1 2	LEXINGTON LAW GROUP Mark N. Todzo, State Bar No. 168389 Abigail Blodgett, State Bar No. 278813	ENDORSED FILED ALAMEDA COUNTY
3	503 Divisadero Street San Francisco, CA 94117	
4	Telephone: (415) 913-7800 Facsimile: (415) 759-4112	NOV 192015
5	mtodzo@lexlawgroup.com ablodgett@lexlawgroup.com	CLERK OF THE SUPBRIOR SOUR L By Deputy
6	Attorneys for Plaintiff CENTER FOR ENVIRONMENTAL HEALTH	
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9	SUPERIOR COURT OF THE	
10	COUNTY OF	_ ~
11		RG15794036
12	CENTER FOR ENVIRONMENTAL) HEALTH, a non-profit corporation,	Case No
13	Plaintiff,	COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES
14	v. (RELIEF AND CIVIL I ENALTES
15	TOTALLY WICKED-E.LIQUID (USA) INCORPORATED; BEACH WELLNESS LLC;)	Health & Safety Code § 25249.6, et seq.
16	INTERNATIONAL VAPOR GROUP, INC.;) LEAD BY SALES, LLC; NICOPURE LABS,)	(Other)
17	LLC; PAX LABS, INC.; SOUTH BEACH) SMOKE INC.; UNITED TOBACCO VAPOR)	
18	GROUP, INC.; VAPOR 4 LIFE HOLDINGS, INC.; VAPOR 4 LIFE, LLC; VAPOR CORP.;	
19	VAPORFI INC.; VMR PRODUCTS LLC; and DOES 1 through 60, inclusive,	
20)	
21	Defendants.)	
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Plaintiff Center for Environmental Health, in the public interest, based on information and belief and investigation of counsel, except for information based on knowledge, hereby makes the following allegations:

INTRODUCTION

- 1. This Complaint seeks to remedy Defendants' continuing failure to warn individuals in California that they are being exposed to formaldehyde and/or acetaldehyde, chemicals known to the State of California to cause cancer. Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale and/or use of two types of products: (i) liquids used with electronic cigarette devices ("E-Liquids"); and (ii) electronic cigarette devices, also known as tanks and vape pens, which contain E-Liquids or are designed and intended for use with E-Liquids ("E-Cigarettes"). E-Liquids and E-Cigarettes are collectively referred to herein as "Products." Individuals in California are exposed to formaldehyde and/or acetaldehyde through ordinary use of the Products.
- 2. Under California's Proposition 65, Health & Safety Code § 25249.5, et seq., it is unlawful for businesses to knowingly and intentionally expose individuals in California to chemicals known to the State to cause cancer without providing clear and reasonable warnings to individuals prior to such exposures. Defendants introduce Products that produce significant quantities of formaldehyde and/or acetaldehyde into the California marketplace, exposing consumers of their Products, many of whom are children and teenagers, to formaldehyde and/or acetaldehyde every time they use the Products.
- 3. Despite the fact that Defendants expose children and other individuals in California who use the Products to formaldehyde and/or acetaldehyde, Defendants provide no warnings whatsoever about the carcinogenic hazards associated with formaldehyde and/or acetaldehyde exposures. Defendants' conduct thus violates the warning provision of Proposition 65. See Health & Safety Code § 25249.6.

PARTIES

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

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

- 5. Defendant TOTALLY WICKED-E.LIQUID (USA) INCORPORATED is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. TOTALLY WICKED-E.LIQUID (USA) INCORPORATED manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde for sale or use in California.
- 6. Defendant BEACH WELLNESS LLC is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. BEACH WELLNESS LLC manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- 7. Defendant INTERNATIONAL VAPOR GROUP, INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

 INTERNATIONAL VAPOR GROUP, INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- 8. Defendant LEAD BY SALES, LLC is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. LEAD BY SALES, LLC manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- 9. Defendant NICOPURE LABS, LLC is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. NICOPURE LABS, LLC manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and

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- Defendant PAX LABS, INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. PAX LABS, INC. manufactures, distributes and/or sells E-Cigarettes that produce formaldehyde for sale or use in California.
- Defendant SOUTH BEACH SMOKE INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. SOUTH BEACH SMOKE INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- Defendant UNITED TOBACCO VAPOR GROUP, INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. UNITED TOBACCO VAPOR GROUP, INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- Defendant VAPOR 4 LIFE HOLDINGS, INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. VAPOR 4 LIFE HOLDINGS, INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and E-Cigarettes that produce acetaldehyde for sale or use in California.
- Defendant VAPOR 4 LIFE, LLC is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. VAPOR 4 LIFE, LLC manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and E-Cigarettes that produce acetaldehyde for sale or use in California.
- Defendant VAPOR CORP. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. VAPOR CORP. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- 16. Defendant VAPORFI INC. is a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. VAPORFI INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde for sale or use in California.

	17.	Defendant VMR PRODUCTS LLC is a person in the course of doing
business with	hin the n	neaning of Health & Safety Code § 25249.11. VMR PRODUCTS LLC
manufacture	s, distrib	utes and/or sells E-Liquids and E-Cigarettes that produce formaldehyde and
acetaldehyde	for sale	or use in California.

