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ENDORSED
FILED
ALAMEDA COUNTY

JUN 22 2015

CLERK OF THE SUPERIOR COURT
By MARGARET L. DOWNIE

6 Attorneys for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 RG15774917

12 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Case No. _____

13
14 Plaintiff,

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

15 v.

Health & Safety Code § 25249.6, *et seq.*

16 VAPE REVOLUTION LLC; ALL RISE
RECORDS, INC.; ATMOS NATION LLC;
17 ATMOS TECHNOLOGY LLC; BEARD VAPE
CO., INC.; BEARD VAPE CO., LLC;
18 CHEROKEE TOBACCO COMPANY, LLC;
CLEAN SMOKE, LLC; GOTVAPE.COM;
19 JRCIGARS.COM, INC.; KRETEK
INTERNATIONAL, INC.; LECIG
DISTRIBUTION LLC; LECIG ENTERPRISES,
20 INC.; MADVAPES LLC; MECAM
CORPORATION; MISTER-E-LIQUID LLC;
21 MR. GOOD VAPE LLC; SS CHOICE, LLC;
SV3, LLC; THE VAPE STORE, INC.; THE
22 VAPOR EMPORIUM, LLC; UNITED
TOBACCO VAPOR GROUP, INC.;
23 VAPETECH, LLC; VAPOR CORP.;
VAPORIN FLORIDA, INC.; VAPORIN, INC.;
24 VIPER ELECTRONIC CIGARETTES, LLC;
and DOES 1 through 30, inclusive,

(Other)

25
26 Defendants.
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1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to nicotine, a chemical known to the State
7 of California to cause birth defects or other reproductive harm. Such exposures have occurred,
8 and continue to occur, through the manufacture, distribution, sale and/or use of two types of
9 products: (i) nicotine-containing liquids for use with electronic cigarettes ("E-Liquids"); and (ii)
10 electronic cigarette devices, also known as tanks and vape pens, which contain nicotine or are
11 designed and intended for use with nicotine-containing E-Liquids ("E-Cigarette Devices"). E-
12 Liquids and E-Cigarette Devices are collectively referred to herein as "Products." Individuals in
13 California, including children and women of childbearing age, are exposed to nicotine through
14 ordinary use of the Products.

15 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*
16 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California
17 to chemicals known to the State to cause birth defects or other reproductive harm without
18 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
19 introduce Products containing significant quantities of nicotine into the California marketplace,
20 exposing consumers of their Product, many of whom are children and women of childbearing
21 age, to nicotine.

22 3. Despite the fact that Defendants expose women of childbearing age,
23 children and other individuals in California who come into contact with the Products to nicotine,
24 Defendants provide no warnings whatsoever about the reproductive hazards associated with these
25 nicotine exposures. Defendants' conduct thus violates the warning provision of Proposition 65.
26 Health & Safety Code § 25249.6.

27 PARTIES

28 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a

1 non-profit corporation dedicated to protecting the public from environmental health hazards and
2 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
3 State of California. CEH is a “person” within the meaning of Health & Safety Code §
4 25249.11(a) and brings this enforcement action in the public interest pursuant to Health & Safety
5 Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group
6 that has prosecuted a large number of Proposition 65 cases in the public interest. These cases
7 have resulted in significant public benefit, including the reformulation of thousands of products
8 to remove toxic chemicals to make them safer. CEH also provides information to Californians
9 about the health risks associated with exposure to hazardous substances, where manufacturers
10 and other responsible parties fail to do so.

11 5. Defendant VAPE REVOLUTION LLC is a person in the course of doing
12 business within the meaning of Health & Safety Code § 25249.11. VAPE REVOLUTION LLC
13 manufactures, distributes and/or sells E-Liquids for sale or use in California.

14 6. Defendant ALL RISE RECORDS, INC. is a person in the course of doing
15 business within the meaning of Health & Safety Code § 25249.11. ALL RISE RECORDS, INC.
16 manufactures, distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in
17 California.

