

1 LEXINGTON LAW GROUP  
Mark N. Todzo, State Bar No. 168389  
2 Abigail Blodgett, State Bar No. 278813  
503 Divisadero Street  
3 San Francisco, CA 94117  
Telephone: (415) 913-7800  
4 Facsimile: (415) 759-4112  
mtodzo@lexlawgroup.com  
5 ablodgett@lexlawgroup.com

6 Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 19 2015

CLERK OF THE SUPERIOR COURT  
By JAMIE THOMAS Deputy

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

RG 15794038

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

13 Plaintiff,

14 v.

15 TOTALLY WICKED-E.LIQUID (USA)  
16 INCORPORATED; BEACH WELLNESS LLC;  
INTERNATIONAL VAPOR GROUP, INC.;  
17 LEAD BY SALES, LLC; NICOPURE LABS,  
LLC; PAX LABS, INC.; SOUTH BEACH  
18 SMOKE INC.; UNITED TOBACCO VAPOR  
GROUP, INC.; VAPOR 4 LIFE HOLDINGS,  
19 INC.; VAPOR 4 LIFE, LLC; VAPOR CORP.;  
VAPORFI INC.; VMR PRODUCTS LLC; and  
20 DOES 1 through 60, inclusive,

21 Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

(Other)

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 formaldehyde and/or acetaldehyde,  
7 chemicals known to the State of California to cause cancer. Such exposures have occurred, and  
8 continue to occur, through the manufacture, distribution, sale and/or use of two types of products:  
9 (i) liquids used with electronic cigarette devices ("E-Liquids"); and (ii) electronic cigarette  
10 devices, also known as tanks and vape pens, which contain E-Liquids or are designed and  
11 intended for use with E-Liquids ("E-Cigarettes"). E-Liquids and E-Cigarettes are collectively  
12 referred to herein as "Products." Individuals in California are exposed to formaldehyde and/or  
13 acetaldehyde through ordinary use of the Products.

14 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et*  
15 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
16 to chemicals known to the State to cause cancer without providing clear and reasonable warnings  
17 to individuals prior to such exposures. Defendants introduce Products that produce significant  
18 quantities of formaldehyde and/or acetaldehyde into the California marketplace, exposing  
19 consumers of their Products, many of whom are children and teenagers, to formaldehyde and/or  
20 acetaldehyde every time they use the Products.

21 3. Despite the fact that Defendants expose children and other individuals in  
22 California who use the Products to formaldehyde and/or acetaldehyde, Defendants provide no  
23 warnings whatsoever about the carcinogenic hazards associated with formaldehyde and/or  
24 acetaldehyde exposures. Defendants' conduct thus violates the warning provision of Proposition  
25 65. *See* Health & Safety Code § 25249.6.

#### 26 PARTIES

27 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
28 non-profit corporation dedicated to protecting the public from environmental health hazards and

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

10           5. Defendant TOTALLY WICKED-E.LIQUID (USA) INCORPORATED is  
11 a person in the course of doing business within the meaning of Health & Safety Code §  
12 25249.11. TOTALLY WICKED-E.LIQUID (USA) INCORPORATED manufactures, distributes  
13 and/or sells E-Liquids and E-Cigarettes that produce formaldehyde for sale or use in California.

14           6. Defendant BEACH WELLNESS LLC is a person in the course of doing  
15 business within the meaning of Health & Safety Code § 25249.11. BEACH WELLNESS LLC  
16 manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and  
17 acetaldehyde for sale or use in California.

18           7. Defendant INTERNATIONAL VAPOR GROUP, INC. is a person in the  
19 course of doing business within the meaning of Health & Safety Code § 25249.11.  
20 INTERNATIONAL VAPOR GROUP, INC. manufactures, distributes and/or sells E-Liquids and  
21 E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.

22           8. Defendant LEAD BY SALES, LLC is a person in the course of doing  
23 business within the meaning of Health & Safety Code § 25249.11. LEAD BY SALES, LLC  
24 manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and  
25 acetaldehyde for sale or use in California.

