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IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

AMERICAN CATALOG MAILERS ASSOCIATION,	)	Case No. __________
Plaintiff,	)	
v.	)	**COMPLAINT FOR DECLARATORY JUDGMENT**
JOSEPH W. TESTA, in his capacity as the Ohio Tax Commissioner, and the **OHIO DEPARTMENT OF TAXATION**,	)	
Defendants.	)	

Pursuant to R.C. 2721.03 and 42 U.S.C. § 1983, Plaintiff American Catalog Mailers Association ("ACMA") brings this Complaint for Declaratory Judgment against Defendant Joseph W. Testa, in his capacity as the Ohio Tax Commissioner ("Commissioner"), and against the Ohio Department of Taxation ("Department"), the agency charged with the enforcement of Ohio's sales and use tax laws. Plaintiff complains and alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment challenging the validity, enforceability, and constitutionality of the newly enacted provisions of R.C. 5741.01(I)(2)(h) and (i) (effective January 1, 2018) (the "Statute"), as interpreted by the Department in Information Release ST 2017-02 (Oct. 2017) ("ST 2017-02"). The Defendants intend to apply the provisions of the Statute in a manner that plainly violates federal law by: (a) exceeding the limitations on state authority to regulate interstate commerce under the dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3, as interpreted by the United States Supreme Court in *Quill v. North Dakota*, 504 U.S. 298 (1992); (b) discriminating against electronic commerce in contravention of the federal

Internet Tax Freedom Act, 47 U.S.C. § 151 (note) ("ITFA"); and (c) depriving out-of-state Internet vendors of their rights under the Due Process Clause, U.S. Const., amend. XIV, § 1.

2. As asserted in ST 2017-02, the Defendants plan to apply R.C. 5741.01(I)(2)(h) to require Internet vendors located outside of Ohio that "[use] in-state software," including "catalog applications downloaded onto the customer's computer or cell phone" and "html and java script coding used in displaying the seller's website on the customer's computer or cell phone" (so-called "In-state Software Nexus"), to collect and remit Ohio sales and use tax, provided that the seller has annual gross receipts in excess of $500,000 from transactions with Ohio customers.

3. The Defendants also intend to apply R.C. 5741.01(I)(2)(i) to require out-of-state Internet vendors that "enter into a contract with a provider of interconnected servers that accelerates the delivery of the seller's website to consumers" (a so-called "Provider CDN"), to collect and remit Ohio sales and use tax when the Provider CDN has servers in Ohio (so-called "Network Nexus"), provided that the seller has annual gross receipts in excess of $500,000 from transactions with Ohio customers.

4. The Defendants' theories of "In-state Software Nexus" and "Network Nexus," and their proposed enforcement of the Statute based on such theories, are unconstitutional and unlawful.

THE PARTIES

5. Plaintiff American Catalog Mailers Association ("ACMA") is incorporated in Washington, D.C. and is the leading trade association in the United States representing the interests of companies, individuals, and organizations engaged in and supporting catalog marketing. Certain of its members also market products via the Internet.

6. The Department is the agency responsible for administration of Ohio's sales and use tax laws. The Department issued ST 2017-02 and, together with the Commissioner, is responsible for the enforcement of the Statute.

7. Defendant Joseph W. Testa is the Ohio Tax Commissioner and head of the Department. Mr. Testa is named as a defendant in this action solely in his capacity as the Commissioner.

JURISDICTION AND VENUE

8. This Court has jurisdiction under the Declaratory Judgments statute, R.C 2721.03, which provides that "any person whose rights, status, or other legal relations are affected by … a statute … may have determined any question of construction or validity arising under … the statute … and obtain a declaration of rights, status, or other legal relations under it." *Id.* (ellipses added). The Court also has jurisdiction over the Plaintiff's claims asserted under 42 U.S.C. § 1983 and the ITFA.

9. Venue is proper in this Court pursuant to Ohio R. Civ. P. 3(B)(2) and (4) because the Defendants have their principal place of business in Franklin County.

STANDING

10. The ACMA has standing to bring this complaint on behalf of its members who are affected by the Statute.

11. The ACMA has at least one member that would be required to register, collect, and remit Ohio sales and use tax under the requirements of the Statute, as interpreted by the Defendants, despite the fact that the affected member(s) lack any physical presence in Ohio.

12. Protecting its members from state regulations that violate state and federal statutory and constitutional protections is an interest germane to the purpose of the ACMA.