18 7. Defendant ATMOS NATION LLC is a person in the course of doing
19 business within the meaning of Health & Safety Code § 25249.11. ATMOS NATION LLC
20 manufactures, distributes and/or sells E-Cigarette Devices for sale or use in California.

21 8. Defendant ATMOS TECHNOLOGY LLC is a person in the course of
22 doing business within the meaning of Health & Safety Code § 25249.11. ATMOS
23 TECHNOLOGY LLC manufactures, distributes and/or sells E-Cigarette Devices for sale or use
24 in California.

25 9. Defendant BEARD VAPE CO., INC. is a person in the course of doing
26 business within the meaning of Health & Safety Code § 25249.11. BEARD VAPE CO., INC.
27 manufactures, distributes and/or sells E-Liquids for sale or use in California.

28 10. Defendant BEARD VAPE CO., LLC is a person in the course of doing

1 business within the meaning of Health & Safety Code § 25249.11. BEARD VAPE CO., LLC
2 manufactures, distributes and/or sells E-Liquids for sale or use in California.

3 11. Defendant CHEROKEE TOBACCO COMPANY, LLC is a person in the
4 course of doing business within the meaning of Health & Safety Code § 25249.11. CHEROKEE
5 TOBACCO COMPANY, LLC manufactures, distributes and/or sells E-Liquids for sale or use in
6 California.

7 12. Defendant CLEAN SMOKE, LLC is a person in the course of doing
8 business within the meaning of Health & Safety Code § 25249.11. CLEAN SMOKE, LLC
9 manufactures, distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in
10 California.

11 13. Defendant GOTVAPE.COM is a person in the course of doing business
12 within the meaning of Health & Safety Code § 25249.11. GOTVAPE.COM manufactures,
13 distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in California.

14 14. Defendant JRCIGARS.COM, INC. is a person in the course of doing
15 business within the meaning of Health & Safety Code § 25249.11. JRCIGARS.COM, INC.
16 manufactures, distributes and/or sells E-Liquids for sale or use in California.

17 15. Defendant KRETEK INTERNATIONAL, INC. is a person in the course
18 of doing business within the meaning of Health & Safety Code § 25249.11. KRETEK
19 INTERNATIONAL, INC. manufactures, distributes and/or sells E-Cigarette Devices for sale or
20 use in California.

21 16. Defendant LECIG DISTRIBUTION LLC is a person in the course of
22 doing business within the meaning of Health & Safety Code § 25249.11. LECIG
23 DISTRIBUTION LLC manufactures, distributes and/or sells E-Cigarette Devices for sale or use
24 in California.

25 17. Defendant LECIG ENTERPRISES, INC. is a person in the course of
26 doing business within the meaning of Health & Safety Code § 25249.11. LECIG
27 ENTERPRISES, INC. manufactures, distributes and/or sells E-Cigarette Devices for sale or use
28 in California.

1 18. Defendant MADVAPES LLC is a person in the course of doing business
2 within the meaning of Health & Safety Code § 25249.11. MADVAPES LLC manufactures,
3 distributes and/or sells E-Liquids for sale or use in California.

4 19. Defendant MECAM CORPORATION is a person in the course of doing
5 business within the meaning of Health & Safety Code § 25249.11. MECAM CORPORATION
6 manufactures, distributes and/or sells E-Cigarette Devices for sale or use in California.

7 20. Defendant MISTER-E-LIQUID LLC is a person in the course of doing
8 business within the meaning of Health & Safety Code § 25249.11. MISTER-E-LIQUID LLC
9 manufactures, distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in
10 California.

11 21. Defendant MR. GOOD VAPE LLC is a person in the course of doing
12 business within the meaning of Health & Safety Code § 25249.11. MR. GOOD VAPE LLC
13 manufactures, distributes and/or sells E-Liquids for sale or use in California.

