

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Formaldehyde Exposures Resulting From Use Of Liquids Used With Electronic Cigarette Devices

December 10, 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 December 10, 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 formaldehyde. Exposures to formaldehyde occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is liquids used with electronic cigarette devices, also known as "tanks" and "vape pens." Such liquids include both nicotine containing and non-nicotine containing liquids. 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 formaldehyde. Use of the liquid products identified in this Notice results in human exposures to formaldehyde. Formaldehyde is produced when electronic cigarette devices utilizing such products are used in the intended manner. 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 products. 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 carcinogenic hazards of formaldehyde.

**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 formaldehyde produced through or during use of liquids used with electronic cigarette devices; actual or potential exposures to formaldehyde from use of such products; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to actual or potential exposures to formaldehyde 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**  
**December 10, 2015 Notice of Violation**  
**Formaldehyde Exposures Resulting From Use Of Liquids**  
**Used With Electronic Cigarette Devices**

Names and Addresses of Responsible Parties	Liquids for Use with Electronic Cigarette Devices
<p style="text-align: center;"><b>PHD Marketing, Inc.</b>            1373 Ridgeway Street            Pomona, CA 91768</p>	<p style="text-align: center;">Square Drops E-Liquid            in Tart But Tangy, 8 mg Nicotine            SKU No. 6-17724-51172-1            Item No. SDWEB-TBT-8MG</p>
	<p style="text-align: center;">Square Drops E-Liquid            in Nothing But Green, 16 mg Nicotine            SKU No. 6-17724-51152-3            Item No. SDWEB-NG-16MG</p>
<p style="text-align: center;"><b>Smart Smoke, Inc.</b>            13412 E. Nora Avenue            Spokane Valley, WA 99216</p>	<p style="text-align: center;">SmartNic Liquid in            Menthol, 18 mg Nicotine            SKU No. 0-13964-27233-8            Item No. 10ML-SMARTNIC            MENTHOL-1711</p>
	<p style="text-align: center;">SmartNic Liquid in Desert Gold            18 mg Nicotine            SKU No. 0-13964-27236-9            Item No. 10ML-SMARTNIC            DESERT-1705</p>
	<p style="text-align: center;">SmartNic Liquid in Watermelon            24 mg Nicotine            SKU No. 0-13964-27223-9            Item No. 10ML-SMARTNIC            WATERMELON-1721</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.

December 10, 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 December 10, 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 2:28 P.m. on December 10, 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  
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221 S. Mooney Avenue, Rm. 224  
Visalia, CA 93291  
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Paul E. Zellerbach, District Attorney  
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4075 Main Street  
Riverside, CA 92501  
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800 South Victoria Avenue  
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Jeff W. Reisig, District Attorney  
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301 Second Street  
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[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

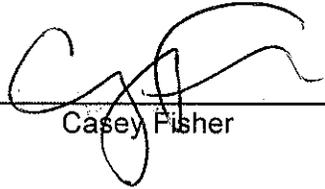
Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Anne Marie Schubert, District Attorney  
Sacramento Country  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.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 December 10, 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  
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San Andreas, CA 95249

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Colusa, CA 95932

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Bakersfield, CA 93301

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Los Angeles, CA 90012-3210

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Madera, CA 93637

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Ukiah, CA 95482

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Merced, CA 95340

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Alturas, CA 96101-4020

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District Attorney of Monterey County  
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330 West Broadway, Ste. 1300  
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Redwood City, CA 94063

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District Attorney of Santa  
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Attn: Jerry Lule-Jian  
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Santa Maria, CA 93454

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San Jose City Attorney's Office  
200 East Santa Clara Street  
San Jose, CA 95113

District Attorney of Sierra County  
Courthouse  
100 Courthouse Sq., 2<sup>nd</sup> Fl.  
Downieville, CA 95936

California Attorney General's Office  
Attention: Proposition 65  
Coordinator and Robert Thomas  
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