

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Nicotine Exposures From Nicotine-Containing Liquids Used With Electronic Cigarette Devices

November 19, 2015

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

#### **Description of Violation:**

- Violators: The names and addresses of the violators are identified in the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least November 19, 2012, and are continuing to this day.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is nicotine. Exposures to nicotine occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing this violation is the nicotine-containing liquid for use with electronic cigarette devices. Non-exclusive examples of this specific type of product are identified in the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to nicotine. Use of the liquid products identified in this Notice results in human exposures to nicotine. Nicotine is intentionally added as an ingredient to the liquid products, and the products are specifically marketed as containing nicotine. The primary routes of exposure for the violations are inhalation and direct ingestion when consumers inhale the aerosol emitted from electronic cigarette devices utilizing the nicotine-containing liquids. In addition, the products cause dermal and secondary ingestion exposures when the nicotine from the products is deposited in indoor environments where the products are used. These exposures occur in homes, workplaces and everywhere else throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the reproductive hazards of

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

**Preservation of Relevant Evidence:**

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to exposures to nicotine from liquid used with electronic cigarette devices; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential exposures to nicotine from use of such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, [mtodzo@lexlawgroup.com](mailto:mtodzo@lexlawgroup.com).

**EXHIBIT 1**  
**November 19, 2015 Notice of Violation**  
**Nicotine-Containing Liquid For Use With Electronic Cigarette Devices**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products
<p style="text-align: center;"><b>ePuffer International Inc.</b>            800 Steeles Avenue West            Unit B10, Suite 185            Thornhill ON L4J 7L2            Canada</p>	<p style="text-align: center;">ePuffer Royal Blend            eLiquid in Belgo Tobacco            8 mg Nicotine</p>
	<p style="text-align: center;">ePuffer Royal Blend            eLiquid in Premium Tobacco            8 mg Nicotine</p>
<p style="text-align: center;"><b>Totally Wicked Ltd.</b>            Stancliffe Street            Blackburn            Lancashire BB2 2QR            United Kingdom</p> <p style="text-align: center;"><b>Totally Wicked-E.Liquid (USA)</b>  <b>Incorporated</b>            2057 60<sup>th</sup> Place East            Bradenton, FL 34203</p>	<p style="text-align: center;">Totally Wicked            E-Liquid in Patriot Range Caramel            14 mg Nicotine</p>

**CERTIFICATE OF MERIT**  
**Health & Safety Code §25249.7(d)**

I, Mark N. Todzo, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

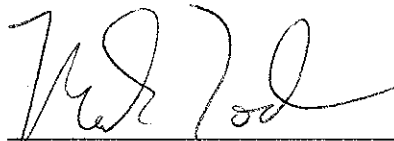
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

November 19, 2015



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Mark N. Todzo  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is cfisher@lexlawgroup.com.

On November 19, 2015, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisk).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

***Please see attached service list.***

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 2:45 P.m. on November 19, 2015:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Yeng Dang  
Supervising Deputy District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Drive, Rm. 212J  
Santa Rosa, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

Phillip J. Cline, District Attorney  
Tulare County  
221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
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Paul E. Zellerbach, District Attorney  
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Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

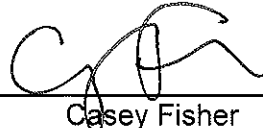
Gregory D. Totten, District Attorney Ventura  
County  
800 South Victoria Avenue  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
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[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

Gregory Alker, Assistant District Attorney  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 19, 2015, at San Francisco, California.

Signed:   
\_\_\_\_\_

Casey Fisher

## SERVICE LIST

District Attorney of Alameda County  
1225 Fallon Street, Rm. 900  
Oakland, CA 94612

District Attorney of Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney of Amador County  
708 Court Street, Ste. 202  
Jackson, CA 95642

District Attorney of Butte County  
Administration Building  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney of Colusa County  
547 Market Street, Ste. 102  
Colusa, CA 95932

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Bakersfield, CA 93301

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Hanford, CA 93230

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Los Angeles, CA 90012-3210

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209 West Yosemite Avenue  
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P.O. Box 730  
Mariposa, CA 95338

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County  
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Ukiah, CA 95482

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2222 "M" Street  
Merced, CA 95340

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204 S. Court Street, Rm. 202  
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Salinas, CA 93902

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Nevada City, CA 95959

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240  
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Hollister, CA 95023

District Attorney of San  
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316 N. Mountain View Avenue  
San Bernardino, CA 92415

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County  
330 West Broadway, Ste. 1300  
San Diego, CA 92101

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San Luis Obispo, CA 93408

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Redwood City, CA 94063

District Attorney of Santa Cruz  
County  
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Santa Cruz, CA 95060

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Attn: Jerry Lule-Jian  
312-D E. Cook Street  
Santa Maria, CA 93454

San Francisco City Attorney's Office  
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San Francisco, CA 94102

District Attorney of Shasta County  
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Redding, CA 96001

San Jose City Attorney's Office  
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San Jose, CA 95113

District Attorney of Sierra County  
Courthouse  
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Downieville, CA 95936

California Attorney General's Office  
Attention: Proposition 65  
Coordinator and Robert Thomas  
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President\*  
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President\*  
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Lancashire BB2 2QR  
United Kingdom

District Attorney of Tehama County  
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Red Bluff, CA 96080

District Attorney of Trinity County  
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Weaverville, CA 96093

Jason Cropper, CEO\*  
Totally Wicked-E.Liquid (USA)  
Incorporated  
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Marysville, CA 95901

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Los Angeles, CA 90012

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