

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

10 Attorneys for Plaintiff
11 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

OCT - 6 2016

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL HEALTH,) Case No. RG 15-774917
15 Plaintiff,)
16 v.) **[PROPOSED] CONSENT**
17 VAPE REVOLUTION LLC, et al.,) **JUDGMENT AS TO VAPOR CORP.,**
18 Defendants.) **VAPORIN FLORIDA, INC.,**
) **VAPORIN, INC., AND THE VAPE**
) **STORE, INC.**

19
20 **1. INTRODUCTION**

21 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental
22 Health, a non-profit corporation ("CEH"), and Defendants Vapor Corp., Vaporin Florida, Inc.,
23 Vaporin, Inc., and The Vape Store, Inc. (collectively referred to herein as "Settling Defendants")
24 to settle claims asserted by CEH against Settling Defendants as set forth in two separate cases: (1)
25 *Center for Environmental Health v. Vape Revolution LLC, et al.*, Alameda County Superior Court
26 Case No. RG 15-774917 (the "*Vape Revolution Action*"); and (2) *Center for Environmental*
27 *Health v. Totally Wicked-E Liquid (USA) Incorporated, et al.*, Alameda County Superior Court

1 Case No. RG-15794036 (the “*Totally Wicked* Action”). The operative complaints on file in the
2 *Vape Revolution* and *Totally Wicked* Actions are referred to herein as the “Complaints.” CEH
3 and Settling Defendants are referred to collectively as the “Parties.”

4 **1.2.** On February 13, 2015 and March 18, 2015, CEH served 60-Day Notices of
5 Violation (the “Nicotine Notices”) relating to the California Safe Drinking Water and Toxic
6 Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”)
7 on Settling Defendants, the California Attorney General, the District Attorneys of every County
8 in the State of California, and the City Attorneys for every City in State of California with a
9 population greater than 750,000. The Nicotine Notices allege violations of Proposition 65 with
10 respect to the presence of nicotine in electronic cigarette devices designed for use with nicotine-
11 containing liquids and nicotine-containing liquids used in such devices (the “Products”)
12 manufactured, distributed, and/or sold by Settling Defendants.

13 **1.3.** On June 22, 2015, CEH filed the *Vape Revolution* Action, naming each of the
14 Settling Defendants as defendants.

15 **1.4.** On September 2, 2015, CEH served four additional 60-Day Notices of Violation
16 (the “Aldehyde Notices”) on each Settling Defendant and the requisite public enforcers alleging
17 additional violations with regards to the Products. Specifically, the Aldehyde Notices allege that
18 the Settling Defendants’ Products expose users to formaldehyde and acetaldehyde, both of which
19 are produced when the Products are used in their intended fashion.

20 **1.5.** On November 19, 2015, CEH filed the *Totally Wicked* Action, naming each of the
21 Settling Defendants as defendants.

22 **1.6.** Each Settling Defendant is a corporation that employs ten (10) or more persons
23 and that manufactures, distributes, and/or sells Covered Products (as defined herein) in the State
24 of California or has done so in the past.

25 **1.7.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
26 Court has jurisdiction over the allegations of violations contained in the Nicotine Notices,
27 Aldehyde Notices, and Complaints and personal jurisdiction over Settling Defendants as to the
28

1 acts alleged in the Complaints; (ii) venue is proper in the County of Alameda; and (iii) this Court
2 has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which
3 were or could have been raised in the Complaints based on the facts alleged in the Notices and
4 Complaints with respect to Products manufactured, distributed, and/or sold by Settling
5 Defendants.

6 **1.8.** The Parties enter into this Consent Judgment as a full and final settlement of all
7 claims which were or could have been raised in the Complaints arising out of the facts or conduct
8 related to Settling Defendants alleged therein and in the Nicotine Notices and Aldehyde Notices.
9 By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not
10 admit any fact, conclusion of law, or violation of law, nor shall compliance with the Consent
11 Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law,
12 or violation of law. Settling Defendants deny the material, factual, and legal allegations in the
13 Notices and Complaints and expressly denies any wrongdoing whatsoever. Except as specifically
14 provided herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right,
15 remedy, argument, or defense any of the Parties may have in this or any other pending or future
16 legal proceedings. This Consent Judgment is the product of negotiation and compromise and is
17 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
18 disputed in the Actions.