26           9. Defendant NICOPURE LABS, LLC is a person in the course of doing  
27 business within the meaning of Health & Safety Code § 25249.11. NICOPURE LABS, LLC  
28 manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and

1 acetaldehyde for sale or use in California.

2 10. Defendant PAX LABS, INC. is a person in the course of doing business  
3 within the meaning of Health & Safety Code § 25249.11. PAX LABS, INC. manufactures,  
4 distributes and/or sells E-Cigarettes that produce formaldehyde for sale or use in California.

5 11. Defendant SOUTH BEACH SMOKE INC. is a person in the course of  
6 doing business within the meaning of Health & Safety Code § 25249.11. SOUTH BEACH  
7 SMOKE INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce  
8 formaldehyde and acetaldehyde for sale or use in California.

9 12. Defendant UNITED TOBACCO VAPOR GROUP, INC. is a person in the  
10 course of doing business within the meaning of Health & Safety Code § 25249.11. UNITED  
11 TOBACCO VAPOR GROUP, INC. manufactures, distributes and/or sells E-Liquids and E-  
12 Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.

13 13. Defendant VAPOR 4 LIFE HOLDINGS, INC. is a person in the course  
14 of doing business within the meaning of Health & Safety Code § 25249.11. VAPOR 4 LIFE  
15 HOLDINGS, INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce  
16 formaldehyde and E-Cigarettes that produce acetaldehyde for sale or use in California.

17 14. Defendant VAPOR 4 LIFE, LLC is a person in the course of doing  
18 business within the meaning of Health & Safety Code § 25249.11. VAPOR 4 LIFE, LLC  
19 manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and  
20 E-Cigarettes that produce acetaldehyde for sale or use in California.

21 15. Defendant VAPOR CORP. is a person in the course of doing business  
22 within the meaning of Health & Safety Code § 25249.11. VAPOR CORP. manufactures,  
23 distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde  
24 for sale or use in California.

25 16. Defendant VAPORFI INC. is a person in the course of doing business  
26 within the meaning of Health & Safety Code § 25249.11. VAPORFI INC. manufactures,  
27 distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde for sale or use in  
28 California.





1 the 2011-2013 National Youth and Tobacco Survey reported that more than a quarter-million  
2 youth who had never smoked a traditional cigarette used the Products in 2013, a three-fold  
3 increase since 2011, and that youth who used the Products were nearly twice as likely to try  
4 traditional cigarettes as those who never used E-Cigarettes.<sup>4</sup>

5           29. This dramatic rise in adolescent use is directly tied to aggressive marketing  
6 efforts for the Products. E-Cigarette ads are in magazines and newspapers, on TV and the radio,  
7 and online, particularly on social media sites such as Facebook, Instagram, YouTube, and  
8 Twitter.<sup>5</sup> In only three years, money spent on Product advertising has increased 1,200 percent or  
9 12-fold.<sup>6</sup> The industry spent \$39 million on advertising between June and November 2013,  
10 alone.<sup>7</sup>

11           30. Moreover, a number of recent studies have shown that E-Cigarette users  
12 are no more likely to quit than regular smokers, including one study finding that 89 percent of  
13 E-Cigarette users are still using them one year later.<sup>8</sup> Another study showed that E-Cigarette  
14 users are a third less likely to quit smoking traditional cigarettes, contradicting the theory that the  
15 Products help people successfully quit their nicotine habits.<sup>9</sup> Finally, statistics show that dual  
16 use of traditional cigarettes and the Products is continuing to rise, which may lessen any potential  
17  
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19 [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=notes-from-the-field-electronic-cigarette-use-among-middle-and-high-scho](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?utm_source=rss&utm_medium=rss&utm_campaign=notes-from-the-field-electronic-cigarette-use-among-middle-and-high-school-students-united-states-20112012)  
20 [ol-students-united-states-20112012](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?utm_source=rss&utm_medium=rss&utm_campaign=notes-from-the-field-electronic-cigarette-use-among-middle-and-high-scho).