13. Neither the claims asserted by the Plaintiff, nor the declaratory relief it seeks, require the participation of the individual members of the association in this lawsuit.

14. By pursuing declaratory relief in this action on behalf of its membership, Plaintiff forecloses what otherwise could be a number of actions filed by, or against, individual business and could result in multiple different cases raising the same legal arguments set forth in this Complaint.

BACKGROUND

Commerce Clause Under Quill

15. The United States Supreme Court, in *Quill*, held that sellers who do no more than communicate with customers in the State by mail, wire, or common carrier as a "part of a general interstate business" lack the necessary "substantial nexus" with a State for the State to require such out-of-state sellers to collect and remit the State's sales and use taxes. 504 U.S. at 307, 313-19.

16. The Court in *Quill* reaffirmed that in order for a State to have the authority under the "substantial nexus" standard of the Commerce Clause to require an out-of-state seller to collect or report the State's sales and use taxes, the seller must have a "physical presence" in the state. *Id.* at 314, 317-18.

17. The United States Supreme Court has not overruled, superseded, or limited its decision in *Quill*.

18. The physical presence requirement of *Quill* remains the law of the land under the United States Constitution. The States, and all state officials and agencies, including the Commissioner and the Department, are bound by *Quill*.

Internet Tax Freedom Act

19. The ITFA was enacted in 1998 and is codified as a note to 47 U.S.C. § 151.

20. As originally enacted, the ITFA imposed a moratorium on discriminatory taxation of electronic commerce. The law was subsequently extended on multiple occasions by Congress until it was made permanent in 2016.

21. The ITFA prohibits any state or political subdivision from imposing "discriminatory taxes on electronic commerce." ITFA §1101(a)(2).

22. The ITFA defines "electronic commerce" to mean, in pertinent part, "any transaction conducted over the Internet or through Internet access, comprising the sales, lease, license, offer or delivery of property, goods, services, or information, whether or not for consideration . . ." ITFA §1105(3).

23. Under the ITFA, a state tax requirement is a "discriminatory tax on electronic commerce" and therefore banned, if it "imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means" than via the Internet. ITFA § 1105(2)(iii).

24. The prohibition on discriminatory taxes on electronic commerce in the ITFA is intended to prohibit States and localities from using Internet-based contacts as a factor in determining whether an out-of-state business has substantial nexus with a taxing jurisdiction.

25. The ITFA bars any state law that would impose different collection obligations between Internet vendors, on the one hand, and other types of remote sellers, on the other hand.

26. One purpose of the ITFA is to ensure that the rules of *Quill*'s physical-presence test will continue to apply to electronic commerce just as they apply to mail-order and other non-electronic commerce, unless and until Congress decides to alter the *Quill* rule.

Ohio Sales and Use Tax

27. Ohio imposes a sales tax on the retail sale of certain tangible personal property and services and a corresponding use tax on their use within the State.

28. Under R.C. 5741.04 and 5741.17, a seller making sales at retail that has "substantial nexus with this state" must collect and remit Ohio use tax.

29. On June 30, 2017, Governor Kasich signed into law Am. Sub. H.B. No. 49, which included the provisions of the Statute. The Statute goes into effect on January 1, 2018.

30. The Statute provides, in pertinent part:

> "Substantial nexus with this state" is presumed to exist when the seller does any of the following:
>
> ***
>
> (h) Uses in-state software to sell or lease taxable tangible personal property or services to consumers, provided the seller has gross receipts in excess of five hundred thousand dollars in the current or preceding calendar year from the sale of tangible personal property for storage, use, or consumption in this state or from providing services the benefit of which is realized in this state.
>
> (i) Provides or enters into an agreement with another person to provide a content distribution network in this state to accelerate or enhance the delivery of the seller's web site to consumers, provided the seller has gross receipts in excess of five hundred thousand dollars in the current or preceding calendar year from the sale of tangible personal property for storage, use, or consumption in this state or from providing services the benefit of which is realized in this state.

R.C. 5741.01(I)(2)(h) & (i).

31. The Department issued ST 2017-02 in October 2017.

32. The purpose of ST 2012-02 is "to describe the nexus standards the Department of Taxation ('Department') will apply to determine whether an out-of-state seller is subject to

Ohio's use tax collection responsibility under the nexus provisions enacted in Am. Sub. H.B. 49 of the 132nd General Assembly." (Footnote omitted.)

33. With regard to "In-state Software Nexus" under R.C. 5741.01(I)(2)(h), ST 2012-02 provides the following explanation of how the Department will enforce the Statute:

> a large out-of-state seller (Seller A) that retails clothing to individual consumers through a website, also provides for the sale of the clothing through a catalog application which is downloaded onto the customer's computer or cell phone. The catalog application is software, as is the html and java script coding used in displaying the seller's website on the customer's computer or cell phone. It is the presence of this software owned by Seller A in Ohio that is significantly associated with Seller A's ability to establish and maintain its market and that meets the physical presence standard set forth in Quill. In 2017, Seller A had $2 million of gross receipts related to the sale of clothing to consumers in Ohio. Beginning January 1, 2018, it is presumed that Seller A has substantial nexus with Ohio and should register and begin collecting and remitting tax on purchases by Ohio consumers in 2018.

34. With regard to "Network Nexus" under R.C. 5741.01(I)(2)(i), ST 2012-02 provides the following explanation of how the Department will enforce the Statute:

> an out-of-state seller (Seller B) sells security services and enters into a contract with a provider of interconnected servers that accelerates the delivery of the seller's website to consumers (Provider CDN). Provider CDN has three servers in Ohio that it will utilize to provide security for uninterrupted service and enhance delivery of Seller B's website and/or web-based services to consumers in Ohio and surrounding states. Seller B also has $800,000 in sales of taxable security services to Ohio consumers in 2017. Beginning January 1, 2018, it is presumed that Seller B has substantial nexus with Ohio and should register and begin collecting and remitting tax on purchases by Ohio consumers in 2018.

35. The Statute thus sets forth provisions of prospective application, binding on numerous out-of-state Internet sellers that are potentially subject to the Statute.

COUNT ONE:
Declaratory Judgment Concerning HTML and Java Script Coding, For Violation of the Commerce Clause of the United States Constitution (R.C. 2721.03; U.S. Const., art I, § 8, cl. 3; 42 U.S.C. § 1983)

36. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

37. The Statute, as interpreted by the Defendants, provides that "In-state Software Nexus" for an out-of-state retailer arises as a result of html and java script coding stored on the computers and/or cellphones of consumers in Ohio and used to display the website of the retailer.

38. The Statute, as interpreted by the Defendants, runs afoul of the *Quill* physical presence standard. Under the Statute, an affected out-of-state retailer may be required to collect and remit Ohio sales and use tax based solely on the fact that html and java script coding used to display its website is stored on consumer's computers and/or cell phones in the state, so long as the retailer meets the $500,000 gross receipts threshold set out in the Statute. No physical presence of the retailer in the State is required.

39. The Commissioner is the state official responsible for implementation and enforcement of the new "In-state Software Nexus" theory under the Statute.

40. The Department is the state agency responsible for implementation and enforcement of the new "In-state Software Nexus" theory under the Statute.

41. The Statute, as interpreted by the Defendants with respect to html and java script coding, violates the Commerce Clause under *Quill.*

42. The Defendants lack the authority to disregard the Supreme Court's controlling precedent in *Quill.* As the Supreme Court has repeatedly made clear:

> We reaffirm that "if a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of

> decisions, [lower courts] should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions."

Agostini v. Felton, 521 U.S. 203, 237 (1997) (citing *Rodriquez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, (1989) (brackets added)).

43. The Court should declare the Defendants' attempt to enforce the Statute against out-of-state sellers with no physical presence in Ohio that use html and/or java script coding to display websites on consumers' computers and/or cell phones in Ohio to be unconstitutional, invalid, and unenforceable.

COUNT TWO:
Declaratory Judgment Concerning Computer Applications,
For Violation of the Commerce Clause of the United States Constitution
(R.C. 2721.03; U.S. Const., art I, § 8, cl. 3; 42 U.S.C. § 1983)

44. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

45. The Statute, as interpreted by the Defendants, provides that "In-state Software Nexus" for an out-of-state retailer arises as a result of a computer application offered by the retailer and stored on the computers and/or cell phones of consumers in Ohio.

46. The Statute, as interpreted by the Defendants, runs afoul of the *Quill* physical presence standard. Under the Statute, an out-of-state retailer may be required to collect and remit Ohio sales and use tax based solely on the fact that a computer application offered by the retailer is downloaded by consumers and stored on the computers and/or cell phones of consumers in the state, so long as the retailer meets the $500,000 gross receipts threshold set out in the Statute. No physical presence of the retailer in the State is required.

