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ALAMEDA COUNTY

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By C. Collins Deputy

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CENTER FOR ENVIRONMENTAL HEALTH

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

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;)
EPUFFER INTERNATIONAL INC.;)
17 INTERNATIONAL VAPOR GROUP, INC.;)
LEAD BY SALES, LLC; NICOPURE LABS,)
18 LLC; PAX LABS, INC.; SOUTH BEACH)
SMOKE INC.; TOTALLY WICKED LTD.;)
19 UNITED TOBACCO VAPOR GROUP, INC.;)
VAPOR 4 LIFE HOLDINGS, INC.; VAPOR 4)
20 LIFE, LLC; VAPOR CORP.; VAPORFI INC.;)
VMR PRODUCTS LLC; and DOES 1 through)
21 60, inclusive,)

22 Defendants.)

Case No. RG 15-794036

**FIRST AMENDED 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 First Amended Complaint seeks to remedy Defendants' continuing
6 failure to warn individuals in California that they are being exposed to formaldehyde and/or
7 acetaldehyde, chemicals known to the State of California to cause cancer. Such exposures have
8 occurred, and continue to occur, through the manufacture, distribution, sale and/or use of two
9 types of products: (i) liquids used with electronic cigarette devices ("E-Liquids"); and (ii)
10 electronic cigarette devices, also known as tanks and vape pens, which contain E-Liquids or are
11 designed and intended for use with E-Liquids ("E-Cigarettes"). E-Liquids and E-Cigarettes are
12 collectively referred to herein as "Products." Individuals in California are exposed to
13 formaldehyde and/or 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 EPUFFER INTERNATIONAL INC. is a person in the course
19 of doing business within the meaning of Health & Safety Code § 25249.11. EPUFFER
20 INTERNATIONAL INC. manufactures, distributes and/or sells E-Liquids and E-Cigarettes that
21 produce formaldehyde and acetaldehyde for sale or use in California.

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

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

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

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

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

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

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

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

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

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

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

13 20. DOES 1 through 20 are each a person in the course of doing business
14 within the meaning of Health & Safety Code § 25249.11. DOES 1 through 20 manufacture,
15 distribute and/or sell E-Liquids and/or E-Cigarettes that produce formaldehyde for sale or use in
16 California.

17 21. DOES 21 through 40 are each a person in the course of doing business
18 within the meaning of Health & Safety Code § 25249.11. DOES 21 through 40 manufacture,
19 distribute and/or sell E-Liquids and/or E-Cigarettes that produce acetaldehyde for sale or use in
20 California.

21 22. DOES 41 through 60 are each a person in the course of doing business
22 within the meaning of Health & Safety Code § 25249.11. DOES 41 through 60 manufacture,
23 distribute and/or sell E-Liquids and/or E-Cigarettes that produce formaldehyde and acetaldehyde
24 for sale or use in California.

25 23. The true names of DOES 1 through 60 are unknown to CEH at this time.
26 When their identities are ascertained, the First Amended Complaint shall be amended to reflect
27 their true names.
28

1 29. Unlike traditional cigarettes that burn tobacco leaf and cause the resulting
2 smoke to be inhaled, E-Cigarettes heat E-Liquids that generally contains nicotine, flavorings,
3 additives, and propylene glycol. The heated E-Liquid is then transformed into an aerosol that is
4 inhaled by the user.²

5 30. One of the largest concerns over use of the Products is their impact on the
6 health and safety of children, teens, and young adults. Studies indicate that E-Cigarette use
7 among middle and high school students more than doubled from 2011 to 2012.³ An analysis of
8 the 2011-2013 National Youth and Tobacco Survey reported that more than a quarter-million
9 youth who had never smoked a traditional cigarette used the Products in 2013, a three-fold
10 increase since 2011, and that youth who used the Products were nearly twice as likely to try
11 traditional cigarettes as those who never used E-Cigarettes.⁴

12 31. This dramatic rise in adolescent use is directly tied to aggressive marketing
13 efforts for the Products. E-Cigarette ads are in magazines and newspapers, on TV and the radio,
14 and online, particularly on social media sites such as Facebook, Instagram, YouTube, and
15 Twitter.⁵ In only three years, money spent on Product advertising has increased 1,200 percent or
16 12-fold.⁶ The industry spent \$39 million on advertising between June and November 2013,
17 alone.⁷

18
19 ² *Id.* at 3.

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

23 ⁴ See Rebecca E. Bunnell, *et al.*, *Intentions to Smoke Cigarettes Among Never-Smoking*
24 *U.S. Middle and High School Electronic Cigarette Users*, *Natl. Youth Tobacco Survey*
25 *2011-2013*, *Nicotine & Tobacco Research* (2014),
<http://ntr.oxfordjournals.org/content/early/2014/08/18/ntr.ntu166.full.pdf+html>.

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

27 ⁶ *Id.*

28 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.

1 32. Moreover, a number of recent studies have shown that E-Cigarette users
2 are no more likely to quit than regular smokers, including one study finding that 89 percent of
3 E-Cigarette users are still using them one year later.⁸ Another study showed that E-Cigarette
4 users are a third less likely to quit smoking traditional cigarettes, contradicting the theory that the
5 Products help people successfully quit their nicotine habits.⁹ Finally, statistics show that dual
6 use of traditional cigarettes and the Products is continuing to rise, which may lessen any potential
7 benefit of cutting back on tobacco cigarettes.¹⁰

8 **Proposition 65 and the Alleged Violations**

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

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

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

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

25
26 ⁸ See Chapman, *A Community Health Threat*, at 6.

27 ⁹ See *id.*

28 ¹⁰ *Id.* at 7.