21           <sup>4</sup> See Rebecca E. Bunnell, *et al.*, *Intentions to Smoke Cigarettes Among Never-Smoking*  
22 *U.S. Middle and High School Electronic Cigarette Users*, Natl. Youth Tobacco Survey  
23 2011-2013, *Nicotine & Tobacco Research* (2014),  
<http://ntr.oxfordjournals.org/content/early/2014/08/18/ntr.ntu166.full.pdf+html>.

24           <sup>5</sup> See Chapman, *A Community Health Threat*, at 7.

25           <sup>6</sup> *Id.*

26           <sup>7</sup> Legacy, *Vaporized: E-cigarettes, Advertising, and Youth* (May 2014), at 7,  
[http://truthinitiative.org/sites/default/files/LEG-Vaporized-E-cig\\_Report-May2014.pdf](http://truthinitiative.org/sites/default/files/LEG-Vaporized-E-cig_Report-May2014.pdf).

27           <sup>8</sup> See Chapman, *A Community Health Threat*, at 6.

28           <sup>9</sup> See *id.*

1 benefit of cutting back on tobacco cigarettes.<sup>10</sup>

2 **Proposition 65 and the Alleged Violations**

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

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

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

15 33. On January 1, 1988, the State of California officially listed formaldehyde  
16 as a chemical known to cause cancer. 27 Cal. Code Regs. (“C.C.R.”) § 27001(c). On January 1,  
17 1989, one year after it was listed as a chemical known to cause cancer, formaldehyde became  
18 subject to the clear and reasonable warning requirement regarding carcinogenicity under  
19 Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

20 34. On April 1, 1988, the State of California officially listed acetaldehyde as a  
21 chemical known to cause cancer. 27 C.C.R. § 27001(b). On April 1, 1989, one year after it was  
22 listed as a chemical known to cause cancer, acetaldehyde became subject to the clear and  
23 reasonable warning requirement regarding carcinogenicity under Proposition 65. *Id.*; Health &  
24 Safety Code § 25249.10(b).

25 35. Defendants’ Products, when used as directed, produce significant amounts  
26 of formaldehyde and/or acetaldehyde in the aerosol inhaled by users. Thus, the intended use of  
27 Defendants’ Products results in consumers, many of whom are children and teenagers, being  
28 exposed to formaldehyde and/or acetaldehyde.

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<sup>10</sup> *Id.* at 7.



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

5           37. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
6 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
7 the District Attorneys of every county in California, the City Attorneys of every California city  
8 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
9 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
10 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
11 time period during which violations occurred; (4) specific descriptions of the violations,  
12 including (a) the routes of exposure to formaldehyde or acetaldehyde from the Products, and (b)  
13 the specific type of Products sold and used in violation of Proposition 65; and (5) the name of the  
14 specific Proposition 65-listed chemical that is the subject of the violations described in each  
15 Notice of Violation.

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

1 persons.

2           39. None of the public prosecutors with the authority to prosecute violations  
3 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
4 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in  
5 CEH's Notices.

6           40. Defendants both know and intend that consumers in California will use  
7 the Products, thus exposing them to formaldehyde and/or acetaldehyde. Under Proposition 65,  
8 an exposure is "knowing" where the party responsible for such exposure has:

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

12 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
13 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2 §  
14 12201).

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

21           42. In addition, Defendants have actual knowledge of the fact that the  
22 Products expose users to formaldehyde and/or acetaldehyde because CEH's 60-Day Notices of  
23 Violation and accompanying Certificates of Merit informed each Defendant of the formaldehyde  
24 and/or acetaldehyde produced by their Products.

25           43. Nevertheless, Defendants continue to expose California consumers,  
26 including children and teenagers, to formaldehyde and/or acetaldehyde without providing any  
27 clear and reasonable warnings regarding the carcinogenic hazards of formaldehyde and/or  
28 acetaldehyde from using the Products.