19 **2. DEFINITIONS**

20 **2.1.** “Covered Products” means “Covered Liquid Products” and “Covered Device
21 Products.”

22 **2.2.** “Covered Liquid Products” means liquids that are designed for use with electronic
23 cigarette devices, also known as tanks and vape pens, that are manufactured, distributed, and/or
24 sold by Settling Defendants in California.

25 **2.3.** “Covered Device Products” means electronic cigarette devices, also known as
26 tanks and vape pens, which contain nicotine or are designed and intended for use with nicotine-
27

1 containing liquid, that are manufactured, distributed, and/or sold by Settling Defendants in
2 California.

3 **2.4.** “Effective Date” means the date on which the Court enters this Consent Judgment.

4 **3. INJUNCTIVE RELIEF**

5 **3.1. Clear and Reasonable Warnings for Nicotine-Containing Covered Liquid**
6 **Products.** As of the Effective Date, no nicotine-containing Covered Liquid Product may be
7 manufactured for sale, distributed or sold by Settling Defendants in California unless such
8 nicotine-containing Covered Liquid Product has a clear and reasonable warning on the outer label
9 of the product. The warning shall state the following:

10 **WARNING:** Use of this product will expose you to nicotine, a chemical
11 known to the State of California to cause birth defects or other reproductive
12 harm, and formaldehyde and acetaldehyde, chemicals known to cause
13 cancer.

14 The warning shall not be preceded by, surrounded by, or include any additional words or phrases
15 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be
16 prominently displayed on the nicotine-containing Covered Liquid Product with such
17 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
18 read and understood by an ordinary individual prior to sale. To the extent that other warning
19 statements are included on the outer label of a nicotine-containing Covered Liquid Product, the
20 warning required herein shall be separated from the other warnings by a line that is at least the
21 same height as a line of text on the label. For internet, catalog, or any other sale where the
22 consumer is not physically present and cannot see a warning displayed on the nicotine-containing
23 Covered Liquid Product prior to purchase or payment, the warning statement shall be displayed in
24 such a manner that it is likely to be read and understood as being applicable to the nicotine-
25 containing Covered Liquid Product being purchased prior to the authorization of or actual
26 payment. Placement of the warning statement at the bottom of an internet webpage that offers
27 multiple products for sale does not satisfy the requirements of this Section.

1 **3.1.1. Warnings for Nicotine-Containing Covered Liquid Products in the**
2 **Stream of Commerce.** In an effort to ensure that consumers receive clear and reasonable
3 warnings in compliance with Proposition 65 for nicotine-containing Covered Liquid Products that
4 have not been labeled in accordance with Section 3.1, within ninety (90) days following the
5 Effective Date, Settling Defendants shall provide warning materials by certified mail to each of
6 their California retailers or distributors to whom Settling Defendants reasonably believe sold
7 nicotine-containing Covered Liquid Products prior to the Effective Date. Such warning materials
8 shall include a reasonably sufficient number of stickers in order to permit the retailer or
9 distributor to affix the warning on each nicotine-containing Covered Liquid Product such
10 customer has purchased from Settling Defendants. The warning stickers shall contain the
11 warning language set forth in Section 3.1 above. The warning materials shall also include a letter
12 of instruction for the placement of the stickers, and a Notice and Acknowledgment postcard.

13 **3.2. Clear and Reasonable Warnings for non-Nicotine-Containing Covered Liquid**
14 **Products.** As of the Effective Date, no non-nicotine-containing Covered Liquid Product may be
15 manufactured for sale, distributed or sold by the Settling Defendants in California unless such
16 non-nicotine-containing Covered Liquid Product has a clear and reasonable warning on the outer
17 label of the product. The warning shall state the following:

18 **WARNING:** Use of this product will expose you to formaldehyde and
19 acetaldehyde, chemicals known to the State of California to cause cancer.

20 The warning shall not be preceded by, surrounded by, or include any additional words or phrases
21 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be
22 prominently displayed on the non-nicotine-containing Covered Liquid Product with such
23 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
24 read and understood by an ordinary individual prior to sale. To the extent that other warning
25 statements are included on the outer label of a non-nicotine-containing Covered Liquid Product,
26 the warning required herein shall be separated from the other warnings by a line that is at least the
27 same height as a line of text on the label. For internet, catalog, or any other sale where the

1 consumer is not physically present and cannot see a warning displayed on the non-nicotine-
2 containing Covered Liquid Product prior to purchase or payment, the warning statement shall be
3 displayed in such a manner that it is likely to be read and understood as being applicable to the
4 non-nicotine-containing Covered Liquid Product being purchased prior to the authorization of or
5 actual payment. Placement of the warning statement at the bottom of an internet webpage that
6 offers multiple products for sale does not satisfy the requirements of this Section.