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

6 37. Defendants' Products, when used as directed, produce significant amounts
7 of formaldehyde and/or acetaldehyde in the aerosol inhaled by users. Thus, the intended use of
8 Defendants' Products results in consumers, many of whom are children and teenagers, being
9 exposed to formaldehyde and/or acetaldehyde.

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

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

25 40. CEH also sent a Certificate of Merit for each Notice to the California
26 Attorney General, the District Attorneys of every county in California, the City Attorneys of
27 every California city with a population greater than 750,000 and to the named Defendants. In
28 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each of the

1 Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
2 relevant and appropriate experience or expertise who reviewed facts, studies or other data
3 regarding the exposures to formaldehyde or acetaldehyde alleged in each of the Notices; and (2)
4 based on the information obtained through such consultations, believes that there is a reasonable
5 and meritorious case for a citizen enforcement action based on the facts alleged in each of the
6 Notices. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each of
7 the Certificates served on the Attorney General included factual information – provided on a
8 confidential basis – sufficient to establish the basis for the Certificate, including the identity of
9 the person(s) consulted by CEH's counsel and the facts, studies, or other data reviewed by such
10 persons.

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

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

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

21 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
22 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2 §
23 12201).

24 43. As companies that manufacture, import, distribute, and/or sell Products
25 for use in the California marketplace, Defendants know or should know that use of the Products
26 produces formaldehyde and/or acetaldehyde, and that individuals who use the Products will be
27 exposed to these carcinogens. The formaldehyde and/or acetaldehyde exposures to consumers
28 who use the Products are a natural and foreseeable consequence of Defendants' placing the

1 Products into the stream of commerce.

2 44. In addition, Defendants have actual knowledge of the fact that the
3 Products expose users to formaldehyde and/or acetaldehyde because CEH's 60-Day Notices of
4 Violation and accompanying Certificates of Merit informed each Defendant of the formaldehyde
5 and/or acetaldehyde produced by their Products.

6 45. Nevertheless, Defendants continue to expose California consumers,
7 including children and teenagers, to formaldehyde and/or acetaldehyde without providing any
8 clear and reasonable warnings regarding the carcinogenic hazards of formaldehyde and/or
9 acetaldehyde from using the Products.

10 46. CEH has engaged in good-faith efforts to resolve the claims alleged herein
11 prior to filing this First Amended Complaint.

12 47. Any person "violating or threatening to violate" Proposition 65 may be
13 enjoined in any court of competent jurisdiction. Health & Safety Code § 25249.7. "Threaten to
14 violate" is defined to mean "to create a condition in which there is a substantial probability that a
15 violation will occur." Health & Safety Code § 25249.11(e). Proposition 65 provides for civil
16 penalties not to exceed \$2,500 per day for each violation of Proposition 65. Health & Safety
17 Code § 25249.7(b).

18 **FIRST CAUSE OF ACTION**
19 **(Violations of the Health & Safety Code § 25249.6 -**
20 **(Alleged for Only Formaldehyde Defendants)**

21 48. CEH realleges and incorporates by reference as if specifically set forth
22 herein Paragraphs 1 through 47, inclusive.

23 49. Formaldehyde is a chemical listed by the State of California as known to
24 cause cancer.

25 50. By placing their Products into the stream of commerce, Defendants Beach
26 Wellness LLC, ePuffer International Inc., International Vapor Group, Inc., Lead By Sales, LLC,
27 Nicopure Labs, LLC, Pax Labs, Inc., South Beach Smoke Inc., Totally Wicked-E.Liquid (USA)
28 Incorporated, Totally Wicked Ltd., United Tobacco Vapor Group, Inc., Vapor 4 Life Holdings,

1 Inc., Vapor 4 Life, LLC, Vaporfi Inc., Vapor Corp., VMR Products LLC, and DOES 1 through
2 20 and 41 through 60 (collectively, the “Formaldehyde Defendants”) are each a person in the
3 course of doing business within the meaning of Health & Safety Code § 25249.11.

4 51. Formaldehyde Defendants know that use of their Products will expose
5 users of the Products to formaldehyde. Formaldehyde Defendants intend that their Products be
6 used in a manner that results in users of their Products being exposed to formaldehyde.

7 52. Formaldehyde Defendants have failed, and continue to fail, to provide
8 prior clear and reasonable warnings regarding the carcinogenic hazards of formaldehyde to users
9 of their Products.

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

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

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

19 54. CEH realleges and incorporates by reference as if specifically set forth
20 herein Paragraphs 1 through 53, inclusive.

21 55. Acetaldehyde is a chemical listed by the State of California as known to
22 cause cancer.

23 56. By placing their Products into the stream of commerce, Defendants Beach
24 Wellness LLC, ePuffer International Inc., International Vapor Group, Inc., Lead By Sales, LLC,
25 Nicopure Labs, LLC, South Beach Smoke Inc., United Tobacco Vapor Group, Inc., Vapor 4 Life
26 Holdings, Inc., Vapor 4 Life, LLC, Vapor Corp., VMR Products LLC, and DOES 21 though 60
27 (collectively, the “Acetaldehyde Defendants”) are each a person in the course of doing business
28 within the meaning of Health & Safety Code § 25249.11.

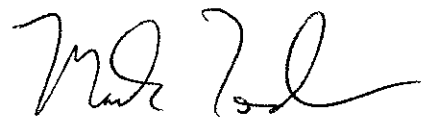
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5. That the Court grant such other and further relief as may be just and proper.

Dated: December 8, 2015

Respectfully submitted,

LEXINGTON LAW GROUP



Mark N. Todzo
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH