court has personal jurisdiction over Defendants because Defendants have transacted business in Minnesota and have committed acts in Minnesota.

### **VENUE**

6. Venue in Clay County is proper under Minnesota Statutes section 542.09 because the cause of action arose in Clay County, Defendants do business in Clay County, and Defendants are located in Clay County.

### **FACTUAL BACKGROUND**

7. Defendants are in the business of manufacturing and selling edible cannabinoid products in the State of Minnesota.

8. Under Minnesota Statutes section 151.72, subdivision 3, an edible cannabinoid product “may be sold for human or animal consumption only if all of the requirements of this section are met” and only if the product “does not contain more than 0.3 percent of any tetrahydrocannabinol” [“THC”].

9. Under Minnesota Statutes section 151.72, subdivision 5a(b)(1) and (2), an edible cannabinoid product sold in Minnesota must not “bear the likeness or contain cartoon-like characteristics of a real or fictional person, animal or fruit that appeals to children” and must not “be modeled after a brand of products primarily consumed by or marketed to children.”

10. Under Minnesota Statutes section 151.72, subdivision 5a(f), an edible cannabinoid product sold in Minnesota must not “contain more than five milligrams of any [THC] in a single serving, or more than a total of 50 milligrams of any [THC] per package.”

11. From at least July 1, 2022 to the date of this Complaint, Defendants have been selling edible cannabinoid products on their websites, *www.deathbygummybears.com* and *www.wonkyweeds.com*, including edible cannabinoid products that bear the likeness or characteristics of a fictional bear and that are modeled after common gummy bear candies produced by brands such as Haribo, Smartsweets, and Albenese, that are primarily consumed by and marketed to children, in violation of Minnesota Statutes section 151.72, subdivision 5a(b)(1) and (2). During this same time, Defendants have also been selling edible cannabinoid products on their websites that contain THC in excess of five milligrams per serving and in excess of 50 milligrams per package, in violation of Minnesota Statutes section 151.72, subdivision 5a(f).

12. Under Minnesota Statutes section 151.72, subdivision 4(a), a manufacturer of an edible cannabinoid product sold in Minnesota must “submit representative samples of the product to an independent, accredited laboratory” for testing to confirm the product, among other things, “does not contain more than trace amounts of any mold, residual solvents, pesticides, fertilizers, or heavy metals” and “does not contain more than 0.3 percent of any [THC].” Minnesota Statutes section 151.72, subdivision 4(b), provides that “[u]pon request of the board, the manufacturer of the product must provide the board with the results of the testing required in this section.”

13. On October 28, 2022 and November 10, 2022, the Board requested from Defendants their most recent and current testing results, by way of Certificates of Analysis, for each product offered for sale on Defendants' Death by Gummy Bears website. As of the date of this Complaint, Defendants have failed to provide the Board with these requested testing results, in violation of Minnesota Statutes section 151.72, subdivision 4(b).

14. Defendants' Death by Gummy Bears website contains links to 12 Certificates of Analysis for various batches of Defendants' edible cannabinoid products. All 12 of the Certificates of Analysis show that more than 0.3 percent of THC was found in the products tested and nine of the 12 show that the products were not tested for the presence of residual solvents, pesticides, and heavy metals, in violation of Minnesota Statutes section 151.72, subdivisions 3 and 4(a).

15. On November 8 and 9, 2022, the Board, in coordination with the U.S. Food and Drug Administration ("FDA"), conducted a joint investigation and site visit of Defendants' manufacturing warehouse facility at 2721 20th Avenue South, Moorhead, Minnesota. During this site visit, the Board's surveyor found edible cannabinoid products that matched those for sale on Defendants' websites that violated Minnesota Statutes section 151.72, subdivisions 3, 4(a) and (b), 5a(b)(1) and (2), and 5a(f), including the following:

a. Approximately 28,896 packages of Death by Gummy Bears, containing 25 individual gummy bears at 100 milligrams of THC per serving for a total of 2,500 milligrams per package;

b. Approximately 112,710 packages of Death by Gummy Bears, containing ten individual gummy bears at 100 milligrams of THC per serving for a total of 1,000 milligrams per package;

c. Approximately 2,400 packages of Wonky Weeds Gummies, containing ten individual gummies at 30 milligrams of THC per serving for a total of 300 milligrams per package; and

d. Approximately 2,310 bottles of Wonky Weeds THC Syrup, containing 700 milligrams of THC per bottle.

16. During the investigation and site visit on November 8, 2022, Defendants' President Brad Erpelding acknowledged to the Board's surveyor that Defendants manufacture and sell edible cannabinoid products that are not compliant with Minnesota law but claimed that Defendants sold only Minnesota-compliant products in Minnesota. To investigate this claim, the Board's surveyor visited Defendants' retail site at 115 8<sup>th</sup> Street South, Moorhead, Minnesota that same day. During this site visit, the Board's surveyor found that Defendants were in fact selling in Minnesota the non-compliant edible cannabinoid products listed in Paragraph 15 above. These non-compliant products, as well as other non-compliant products, were on display for sale with customers in the store actively purchasing products.

17. Under Minnesota Statutes section 151.72, subdivision 6(a)(6), an edible cannabinoid product is considered an adulterated drug if "it contains more than 0.3 percent of any [THC] or, if the product is an edible cannabinoid product, an amount of [THC] that exceeds the limits established in subdivision 5a, paragraph (f)."

18. Accordingly, the Board's surveyor found, and had probable cause to find, that Defendants' edible cannabinoid products listed in Paragraph 15 above constituted adulterated drug. Pursuant to Minnesota Statutes section 151.38(1), the Board's surveyor, a duly authorized agent of the Board, embargoed this non-compliant product.



**COUNT I****CONDEMNATION OF ADULTERATED DRUGS UNDER MINN. STAT. § 151.38**

17. The Board re-alleges and incorporates by reference all prior paragraphs of this Complaint.

18. Minnesota Statutes section 151.38(2) provides that “[w]hen an embargoed article has been found by [an agent of the board] to be adulterated . . . the board shall, within 30 days, petition the district court in whose jurisdiction the article is embargoed for an order of condemnation.”

19. The Board finds, and has probable cause to find, that the embargoed edible cannabinoid products at Defendants’ Moorhead, Minnesota warehouse are adulterated. Accordingly, the Board petitions the Court for an order of condemnation.

**COUNT II****DESTRUCTION OF ADULTERATED DRUGS UNDER MINN. STAT. § 151.38**

20. The Board re-alleges and incorporates by reference all prior paragraphs of this Complaint.

21. Minnesota Statutes section 151.38(3) provides that “if the court finds that an embargoed article is adulterated . . . the article shall be destroyed . . . .”

22. Based on the facts set forth in the preceding paragraphs, the Board seeks a finding from this Court that the embargoed edible cannabinoid products at Defendants' Moorhead, Minnesota warehouse are adulterated and an order that the products be destroyed.

### **COUNT III**

#### **PAYMENT OF EXPENSES, COSTS, AND FEES UNDER MINN. STAT. § 151.38**

23. The Board re-alleges and incorporates by reference all prior paragraphs of this Complaint.

24. Minnesota Statutes section 151.38(3) provides that embargoed articles found to be adulterated "shall be destroyed at the expense of the claimant thereof, who shall also pay all court costs and fees, storage and other proper expenses."

25. Based on the facts set forth in the preceding paragraphs, the Board requests this Court order Defendants to pay any and all expenses associated with destroying the embargoed edible cannabinoid products at Defendants' warehouse, any and all court costs and fees, and any and all costs and fees associated with storage and other proper expenses.

### **COUNT IV**

#### **INJUNCTIVE RELIEF UNDER MINN. STAT. § 214.11**

23. The Board re-alleges and incorporates by reference all prior paragraphs of this Complaint.

24. Minnesota Statutes section 214.11 provides that the Board may bring an action for "injunctive relief to restrain any unauthorized practice or violation or threatened violation of any statute or rule which the board is empowered to regulate or enforce."

25. Based on the facts set forth in the preceding paragraphs, the Board requests this Court issue an order enjoining Defendants from violating Minnesota Statutes section 151.72,

including selling edible cannabinoid products without testing representative samples of the products to confirm they do not contain more than trace amounts of any mold, residual solvents, pesticides, fertilizers, or heavy metals or more than 0.3 percent of any THC, in violation of Minnesota Statutes section 151.72, subdivisions 3 and 4(a); from selling edible cannabinoid products without providing the Board with the results of the testing upon request, in violation of Minnesota Statutes section 151.72, subdivision 4(b); from selling edible cannabinoid products that bear the likeness or contain cartoon-like characteristics of a real or fictional person, animal, or fruit that appeals to children, in violation of Minnesota Statutes section 151.72, subdivision 5a(b)(1); from selling edible cannabinoid products that are modeled after a brand of products primarily consumed by or marketed to children, in violation of Minnesota Statutes section 151.72, subdivision 5a(b)(2); and from selling edible cannabinoid products that contain THC in excess of five milligrams per serving and in excess of 50 milligrams per package, in violation of Minnesota Statutes section 151.72, subdivision 5a(f).

#### **PRAYER FOR RELIEF**

WHEREFORE, the Board requests this Court award the following relief:

1. Ordering the condemnation of all edible cannabinoid products embargoed in Defendants' Moorhead, Minnesota warehouse;
2. Ordering the destruction of all edible cannabinoid products embargoed in Defendants' Moorhead, Minnesota warehouse;
3. Ordering Defendants to pay any and all expenses associated with destroying the edible cannabinoid products embargoed in Defendants' Moorhead, Minnesota warehouse, as well as any and all court costs, fees, and storage and other proper expenses as authorized by Minnesota Statutes section 151.38(3);

4. Ordering Defendants to provide the Board with the locations of any additional edible cannabinoid products in Defendants' possession that violate Minnesota Statutes section 151.72, including subdivisions 3, 4(a) and (b), 5a(b)(1) and (2), and 5a(f).

5. Enjoining Defendants from manufacturing and selling edible cannabinoid products that violate Minnesota Statutes section 151.72, including subdivisions 3, 4(a) and (b), 5a(b)(1) and (2), and 5a(f); and

6. Granting such further relief as provided for by law or equity, or as the Court deems appropriate and just.

Dated: December 5, 2022

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Hans A. Anderson  
HANS A. ANDERSON  
Assistant Attorney General  
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ATTORNEYS FOR PLAINTIFF  
MINNESOTA BOARD OF PHARMACY

**MINN. STAT. § 549.211****ACKNOWLEDGMENT**

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211.

Dated: December 5, 2022

Respectfully submitted,

KEITH ELLISON  
Attorney General  
State of Minnesota

/s/ Hans A. Anderson

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