47. The Commissioner is the state official responsible for implementation and enforcement of the new "In-state Software Nexus" theory under the Statute.

48. The Department is the state agency responsible for implementation and enforcement of the new "In-state Software Nexus" theory under the Statute.

49. The Statute, as interpreted by the Defendants with respect to computer applications downloaded by consumers and stored on their computers and/or cell phones violates the Commerce Clause under *Quill.*

50. The Defendants lack the authority to disregard the Supreme Court's controlling precedent in *Quill.*

51. The Court should declare the Defendants' attempt to enforce the Statute against out-of-state retailers with no physical presence in Ohio that offers a computer application that is downloaded by consumers and stored on the computers and/or cell phones of consumers in the state is unconstitutional, invalid, and unenforceable.

COUNT THREE:
Declaratory Judgment Concerning Use of a Content Distribution Network, For Violation of the Commerce Clause of the United States Constitution (R.C. 2721.03; U.S. Const., art I, § 8, cl. 3; 42 U.S.C. § 1983)

52. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

53. The Statute, as interpreted by the Defendants, provides that "Network Nexus" for an out-of-state retailer arises as a result of entering into a contract with a provider of a content distribution network ("CDN") that has servers in Ohio that enhance delivery of the retailer's website to consumers in Ohio and surrounding states.

54. CDNs are an integral part of the Internet.

55. The Statute, as interpreted by the Defendants, runs afoul of the *Quill* physical presence standard. Under the Statute, an affected out-of-state retailer may be required to collect

and remit Ohio sales and use tax based solely on the fact that its uses a CDN with servers in Ohio, so long as the retailer meets the $500,000 gross receipts threshold set out in the Statute. No physical presence of the retailer in the State is required.

56. The Commissioner is the state official responsible for implementation and enforcement of the new "Network Nexus" theory under the Statute.

57. The Department is the state agency responsible for implementation and enforcement of the new "Network Nexus" theory under the Statute.

58. The Defendants lack the authority to disregard the Supreme Court's controlling precedent in *Quill.*

59. The Statute, as interpreted by the Defendants with respect to retailers that use a CDN with servers in Ohio, violates the Commerce Clause under *Quill.*

60. The Court should declare the Defendants' attempt to enforce the Statute against out-of-state sellers with no physical presence in Ohio that use a CDN with servers in Ohio unconstitutional, invalid, and unenforceable.

COUNT FOUR:
Declaratory Judgment Concerning HTML and Java Script Coding,
For Violation of the Internet Tax Freedom Act and
Preemption Under the Supremacy Clause of the United States Constitution
(R.C. 2721.03; U.S. Const., art IV, § 2; 42 U.S.C. § 1983)

61. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

62. The ITFA prohibits a state from imposing a discriminatory tax on electronic commerce. ITFA § 1101(a)(2).

63. Under the ITFA, a "discriminatory tax" includes "any tax…on electronic commerce that…imposes an obligation to collect or pay the tax on a different person or entity

than in the case of transactions involving similar property, goods, services, or information accomplished through other means." *Id.* § 1105(2)(A)(iii) (ellipsis added).

64. The term "tax" under the ITFA includes both revenue raising measures and "the imposition on a seller of an obligation to collect and to remit to a governmental entity any sales or use tax imposed on a buyer by a governmental entity." *Id.* § 1105(8).

65. "Electronic commerce" is defined as "any transaction conducted over the Internet…comprising sales…of delivery or property, goods, service or information…." *Id.* § 1105(3) (ellipses added).

66. The ITFA was expressly drafted with the intent of prohibiting states and localities from using Internet-based contacts as a factor in determining whether an out-of-state business has substantial nexus with the taxing jurisdiction.

67. The ITFA expressly rejected a theory of substantial nexus or physical presence based on a vendor's electronic contacts with a taxing jurisdiction.

68. The Statute, as interpreted by the Defendants, violates the ITFA because it justifies the imposition of sales and use tax collection obligations against affected Internet vendors based on the fact that html and java script coding used to display its website is stored on consumer's computers and/or cell phones in the state, while retailers that complete transactions through other means are not required to collect Ohio use tax based on similar, offline contacts, such as (but not limited to) printed catalogs retained by consumers in Ohio.

69. In this respect, the Statute, as interpreted by the Defendants, conflicts with both the language and intent of the ITFA.

70. The Commissioner is the state official, and the Department is the state agency, responsible for implementation and enforcement of the Statute against affected Internet sellers.

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71. The Statute, as interpreted by the Defendants, would constitute an impermissible discriminatory tax on electronic commerce in violation of the ITFA.

72. Consistent with the Supremacy Clause of the United States Constitution, the ITFA preempts state laws or regulations that violate its prohibitions.

73. The Court should declare that the Statute, as interpreted by the Defendants, violates the prohibition on discriminatory taxes on electronic commerce set forth in the ITFA, is preempted by federal law, and is invalid and without legal effect.

COUNT FIVE:
Declaratory Judgment Concerning Computer Applications,
For Violation of the Internet Tax Freedom Act and
Preemption Under the Supremacy Clause of the United States Constitution
(R.C. 2721.03; U.S. Const., art IV, § 2; 42 U.S.C. § 1983)

74. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

75. The ITFA prohibits a state from imposing a discriminatory tax on electronic commerce.

76. The Statute, as interpreted by the Defendants, violates the ITFA because it justifies the imposition of sales and use tax collection obligations against affected Internet vendors based on the fact that a computer application is stored on consumer's computers and/or cell phones in the state, while retailers that complete transactions through other means are not required to collect Ohio use tax based on similar, offline contacts, such as (but not limited to) printed catalogs retained by consumers in Ohio.

77. In this respect, the Statute, as interpreted by the Defendants, conflicts with both the language and intent of the ITFA.

78. The Commissioner is the state official, and the Department is the state agency, responsible for implementation and enforcement of the Statute against affected Internet sellers.

79. The Statute, as interpreted by the Defendants, would constitute an impermissible discriminatory tax on electronic commerce in violation of the ITFA.

80. Consistent with the Supremacy Clause of the United States Constitution, the ITFA preempts state laws or regulations that violate its prohibitions.

81. The Court should declare that the Statute, as interpreted by the Defendants, violates the prohibition on discriminatory taxes on electronic commerce set forth in the ITFA, is preempted by federal law, and is invalid and without legal effect.

COUNT SIX:
Declaratory Judgment Concerning Use of a Content Distribution Network, For Violation of the Internet Tax Freedom Act and Preemption Under the Supremacy Clause of the United States Constitution (R.C. 2721.03; U.S. Const., art IV, § 2; 42 U.S.C. § 1983)

82. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

83. The ITFA prohibits a state from imposing a discriminatory tax on electronic commerce.

84. Content distribution networks, which are the subject of the Defendants' "Network Nexus" theory, are an integral part of the Internet and of electronic commerce.

85. The Statute, as interpreted by the Defendants, violates the ITFA because it justifies the imposition of sales and use tax collection obligations against affected Internet vendors based on the use of a CDN with servers in Ohio, while retailers that complete transactions through other means are not required to collect Ohio use tax based on similar, offline contacts, such as (but not limited to) distribution of printed catalogs in Ohio.

86. In this respect, the Statute, as interpreted by the Defendants, conflicts with both the language and intent of the ITFA.

87. The Commissioner is the state official, and the Department is the state agency, responsible for implementation and enforcement of the Statute against affected Internet sellers.

88. The Statute, as interpreted by the Defendants, would constitute an impermissible discriminatory tax on electronic commerce in violation of the ITFA.

89. Consistent with the Supremacy Clause of the United States Constitution, the ITFA preempts state laws or regulations that violate its prohibitions.

90. The Court should declare that the Statute, as interpreted by the Defendants, violates the prohibition on discriminatory taxes on electronic commerce set forth in the ITFA, is preempted by federal law, and is invalid and without legal effect.

COUNT SEVEN:
Declaratory Judgment Concerning the Presumption of Substantial Nexus, For Violation of the Due Process Clause of the United States Constitution (R.C. 2721.03; U.S. Const., amend. XIV, § 1; 42 U.S.C. § 1983)

91. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

92. The Constitution requires that an "interstate business must have a substantial nexus with the State before *any* tax may be levied on it." *E.g., Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981).

93. Under *Quill*, a retailer whose only connection with a state is by mail, wire, and/or common carrier lacks a substantial nexus with the state and cannot be compelled to collect the state's sales or use tax.

94. R.C. 5741.01(I) provides that "substantial nexus with this state" is presumed to exist when a seller engages in the activities set forth in R.C. 5741.01(I)(2)(h) or (i).

95. Under the Due Process Clause of the United States Constitution, a state cannot create a statutory presumption to avoid a restriction on the scope of state power under the

Constitution. *Speiser v. Randall*, 357 U.S. 513, 526 (1958) ("The power to create presumptions is not a means to escape from constitutional restrictions.").

96. The Due Process Clause prohibits a state from doing indirectly what it cannot do directly.

97. The Due Process Clause is made applicable to the States through the Fourteenth Amendment.

98. The Statute, as interpreted by the Defendants, creates a presumption that "In-state Software Nexus" and "Network Nexus" are a sufficient basis to require use tax collection by an out-of-state retailer, despite the limitations on Ohio's taxing power under the Constitution.

99. The Statute, as interpreted by the Defendants, violates the Due Process Clause through an impermissible presumption.

100. The Court should declare the Defendants' attempt to enforce the Statute against out-of-state sellers based on a presumption of "In-state Software Nexus" or "Network Nexus" unconstitutional, invalid, and unenforceable.

COUNT EIGHT:
Declaratory Judgment for Violation of the
Due Process Clause of the United States Constitution
(R.C. 2721.03; U.S. Const., amend. XIV, § 1; 42 U.S.C. § 1983)

101. Plaintiff incorporates the foregoing paragraphs of the Complaint as if set forth in this paragraph.

102. The Due Process Clause of the United States Constitution, made applicable to the States through the Fourteenth Amendment, requires a definite link and a minimum connection between the state and a person it seeks to tax.

103. The Supreme Court has not determined whether, for purposes of the Due Process Clause, the prescriptive jurisdiction of a state, *i.e.*, its jurisdiction to impose tax or regulatory obligations, is co-extensive with the state's adjudicative jurisdiction.

104. The minimum thresholds set forth in the Statute for asserting prescriptive jurisdiction over Internet vendors that have no physical presence in the state is inconsistent with the requirements of the Due Process Clause.

105. This Court should declare the Statute unconstitutional, invalid, and unenforceable under the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the Court:

(A) Enter a declaration that the Defendants' proposed enforcement of "In-state Software Nexus" against an out-of-state retailer, based on html and/or java script coding for the retailer's website that is stored on consumers' computer and/or cell phones in Ohio, is unconstitutional under the Commerce Clause, and so invalid and unenforceable;

(B) Enter a declaration that the Defendants' proposed enforcement of "In-state Software Nexus" against an out-of-state retailer, based on computer applications offered by the retailer and stored on consumers' computer and/or cell phones in Ohio, is unconstitutional under the Commerce Clause, and so invalid and unenforceable;

(C) Enter a declaration that the Defendants' proposed enforcement of "Network Nexus" against an out-of-state retailer, based on the use of CDN that has one or

more servers in Ohio, is unconstitutional under the Commerce Clause, and so invalid and unenforceable;

(D) Enter a declaration that the Defendants' proposed enforcement of "In-state Software Nexus" against an out-of-state retailer, based on html and/or java script coding for the retailers' website that is stored on consumers' computer and/or cell phones in Ohio, is barred by the ITFA and void because it is preempted under the Supremacy Clause;

(E) Enter a declaration that the Defendants' proposed enforcement of "In-state Software Nexus" against an out-of-state retailer, based on computer applications offered by the retailer and stored on consumers' computer and/or cell phones in Ohio, is barred by the ITFA and void because it is preempted under the Supremacy Clause;

(F) Enter a declaration that the Defendants' proposed enforcement of "Network Nexus" against an out-of-state retailer, based on the use of a CDN that has one or more servers in Ohio, is barred by the ITFA and void because it is preempted under the Supremacy Clause;

(G) Enter a declaration that the Statute, as interpreted by the Defendants, creates an impermissible presumption of "substantial nexus" in violation of the Due Process Clause, and is unconstitutional and unenforceable as a result;

(H) Enter a declaration that the Defendants' proposed enforcement of the Statute is unconstitutional for violation of the 'minimum connection" requirement of the Due Process Clause, and so invalid and unenforceable;

(I) Enter a declaration that out-of-state retailers whose Ohio activities are limited to those described in R.C. 5741.01(I)(2)(h) and (i) and or ST 2017-02 are not required to obtain a seller's use tax permit, collect tax on taxable sales made to consumer in Ohio or file returns and remit tax;

(J) Enter judgment for Plaintiff;

(K) Award Plaintiff its attorneys' fees and costs; and

(L) Grant such further and other relief as the Court deems just and proper.

DATED this 29 day of December, 2017

/s/ Elizabeth A. McNellie
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