- 18. DOES 1 through 20 are each a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. DOES 1 through 20 manufacture, distribute and/or sell E-Liquids and/or E-Cigarettes that produce formaldehyde for sale or use in California.
- 19. DOES 21 through 40 are each a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. DOES 21 through 40 manufacture, distribute and/or sell E-Liquids and/or E-Cigarettes that produce acetaldehyde for sale or use in California.
- 20. DOES 41 through 60 are each a person in the course of doing business within the meaning of Health & Safety Code § 25249.11. DOES 41 through 60 manufacture, distribute and/or sell E-Liquids and/or E-Cigarettes that produce formaldehyde and acetaldehyde for sale or use in California.
- 21. The true names of DOES 1 through 60 are unknown to CEH at this time. When their identities are ascertained, the Complaint shall be amended to reflect their true names.
- 22. The defendants identified in paragraphs 5 through 17 and DOES 1 through 60 are collectively referred to herein as "Defendants."

JURISDICTION AND VENUE

- 23. The Court has jurisdiction over this action pursuant to Health & Safety Code § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial courts.
- 24. This Court has jurisdiction over Defendants because each Defendant is a business entity that does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market through the sale, marketing, or use

of Products in California and/or by having such other contacts with California so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

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

BACKGROUND FACTS

Use of the Products and the Associated Health Risks

- 26. Over the past several years, consumer use of the Products has exploded due to aggressive and unrestricted marketing, increased restrictions on the use of traditional cigarettes, and an inaccurate perception that E-Cigarettes are "healthy" alternatives to traditional smoking. Despite the Products' reputation as a "healthy" alternative to smoking, studies reveal multiple problems with using the Products including health risks to the user, adverse impacts on the health and safety of children, teens, and young adults, and a lack of scientific evidence showing that the Products are effective smoking cessation devices or that they reduce the consumption of traditional cigarettes.
- 27. Unlike traditional cigarettes that burn tobacco leaf and cause the resulting smoke to be inhaled, E-Cigarettes heat E-Liquids that generally contains nicotine, flavorings, additives, and propylene glycol. The heated E-Liquid is then transformed into an aerosol that is inhaled by the user.²
- 28. One of the largest concerns over use of the Products is their impact on the health and safety of children, teens, and young adults. Studies indicate that E-Cigarette use among middle and high school students more than doubled from 2011 to 2012.³ An analysis of

¹ See Ron Chapman, MD, MPH, Cal. Dept. of Public Health, Cal. Tobacco Control Program, State Health Officer's Report on E-Cigarettes: A Community Health Threat, (Jan. 2015), 6, http://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf.

² *Id.* at 3.

³ Catherine Corey, MSPH, et al., Notes From the Field: Electronic Cigarette Use Among Middle and High School Students-U.S., 2011-2012, Center for Disease Control and Prevention, MMWR Morbidity and Mortality Weekly Report, 62(35):729-730 (Sept. 6, 2013),

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

- 29. This dramatic rise in adolescent use is directly tied to aggressive marketing efforts for the Products. E-Cigarette ads are in magazines and newspapers, on TV and the radio, and online, particularly on social media sites such as Facebook, Instagram, YouTube, and Twitter.⁵ In only three years, money spent on Product advertising has increased 1,200 percent or 12-fold.⁶ The industry spent \$39 million on advertising between June and November 2013, alone.7
- 30. Moreover, a number of recent studies have shown that E-Cigarette users are no more likely to quit than regular smokers, including one study finding that 89 percent of E-Cigarette users are still using them one year later. Another study showed that E-Cigarette users are a third less likely to quit smoking traditional cigarettes, contradicting the theory that the Products help people successfully quit their nicotine habits. Finally, statistics show that dual use of traditional cigarettes and the Products is continuing to rise, which may lessen any potential

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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 ol-students-united-states-20112012.

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

⁵ See Chapman, A Community Health Threat, at 7.

⁶ *Id.*

⁷ Legacy, Vaporized: E-cigarettes, Advertising, and Youth (May 2014), at 7, http://truthinitiative.org/sites/default/files/LEG-Vaporized-E-cig Report-May2014.pdf.

⁸ See Chapman, A Community Health Threat, at 6.

⁹ See id.

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Proposition 65 and the Alleged Violations

- 31. The People of the State of California have declared by initiative under Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Proposition 65 § 1(b).
- 32. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects, or other reproductive harm without a "clear and reasonable warning," unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent part:

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

- 33. On January 1, 1988, the State of California officially listed formaldehyde as a chemical known to cause cancer. 27 Cal. Code Regs. ("C.C.R.") § 27001(c). On January 1, 1989, one year after it was listed as a chemical known to cause cancer, formaldehyde became subject to the clear and reasonable warning requirement regarding carcinogenicity under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).
- 34. On April 1, 1988, the State of California officially listed acetaldehyde as a chemical known to cause cancer. 27 C.C.R. § 27001(b). On April 1, 1989, one year after it was listed as a chemical known to cause cancer, acetaldehyde became subject to the clear and reasonable warning requirement regarding carcinogenicity under Proposition 65. Id.; Health & Safety Code § 25249.10(b).
- 35. Defendants' Products, when used as directed, produce significant amounts of formaldehyde and/or acetaldehyde in the aerosol inhaled by users. Thus, the intended use of Defendants' Products results in consumers, many of whom are children and teenagers, being exposed to formaldehyde and/or acetaldehyde.

¹⁰ *Id.* at 7.

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

- 37. More than sixty days prior to naming each Defendant in this lawsuit, CEH provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to each of the named Defendants. In compliance with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the following information: (1) the name and address of each violator; (2) the statute violated; (3) the time period during which violations occurred; (4) specific descriptions of the violations, including (a) the routes of exposure to formaldehyde or acetaldehyde from the Products, and (b) the specific type of Products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that is the subject of the violations described in each Notice of Violation.
- Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000 and to the named Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each of the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with relevant and appropriate experience or expertise who reviewed facts, studies or other data regarding the exposures to formaldehyde or acetaldehyde alleged in each of the Notices; and (2) based on the information obtained through such consultations, believes that there is a reasonable and meritorious case for a citizen enforcement action based on the facts alleged in each of the Notices. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of the Certificates served on the Attorney General included factual information provided on a confidential basis sufficient to establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts, studies, or other data reviewed by such

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

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

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

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

- 41. As companies that manufacture, import, distribute, and/or sell Products for use in the California marketplace, Defendants know or should know that use of the Products produces formaldehyde and/or acetaldehyde, and that individuals who use the Products will be exposed to these carcinogens. The formaldehyde and/or acetaldehyde exposures to consumers who use the Products are a natural and foreseeable consequence of Defendants' placing the Products into the stream of commerce.
- 42. In addition, Defendants have actual knowledge of the fact that the Products expose users to formaldehyde and/or acetaldehyde because CEH's 60-Day Notices of Violation and accompanying Certificates of Merit informed each Defendant of the formaldehyde and/or acetaldehyde produced by their Products.
- 43. Nevertheless, Defendants continue to expose California consumers, including children and teenagers, to formaldehyde and/or acetaldehyde without providing any clear and reasonable warnings regarding the carcinogenic hazards of formaldehyde and/or acetaldehyde from using the Products.

51. By committing the acts alleged above, Formaldehyde Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to formaldehyde without first giving clear and reasonable warnings to such individuals regarding the carcinogenic nature of formaldehyde.

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

SECOND CAUSE OF ACTION (Violations of the Health & Safety Code § 25249.6) (Alleged for Only Acetaldehyde Defendants)

- 52. CEH realleges and incorporates by reference as if specifically set forth herein Paragraphs 1 through 51, inclusive.
- 53. Acetaldehyde is a chemical listed by the State of California as known to cause cancer.
- 54. By placing their Products into the stream of commerce, Defendants Beach Wellness LLC, International Vapor Group, Inc., Lead By Sales, LLC, Nicopure Labs, LLC, South Beach Smoke Inc., United Tobacco Vapor Group, Inc., Vapor 4 Life Holdings, Inc., Vapor 4 Life, LLC, Vapor Corp., VMR Products LLC, and DOES 21 though 60 (collectively, the "Acetaldehyde Defendants") are each a person in the course of doing business within the meaning of Health & Safety Code § 25249.11.
- 55. Acetaldehyde Defendants know that use of their Products will expose users of the Products to acetaldehyde. Acetaldehyde Defendants intend that their Products be used in a manner that results in users of their Products being exposed to acetaldehyde.
- 56. Acetaldehyde Defendants have failed, and continue to fail, to provide prior clear and reasonable warnings regarding the carcinogenic hazards of acetaldehyde to users of their Products.
- 57. By committing the acts alleged above, Acetaldehyde Defendants have at all times relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to acetaldehyde without first giving clear and reasonable warnings to such

1	individuals regarding the carcinogenic nature of acetaldehyde.		
2	Wherefore, CEH prays for judgment against Acetaldehyde Defendants, as set		
3	forth hereafter.		
4	PRAYER FOR RELIEF		
5	Wherefore, CEH prays for judgment against Defendants as follows:		
6	1. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess		
7	civil penalties against each Defendant in the amount of \$2,500 per day for each violation of		
8	Proposition 65 according to proof;		
9	2. That the Court, pursuant to Health & Safety Code § 25249.7(a),		
0	preliminarily and permanently enjoin Defendants from offering Products for sale in California		
11	without providing prior clear and reasonable warnings, as CEH shall specify in further		
12	application to the Court;		
3	3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order		
4	Defendants to take action to stop ongoing unwarned exposures to formaldehyde and/or		
15	acetaldehyde resulting from use of Products sold by Defendants, as CEH shall specify in further		
16	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		
20	proper.		
21			
22	Dated: November 19, 2015 Respectfully submitted,		
23	LEXINGTON LAW GROUP		
24	$\mathcal{I}_{\mathcal{U}}$		
25	Man (sel		
26	Mark N. Todzo Attorneys for Plaintiff		
27	CENTER FOR ENVIRONMENTAL HEALTH		