7 **3.2.1. Warnings for non-Nicotine-Containing Covered Liquid Products in**
8 **the Stream of Commerce.** In an effort to ensure that consumers receive clear and reasonable
9 warnings in compliance with Proposition 65 for non-nicotine-containing Covered Products that
10 have not been labeled in accordance with Section 3.2, within thirty (30) days following the
11 Effective Date, Settling Defendants shall provide warning materials by certified mail to each of
12 their California retailers or distributors to whom Settling Defendants reasonably believe sold non-
13 nicotine-containing Covered Liquid Products prior to the Effective Date. Such warning materials
14 shall include a reasonably sufficient number of stickers in order to permit the retailer or
15 distributor to affix the warning on each non-nicotine-containing Covered Liquid Product such
16 customer has purchased from Settling Defendants. The warning stickers shall contain the
17 warning language set forth in Section 3.1 above. The warning materials shall also include a letter
18 of instruction for the placement of the stickers, and a Notice and Acknowledgment postcard.

19 **3.3. Clear and Reasonable Warnings for Covered Device Products.** As of the
20 Effective Date, no Covered Device Product may be manufactured for sale, distributed or sold in
21 California unless such Covered Device Product has a clear and reasonable warning on the outer
22 packaging of the product. For Covered Device Products that contain nicotine, the warning shall
23 state the following:

24 **WARNING:** Use of this product will expose you to nicotine, a chemical
25 known to the State of California to cause birth defects or other reproductive
26 harm, and formaldehyde and acetaldehyde, chemicals known to cause
27 cancer.

1 For Covered Device Products that do not contain nicotine, but are designed for use with nicotine-
2 containing products, the warning shall state the following:

3 **WARNING:** Use of this product with nicotine-containing liquid will
4 expose you to nicotine, a chemical known to the State of California to
5 cause birth defects or other reproductive harm, and formaldehyde and
6 acetaldehyde, chemicals known to cause cancer.

7 The warning shall not be preceded by, surrounded by, or include any additional words or phrases
8 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be
9 prominently displayed on the outer packaging of the Covered Device Product with such
10 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
11 read and understood by an ordinary individual prior to sale. To the extent that other warning
12 statements are included on the outer packaging of a Covered Device Product, the warning
13 required herein shall be separated from the other warnings by a line that is at least the same height
14 as a line of text on the label. For internet, catalog, or any other sale where the consumer is not
15 physically present and cannot see a warning displayed on the Covered Device Product prior to
16 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to
17 be read and understood as being applicable to the Covered Device Product being purchased prior
18 to the authorization of or actual payment. Placement of the warning statement at the bottom of an
19 internet webpage that offers multiple products for sale does not satisfy the requirements of this
20 Section.

21 **3.3.1. Warnings for Covered Device Products in the Stream of Commerce.**

22 In an effort to ensure that consumers receive clear and reasonable warnings in compliance with
23 Proposition 65 for Covered Products that have not been labeled in accordance with Section 3.3,
24 within thirty (30) days following the Effective Date, Settling Defendants shall provide warning
25 materials by certified mail to each of their California retailers or distributors to whom Settling
26 Defendants reasonably believe sold Covered Device Products prior to the Effective Date. Such
27 warning materials shall include a reasonably sufficient number of stickers in order to permit the

1 retailer or distributor to affix the warning on each Covered Device Product such customer has
2 purchased from Settling Defendants. The warning stickers shall contain the warning language set
3 forth in Section 3.3 above. The warning materials shall also include a letter of instruction for the
4 placement of the stickers, and a Notice and Acknowledgment postcard.

5 **3.4. Optional Additional Injunctive Provisions.** In order for Settling Defendants to
6 be eligible for any waiver of the additional penalty/payment in lieu of penalty payments set forth
7 in Section 4.1.5 below, Settling Defendants shall undertake the additional actions below. If
8 Settling Defendants opt to be bound by this Section, Settling Defendants must provide CEH with
9 a written election stating which optional provision(s) they are agreeing to implement.

10 **3.4.1. Product Reformulation.** Within ninety (90) days following the Effective
11 Date, all Covered Products manufactured for sale in California shall be manufactured such that
12 use of the Covered Products will not produce detectable levels of formaldehyde and acetaldehyde.

13 **3.4.2. Product Safety Requirements.** If Settling Defendants opt to participate in
14 Section 3.3, Settling Defendants shall make the following changes to the Covered Products to
15 increase the safety of such products:

16 **3.4.2.1.** Within ninety (90) days following the Effective Date, all
17 Covered Liquid Products manufactured for sale in California shall be manufactured with child
18 proof caps in accordance with the standards set forth in 16 C.F.R. § 1700.15(b) and flow
19 restrictions in accordance with the standard set forth in 16 C.F.R. § 1700.15(d).

20 **3.4.2.2.** Within ninety (90) days following the Effective Date, all
21 Covered Liquid Products manufactured for sale in California shall be manufactured without
22 diacetyl in the Covered Liquid Products.

23 **3.4.3. Prohibition on Sales and Advertising to Minors.** If Settling Defendants
24 opt to participate in Section 3.3, Settling Defendants shall not sell Covered Products to persons
25 younger than eighteen (18) years of age and shall take reasonable steps to prevent the sale of
26 Covered Products to such persons, including, but not limited to the following measures:

1 **3.4.3.1.** Settling Defendants shall implement one or more systems
2 for checking the age of persons who purchase Covered Products on the Internet or in person. The
3 system shall include age verification by requiring and checking an official government
4 identification card or verifying through a reputable credit agency the age of anyone who
5 purchases Covered Products on the Internet, or of anyone under twenty-six (26) years old who
6 purchases in person. The system shall be put into place within ninety (90) days of the Effective
7 Date.

8 **3.4.3.2.** Settling Defendants shall not use advertisements that target
9 minors. Specifically, Settling Defendants will not use models or images of people that appear to
10 be younger than twenty-eight (28) years of age, cartoons, art, fashion, or music that is intended
11 and designed to appeal to people under the legal smoking age in advertisements or promotional
12 materials that appear in California, including on the Internet and in mobile advertisements such as
13 Instagram. Additionally, Settling Defendants will not: (a) advertise in any media that has more
14 than 25% under 18 readership; (b) utilize any form of outdoor advertising within 1,000 feet of any
15 school or playground; and (c) sponsor any athletic, musical or other cultural events unless such
16 events are designated as prohibiting patrons under the age of eighteen (18).

17 **3.4.4. Prohibition on Health and Safety Claims.** If Settling Defendants opt to
18 participate in Section 3.3, Settling Defendants shall not make health and or safety claims unless
19 such claims have been reviewed and approved by the Federal Food and Drug Administration.
20 Examples of prohibited claims include the following:

21 **3.4.4.1.** Settling Defendants shall not advertise Covered Products as
22 smoking-cessation devices. This prohibition includes any claims or testimonials about quitting
23 smoking, using e-cigarettes as a treatment for tobacco dependence or addiction.

24 **3.4.4.2.** Settling Defendants shall not make any claim that the
25 Covered Products do not expose users to carcinogens or are better or safer than tobacco.

26 **3.4.4.3.** Settling Defendants shall not make any claim that the
27 Covered Products produce no second hand smoke.

1 **4. PAYMENTS**

2 **4.1.** Settling Defendants shall jointly and severally initially pay to CEH the total sum of
3 \$45,000, which shall be allocated as follows:

4 **4.1.1.** \$1,900 as a civil penalty pursuant to California Health & Safety Code §
5 25249.7(b), such money to be apportioned by CEH in accordance with California Health &
6 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of
7 Environmental Health Hazard Assessment).

8 **4.1.2.** \$2,850 as a payment in lieu of civil penalty pursuant to California Health &
9 Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use
10 such funds to continue its work educating and protecting people from exposures to toxic
11 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent
12 Judgment and to purchase and test Settling Defendants' Products to confirm compliance. In
13 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four
14 percent (4%) of such funds to award grants to grassroots environmental justice groups working to
15 educate and protect the public from exposures to toxic chemicals. The method of selection of
16 such groups can be found at the CEH website at www.keh.org/justicefund.

17 **4.1.3.** \$40,250 as a reimbursement of a portion of CEH's reasonable attorneys'
18 fees and costs. This amount shall be divided into two checks: (1) a check for \$35,750 shall be
19 made payable to Lexington Law Group; and (2) a check for \$4,500 shall be made payable to the
20 Center for Environmental Health.

21 **4.1.4.** The payments required under Sections 4.1.1-4.1.3 shall be made in four (4)
22 separate checks, all to be delivered within ten (10) days following the Effective Date. The
23 payments required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable to the Center
24 for Environmental Health. All checks shall be delivered to Mark Todzo at Lexington Law Group
25 at the address set forth in Section 8.1.2.

26 **4.1.5.** In the event that Settling Defendants elect not to certify their compliance
27 with one or more of the optional provisions in Section 3.4 in accordance with that Section, within
28

ninety (90) days following the Effective Date, Settling Defendants must jointly and severally make an additional payment for each provision not certified, as follows: (i) \$5,000 if Settling Defendants elect to not participate in Section 3.4.1; (ii) \$5,000 if Settling Defendants elect to not participate in Section 3.4.2; (iii) \$5,000 if Settling Defendants elect to not participate in Section 3.4.3; and (iv) \$5,000 if Settling Defendants elect to not participate in Section 3.4.4. Each of these payments shall be paid in two (2) separate checks, each payable to the Center for Environmental Health, to be allocated as follows:

4.1.5.1. Forty percent (40%) shall constitute a civil penalty pursuant to California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment).

4.1.5.2. Sixty percent (60%) shall constitute a payment in lieu of civil penalty pursuant to California Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent Judgment and to purchase and test Settling Defendants' Products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect the public from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1. CEH may, by motion or application for an order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH shall provide Settling Defendants with a Notice of Violation and a copy of any test results which purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding

1 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
2 including providing Settling Defendants a reasonable opportunity of at least thirty (30) days to
3 cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its
4 enforcement motion or application. The prevailing party on any motion to enforce this Consent
5 Judgment shall be entitled to its reasonable attorney's fees and costs incurred as a result of such
6 motion or application. This Consent Judgment may only be enforced by the Parties.

7 **6. MODIFICATION OF CONSENT JUDGMENT**

8 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and
9 Settling Defendants, or upon motion of CEH or Settling Defendants as provided by law.

10 **7. CLAIMS COVERED AND RELEASE**

11 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH acting
12 in the public interest and Settling Defendants and Settling Defendants' parents, officers, directors,
13 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns
14 ("Defendant Releasees") and all entities to whom they distribute or sell or have distributed or sold
15 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,
16 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of all
17 claims alleged in the Complaints arising from any violation of Proposition 65 that have been or
18 could have been asserted in the public interest against Settling Defendants and Downstream
19 Defendant Releasees, regarding the failure to warn about exposures to nicotine, formaldehyde,
20 and/or acetaldehyde in the Covered Products manufactured, distributed, or sold by Settling
21 Defendants prior to the Effective Date.¹

22 **7.2.** CEH, for itself and on behalf of the public interest pursuant to Health and Safety
23 Code §25249.7, releases, waives, and forever discharges any and all claims alleged in the
24 Complaints against Settling Defendants and Downstream Defendant Releasees arising from any
25 violation of Proposition 65 that have been or could have been asserted regarding the failure to
26

27 ¹ This release does not address products sold to Downstream Defendant Releasees prior to the
28 Effective Date but currently in the stream of commerce.

1 warn about exposures to nicotine, formaldehyde, and/or acetaldehyde in connection with Covered
2 Products manufactured, distributed, or sold by Settling Defendants prior to the Effective Date.

3 7.3. Compliance with the terms of this Consent Judgment by Settling Defendants and
4 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling
5 Defendants and Downstream Defendant Releasees with respect to any alleged failure to warn
6 about nicotine, formaldehyde, and/or acetaldehyde in Covered Products manufactured,
7 distributed, or sold by Settling Defendants after the Effective Date.