14 22. Defendant SS CHOICE, LLC is a person in the course of doing business
15 within the meaning of Health & Safety Code § 25249.11. SS CHOICE, LLC manufactures,
16 distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in California.

17 23. Defendant SV3, LLC is a person in the course of doing business within the
18 meaning of Health & Safety Code § 25249.11. SV3, LLC manufactures, distributes and/or sells
19 E-Liquids for sale or use in California.

20 24. Defendant THE VAPE STORE, INC. is a person in the course of doing
21 business within the meaning of Health & Safety Code § 25249.11. THE VAPE STORE, INC.
22 manufactures, distributes and/or sells E-Liquids for sale or use in California.

23 25. Defendant THE VAPOR EMPORIUM, LLC is a person in the course of
24 doing business within the meaning of Health & Safety Code § 25249.11. THE VAPOR
25 EMPORIUM, LLC manufactures, distributes and/or sells E-Liquids for sale or use in California.

26 26. Defendant UNITED TOBACCO VAPOR GROUP, INC. is a person in the
27 course of doing business within the meaning of Health & Safety Code § 25249.11. UNITED
28 TOBACCO VAPOR GROUP, INC. manufactures, distributes and/or sells E-Cigarette Devices

1 for sale or use in California.

2 27. Defendant VAPETECH, LLC is a person in the course of doing business
3 within the meaning of Health & Safety Code § 25249.11. VAPETECH, LLC manufactures,
4 distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in California.

5 28. Defendant VAPOR CORP. is a person in the course of doing business
6 within the meaning of Health & Safety Code § 25249.11. VAPOR CORP. manufactures,
7 distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in California.

8 29. Defendant VAPORIN FLORIDA, INC. is a person in the course of doing
9 business within the meaning of Health & Safety Code § 25249.11. VAPORIN FLORIDA, INC.
10 manufactures, distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in
11 California.

12 30. Defendant VAPORIN, INC. is a person in the course of doing business
13 within the meaning of Health & Safety Code § 25249.11. VAPORIN, INC. manufactures,
14 distributes and/or sells E-Liquids and E-Cigarette Devices for sale or use in California.

15 31. Defendant VIPER ELECTRONIC CIGARETTES, LLC is a person in the
16 course of doing business within the meaning of Health & Safety Code § 25249.11. VIPER
17 ELECTRONIC CIGARETTES, LLC manufactures, distributes and/or sells E-Cigarette Devices
18 for sale or use in California.

19 32. DOES 1 through 10 are each a person in the course of doing business
20 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 10 manufacture,
21 distribute and/or sell E-Liquids for sale or use in California.

22 33. DOES 11 through 20 are each a person in the course of doing business
23 within the meaning of Health & Safety Code § 25249.11. DOES 11 through 20 manufacture,
24 distribute and/or sell E-Cigarette Devices for sale or use in California.

25 34. DOES 21 through 30 are each a person in the course of doing business
26 within the meaning of Health & Safety Code § 25249.11. DOES 21 through 30 manufacture,
27 distribute and/or sell E-Liquids and E-Cigarette Devices for sale or use in California.

28 35. The true names of DOES 1 through 30 are unknown to CEH at this time.

1 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

2 36. The defendants identified in paragraphs 5 through 31 and DOES 1
3 through 30 are collectively referred to herein as “Defendants.”

4 **JURISDICTION AND VENUE**

5 37. The Court has jurisdiction over this action pursuant to Health & Safety
6 Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
7 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
8 to other trial courts.

9 38. This Court has jurisdiction over Defendants because each Defendant is a
10 business entity that does sufficient business, has sufficient minimum contacts in California or
11 otherwise intentionally avails itself of the California market through the sale, marketing, or use
12 of Products in California and/or by having such other contacts with California so as to render the
13 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
14 play and substantial justice.

15 39. Venue is proper in the Alameda Superior Court because one or more of the
16 violations arise in the County of Alameda.

