

ADDISON SUPERIOR COURT  
ADDISON COUNTY, SS

JAMES STONE,	)	
Plaintiff	)	Addison Superior Court
	)	
v.	)	Docket No. _____
	)	
TOWN OF MIDDLEBURY and	)	
ROBERT P. LAFIANDRA, M.D., individually	)	
and in his official capacity as the	)	
Middlebury Town Health Officer,	)	
Defendants.	)	

COMPLAINT

NOW COMES the plaintiff, James Stone, by and through his attorneys, and hereby complains against defendants as follows:

Parties

1. Plaintiff, James Stone, is a resident of the Town of Ferrisburgh, County of Addison, State of Vermont.
2. The Town of Middlebury is a municipality of the State of Vermont, located in Addison County.
3. Robert P. LaFiandra, M.D., is, and has at all relevant times been, the Middlebury Town Health Officer, and is a resident of the Town of Middlebury, County of Addison, State of Vermont.

Facts

4. In April 2007, and for a period of time prior thereto, Plaintiff operated a retail establishment in the Town of Middlebury selling a number of items for sale. One

of the items that Plaintiff sold in his retail establishment was an herb known as salvia divinorum.

5. Salvia divinorum is an herb commonly used and sold in various countries, and is not a regulated drug. There are no laws regulating the sale of salvia divinorum in Vermont, and it is a legal product to be sold in the State of Vermont.

6. Robert P. LaFiandra, the Middlebury Town Health Officer, concluded that salvia divinorum was a hallucinogenic substance, and held a personal belief that it should not be sold in the Town of Middlebury, despite the fact that there were no laws regulating its sale in the State of Vermont.

7. Based on this personal belief, Defendant LaFiandra, as Middlebury Town Health Officer, after consulting with the Middlebury Select Board, issued an "Emergency Health Order" on April 11, 2007 providing that "James Stone and his agents shall cease and desist from any sale and distribution of Salvia Divinorum or other non-medical hallucinatory substance."

8. On April 24, 2007, the Select Board of the Town of Middlebury held a special meeting at which they upheld the Emergency Health Order. On May 8, 2007, the Select Board issued a formal order, ordering Plaintiff and his agents to cease and desist from the sale of salvia divinorum.

9. The Emergency Health Order and the order of the Middlebury Select Board were illegal and *ultra vires*, being outside the scope of the authority delegated to health officers and select boards by the State of Vermont.

10. The legislature of the State of Vermont has adopted a comprehensive scheme for controlling the sale and distribution of hallucinogenic drugs and other substances deemed by the legislature to be harmful. The legislature, by adopting this comprehensive scheme, has reserved to itself the sole right to determine which substances are illegal for sale in the State of Vermont, and the legislature has not delegated to municipal health officers or municipalities the right to make an independent determination of what substances may legally be sold within the State of Vermont.

11. Defendants are “persons” within the meaning of the relevant federal statutes. Defendants’ actions aforementioned were taken under color of law.

12. The actions of defendants aforementioned were unlawful under Vermont law and caused plaintiff to be deprived of due process of law, the equal protection of the law and equal privileges under the law, and the rights of plaintiff guaranteed to him by the provisions of 42 U.S.C. sections 1983 and 1985, the U.S. Constitution, the Vermont Constitution, and other provisions of law. These actions were illegal, and tortious, and violated the laws of the United States and of the State of Vermont.

#### Damages

13. As a direct and proximate result of the actions of Defendants as aforementioned, Plaintiff was threatened by the Middlebury Police, vilified by various members of the community, suffered substantial mental distress, and suffered substantial financial damage. As a direct and proximate result of the actions of Defendants as aforementioned, Plaintiff found it necessary to close his retail establishment in the Town of Middlebury.

14. Plaintiff desires the ability to sell the substance salvia divinorum in the Town of Middlebury, without being subject to an illegal order by the health officer of the Town of Middlebury or by the Select Board of the Town of Middlebury.

WHEREFORE, Plaintiff prays the Court:

A. To declare that the Emergency Health Order dated April 11, 2007 and the order of the Select Board of the Town of Middlebury dated May 8, 2007 are null and void;

B. To grant him damages in such amount as the Court deems just;

C. To issue a declaratory judgment stating that Plaintiff may sell the substance salvia divinorum within the Town of Middlebury, provided all other legal rules and regulations are followed;

D. To grant him reasonable attorney's fees pursuant to 42 U.S.C. section 1988 and any other applicable provisions of law; and

E. To grant him interest, the cost of this action and such other relief as the Court deems just.

Dated at Hinesburg, Vermont this 1<sup>st</sup> day of May, 2009.

JAMES STONE

By: \_\_\_\_\_

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