8 **8. PROVISION OF NOTICE**

9 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
10 notice shall be sent by first class and electronic mail as follows:

11 8.1.1. **Notices to Settling Defendants.** The person(s) for Settling Defendants to
12 receive notices pursuant to this Consent Judgment shall be:

13 Jeffrey Holman
14 3001 Griffin Road
15 Dania Beach, FL 33312
jholman@vpco.com

16 8.1.2. **Notices to Plaintiff.** The person for CEH to receive notices pursuant to
17 this Consent Judgment shall be:

18 Mark Todzo
19 Lexington Law Group
20 503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

21 8.2. Any Party may modify the person and address to whom the notice is to be sent by
22 sending the other Parties notice by first class and electronic mail.

23 **9. COURT APPROVAL**

24 9.1. This Consent Judgment shall become effective on the Effective Date, provided
25 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
26 Settling Defendants shall support approval of such Motion.
27

1 **9.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
3 purpose.

4 **10. GOVERNING LAW AND CONSTRUCTION**

5 **10.1.** The terms and obligations arising from this Consent Judgment shall be construed
6 and enforced in accordance with the laws of the State of California.

7 **11. ENTIRE AGREEMENT**

8 **11.1.** This Consent Judgment contains the sole and entire agreement and understanding
9 of CEH and Settling Defendants with respect to the entire subject matter hereof, and any and all
10 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
11 merged herein and therein.

12 **11.2.** There are no warranties, representations, or other agreements between CEH and
13 Settling Defendants except as expressly set forth herein. No representations, oral or otherwise,
14 express or implied, other than those specifically referred to in this Consent Judgment have been
15 made by any Party hereto.

16 **11.3.** No other agreements not specifically contained or referenced herein, oral or
17 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
19 any of the Parties hereto only to the extent that they are expressly incorporated herein.

20 **11.4.** No supplementation, modification, waiver, or termination of this Consent
21 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

22 **11.5.** No waiver of any of the provisions of this Consent Judgment shall be deemed or
23 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
24 such waiver constitute a continuing waiver.

25 **12. RETENTION OF JURISDICTION**

26 **12.1.** This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

1 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

5 **14. NO EFFECT ON OTHER SETTLEMENTS**


6 **14.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against another entity on terms that are different from those contained in this Consent Judgment.

8 **15. EXECUTION IN COUNTERPARTS**

9 **15.1.** The stipulations to this Consent Judgment may be executed in counterparts and by
10 means of facsimile, which taken together shall be deemed to constitute one document.

11
12 **IT IS SO STIPULATED:**

13 **CENTER FOR ENVIRONMENTAL HEALTH**

14 
15 _____
16 Charlie Pizarro
17 Associate Director

18 **VAPOR CORP.**

19
20 _____
21 Signature

22
23 _____
24 Printed Name

25 _____
26 Title
27
28

1 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 **13.1.** Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

5 **14. NO EFFECT ON OTHER SETTLEMENTS**

6 **14.1.** Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against another entity on terms that are different from those contained in this Consent Judgment.

8 **15. EXECUTION IN COUNTERPARTS**

9 **15.1.** The stipulations to this Consent Judgment may be executed in counterparts and by
10 means of facsimile, which taken together shall be deemed to constitute one document.

11
12 **IT IS SO STIPULATED:**

13 **CENTER FOR ENVIRONMENTAL HEALTH**

14
15
16 _____
Charlie Pizarro
Associate Director

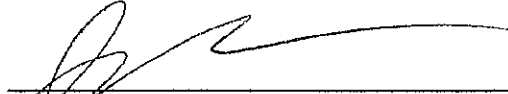
17
18 **VAPOR CORP.**

19
20 _____
Signature

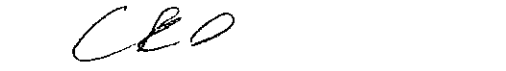
21
22 Jeff Halman
23 Printed Name

24
25 CEO
26 Title
27
28


1 VAPORIN FLORIDA, INC.

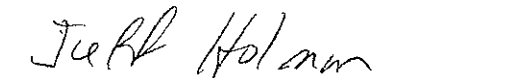
2 
3 Signature


4 
5 Printed Name

6 
7
8 Title


9
10 VAPORIN, INC.


11 
12
13 Signature


14 
15 Printed Name

16 
17
18 Title

19
20 THE VAPE STORE, INC.

21 
22
23 Signature

24 
25 Printed Name

26 
27
28 Title

1 **IT IS SO ORDERED:**

2
3 **OCT - 6 2016**

GEORGE C. HERNANDEZ, JR.

4 Dated: _____, 2016

Judge of the Superior Court