17 **BACKGROUND FACTS**

18 40. The People of the State of California have declared by initiative under
19 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
20 defects, or other reproductive harm.” Proposition 65 § 1(b).

21 41. To effectuate this goal, Proposition 65 prohibits exposing people to
22 chemicals listed by the State of California as known to cause cancer, birth defects, or other
23 reproductive harm without a “clear and reasonable warning” unless the business responsible for
24 the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6
25 states, in pertinent part:

26 No person in the course of doing business shall knowingly and
27 intentionally expose any individual to a chemical known to the
28 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual. . .

1 42. On April 1, 1990, the State of California officially listed nicotine as a
2 chemical known to cause reproductive toxicity. 27 Cal. Code Regs. (“C.C.R.”) § 27001(c). On
3 April 1, 1991, one year after it was listed as a chemical known to cause reproductive toxicity,
4 nicotine became subject to the clear and reasonable warning requirement regarding reproductive
5 toxicants under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

6 43. Individuals who use Defendants’ Products are exposed to sufficient
7 quantities of nicotine such that individuals, including women of childbearing age and children
8 who use the Products or are located in close proximity to those using the Products, are exposed to
9 nicotine. Nicotine is intentionally added as an ingredient in E-Liquids, and some E-Cigarette
10 Devices, such as disposable electronic cigarettes, are pre-loaded with E-Liquids that contain
11 nicotine. E-Cigarette Devices are designed, marketed, and intended to be actively used with E-
12 Liquids. E-Cigarette Devices are also necessary components to the nicotine exposures that result
13 from using E-Liquids because E-Cigarette Devices alter the physical form of E-Liquids by
14 vaporizing such E-Liquids into vapor, causing the exposures to nicotine. Consumers are
15 primarily exposed to nicotine when they inhale the vapor emitted from E-Cigarette Devices
16 containing the E-Liquids.

17 44. The Products are frequently designed for and marketed to children. For
18 example, many E-Liquids are manufactured in flavors that are targeted to appeal to minors, such
19 as candy, cereal, and fruit flavors.

20 45. Any person acting in the public interest has standing to enforce violations
21 of Proposition 65, provided that such person has supplied the requisite public enforcers with a
22 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
23 action within such time. Health & Safety Code § 25249.7(d).

24 46. More than sixty days prior to naming each Defendant in this lawsuit, CEH
25 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
26 the District Attorneys of every county in California, the City Attorneys of every California city
27 with a population greater than 750,000 and to each of the named Defendants. In compliance with
28 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the

1 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
2 time period during which violations occurred; (4) specific descriptions of the violations,
3 including (a) the routes of exposure to nicotine from Products, and (b) the specific type of
4 Products sold and used in violation of Proposition 65; and (5) the name of the specific
5 Proposition 65-listed chemical that is the subject of the violations described in each Notice.

6 47. CEH also sent a Certificate of Merit for each Notice to the California
7 Attorney General, the District Attorneys of every county in California, the City Attorneys of
8 every California city with a population greater than 750,000 and to the named Defendants. In
9 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each of the
10 Certificates certified that CEH’s counsel: (1) has consulted with one or more persons with
11 relevant and appropriate experience or expertise who reviewed facts, studies or other data
12 regarding the exposures to nicotine alleged in each of the Notices; and (2) based on the
13 information obtained through such consultations, believes that there is a reasonable and
14 meritorious case for a citizen enforcement action based on the facts alleged in each of the
15 Notices. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of
16 the Certificates served on the Attorney General included factual information – provided on a
17 confidential basis – sufficient to establish the basis for the Certificate, including the identity of
18 the person(s) consulted by CEH’s counsel and the facts, studies, or other data reviewed by such
19 persons.

20 48. None of the public prosecutors with the authority to prosecute violations
21 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
22 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in
23 CEH’s Notices.

24 49. Defendants both know and intend that consumers in California, including
25 women of childbearing age and children, will use, inhale, touch, and/or handle Products, thus
26 exposing them to nicotine.

27 50. Under Proposition 65, an exposure is “knowing” where the party
28 responsible for such exposure has:

1 knowledge of the fact that a[n] . . . exposure to a chemical listed
2 pursuant to [Health and Safety Code §25249.8(a)] is occurring.
3 No knowledge that the . . . exposure is unlawful is required.

4 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
5 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2, §
6 12201).

7 51. No clear and reasonable warning is provided with Products regarding the
8 reproductive hazards of nicotine.

9 52. Defendants have been informed of the nicotine in their Products by the 60-
10 Day Notice(s) of Violation and accompanying Certificate of Merit served on them by CEH.

11 53. Defendants also have constructive knowledge that their Products contain
12 nicotine due to the widespread media coverage concerning the problem of nicotine in Products.
13 This industry-wide problem of nicotine in Products has been the subject of extensive media
14 coverage, including articles in national newspapers and stories on nationally televised programs.

15 54. As companies that manufacture, import, distribute and/or sell Products for
16 use in the California marketplace, Defendants know or should know that Products contain
17 nicotine and that individuals who use Products will be exposed to nicotine. The nicotine
18 exposures to consumers who use the Products are a natural and foreseeable consequence of
19 Defendants' placing the Products into the stream of commerce.

20 55. Nevertheless, Defendants continue to expose consumers in California,
21 including women of childbearing age and children, to nicotine without prior clear and reasonable
22 warnings regarding the reproductive hazards of nicotine.

23 56. CEH has engaged in good-faith efforts to resolve the claims alleged herein
24 prior to filing this Complaint.

25 57. Any person "violating or threatening to violate" Proposition 65 may be
26 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
27 violate" is defined to mean "to create a condition in which there is a substantial probability that a
28 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil

1 penalties not to exceed \$2,500 per day for each violation of Proposition 65. Health & Safety
2 Code § 25249.7(b).

3
4 **FIRST CAUSE OF ACTION**
(Violations of the Health & Safety Code § 25249.6)

5 58. CEH realleges and incorporates by reference as if specifically set forth
6 herein Paragraphs 1 through 57, inclusive.

7 59. Nicotine is a chemical listed by the State of California as known to cause
8 birth defects or other reproductive harm.

9 60. By placing their Products into the stream of commerce, Defendants are
10 each a person in the course of doing business within the meaning of Health & Safety Code §
11 25249.11.

12 61. Defendants know that average use of their Products will expose users of
13 the Products to nicotine. Defendants intend that their Products be used in a manner that results in
14 users of their Products being exposed to nicotine contained therein.

15 62. Defendants have failed, and continue to fail, to provide prior clear and
16 reasonable warnings regarding the reproductive toxicity of nicotine to users of their Products.

17 63. By committing the acts alleged above, Defendants have at all times
18 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
19 individuals to nicotine without first giving clear and reasonable warnings to such individuals
20 regarding the reproductive toxicity of nicotine.

21 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

22 **PRAYER FOR RELIEF**

23 Wherefore, CEH prays for judgment against Defendants as follows:

24 1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess
25 civil penalties against each Defendant in the amount of \$2,500 per day for each violation of
26 Proposition 65 according to proof;

27 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
28

1 preliminarily and permanently enjoin Defendants from offering Products for sale in California
2 without providing prior clear and reasonable warnings, as CEH shall specify in further
3 application to the Court;

4 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order
5 Defendants to take action to stop ongoing unwarned exposures to nicotine resulting from use of
6 Products sold by Defendants, as CEH shall specify in further application to the Court;

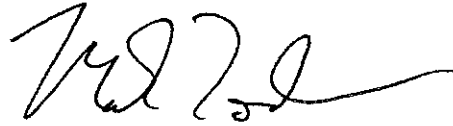
7 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
8 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

9 5. That the Court grant such other and further relief as may be just and
10 proper.

11
12 Dated: June 19, 2015

Respectfully submitted,

LEXINGTON LAW GROUP

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Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH