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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

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21 JEROD HARRIS,

Case No.

22 Plaintiff,

**CLASS ACTION COMPLAINT**

23 vs.

24 R.J. REYNOLDS VAPOR COMPANY,

25 Defendant.

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1 Plaintiff Jerod Harris (“Plaintiff”), a California resident, individually and on behalf of  
2 other similarly situated individuals, alleges the following Class Action Complaint against  
3 Defendant R.J. Reynolds Vapor Company and its affiliates known and unknown (“Defendant”)  
4 involved in the manufacturing, distributing, and selling of Vuse Electronic Cigarettes (the  
5 “Products”). Plaintiff, based on his personal knowledge and investigation of his counsel, hereby  
6 alleges the following:

7 **INTRODUCTION**

8 1. This Complaint seeks to remedy Defendant’s deceptive and unfair sales of Vuse  
9 electronic cigarettes in California. Consumers of the Products are exposed to significant amounts  
10 of harmful carcinogens when using the Products as directed. Yet, Defendant not only fails to warn  
11 consumers of such cancer-causing chemicals, but it utterly fails to disclose the presence of such  
12 chemicals.

13 2. Under California law, companies exposing individuals to cancer-causing chemicals  
14 are required to warn those individuals regarding this exposure. Defendant’s failure to provide the  
15 legally required cancer warnings for the Products constitutes a material omission that is likely to  
16 deceive ordinary consumers.

17 3. Material omissions in the face of a duty to disclose constitute unfair competition in  
18 violation of California’s Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.* and the  
19 California Consumers Legal Remedies Act Civ. Code § 1750, *et seq.*

20 **JURISDICTION AND VENUE**

21 4. This Court has personal jurisdiction over the parties in this case. Plaintiff Jerod  
22 Harris is a citizen of California. Defendant R.J. Reynolds Vapor Company purposefully avails  
23 itself of the California consumer market, and sells the Products to locations throughout California,  
24 where the Products are purchased by California consumers.

25 5. This Court has original subject-matter jurisdiction over this proposed class action  
26 pursuant to 28 U.S.C. § 1332(d), which under the provisions of the Class Action Fairness Act  
27 (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action  
28 in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class

1 is a citizen of a state different from any defendant, and the matter in controversy exceeds the sum  
2 of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that there are at least 100  
3 members in the proposed class, Plaintiff is citizen of a state different from Defendant, and the total  
4 claims of individual members of the proposed Class (as defined herein) are well in excess of  
5 \$5,000,000.00 in the aggregate, exclusive of interest and costs.

6 6. Venue is proper in this District under 28 U.S.C. § 1391(a). Substantial acts in  
7 furtherance of the alleged improper conduct, including the failure to disclose material information  
8 regarding the nature, quality, and toxicity of the Products, occurred within this District.

### 9 **INTRADISTRICT ASSIGNMENT**

10 7. Assignment to the San Francisco Division is appropriate under Civil L.R. 3-2(c)  
11 and (d) because a substantial part of the events or omissions that give rise to the claim—including  
12 the dissemination of false and misleading information regarding the nature, quality, and toxicity of  
13 the Products—occurred within the Counties of Alameda, Contra Costa, Del Norte, Humboldt,  
14 Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, and Sonoma.

### 15 **PARTIES**

#### 16 **Individual and Representative Plaintiff**

17 8. Plaintiff Jerod Harris is an individual consumer who, at all times material hereto,  
18 was a citizen of Orange County, California. During the Class period, as defined below, Plaintiff  
19 purchased the Products in Dana Point, Orange County, California.

20 9. Plaintiff relied on Defendant's false, misleading, and deceptive material omissions  
21 concerning the nature of the products. Plaintiff would not have purchased, or would have paid  
22 less for, the Product had he known the material facts omitted by Defendant: that the Products will  
23 expose users to carcinogenic toxins such as formaldehyde and acetaldehyde.

24 10. If Plaintiff knew that labels on Defendant's Products were truthful and not  
25 misleading, he would consider purchasing the Product in the future. At present, however, Plaintiff  
26 cannot be confident that the labeling of the Product is, and will be, truthful and non-misleading.

#### 27 **Defendant**

28 11. Defendant R.J. Reynolds Vapor Company is incorporated in the state of North

1 Carolina and maintains its principal place of business at 401 North Main Street, Winston-Salem,  
2 North Carolina 27101. It also operates in plants, business and technical centers, and customer  
3 business (sales) centers all over the United States, and in California.

#### 4 COMMON FACTUAL ALLEGATIONS

##### 5 E-Cigarette History

6 12. E-cigarettes are battery-operated devices, often designed to resemble a tobacco  
7 cigarette, that deliver a nicotine containing aerosol that is inhaled by the user. As a result of  
8 aggressive and unrestricted marketing, increased restrictions on the use of traditional cigarettes,  
9 and a perception that the e-cigarettes are “healthy” alternatives to traditional smoking, e-cigarette  
10 use has exploded since their introduction in the U.S. in 2007.<sup>1</sup> Despite the perception as a  
11 “healthy” alternative, studies reveal multiple problems with e-cigarette device use including health  
12 risks to the user, the adverse impact on the health and safety of children, teens, and young adults,  
13 and a lack of scientific evidence showing that e-cigarettes are effective smoking cessation devices  
14 or that they reduce their consumption.

15 13. Unlike traditional cigarettes where tobacco leaf is burned and the resulting smoke  
16 inhaled, e-cigarettes heat liquid that generally contains nicotine, flavorings, additives and  
17 propylene glycol.<sup>2</sup> The heated e-liquid is not just water vapor, as many believe.<sup>3</sup> Rather, it is  
18 turned into an aerosol that is inhaled by the user.<sup>4</sup>

19 14. One of the largest concerns over the use of e-cigarettes is its impact on the health  
20 and safety of children, teens, and young adults. Studies indicate that e-cigarette use among middle  
21 and high school students more than doubled from 2011 to 2012.<sup>5</sup> An analysis of the 2011-2013

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22 <sup>1</sup> See Ron Chapman, MD, MPH, *California Department of Public Health, California*  
23 *Tobacco Control Program, State Health Officer’s Report on E-Cigarettes: A Community Health*  
24 *Threat*, (January 2015), at 6,  
<http://www.cdph.ca.gov/programs/tobacco/Documents/Media/State%20Health-e-cig%20report.pdf>.

25 <sup>2</sup> *Id.* at 3.

26 <sup>3</sup> *Id.*

27 <sup>4</sup> *Id.*

28 <sup>5</sup> Catherine Corey, MSPH, *et al.*, *Notes From the Field: Electronic Cigarette Use Among*

1 National Youth and Tobacco Survey reported that more than a quarter-million youth who had  
 2 never smoked a traditional cigarette used e-cigarettes in 2013, a three-fold increase since 2011,  
 3 and that youth who used e-cigarettes were nearly twice as likely to try traditional cigarettes as  
 4 those who never used e-cigarettes.<sup>6</sup>

5 15. This dramatic rise in adolescent use is directly tied to aggressive marketing efforts  
 6 of e-cigarettes. E-cigarettes ads are found on TV, radio, magazines, newspapers, and online,  
 7 particularly on social media sites such as Facebook, Instagram, YouTube, and Twitter.<sup>7</sup> In only  
 8 three years, money spent on e-cigarettes advertising has increased 1,200 percent or 12-fold.<sup>8</sup> The  
 9 industry spent \$39 million on advertising between June and November 2013, alone.<sup>9</sup>

10 16. Moreover, a number of recent studies have shown that e-cigarette users are no more  
 11 likely to quit than regular smokers, including one study finding that 89 percent of e-cigarettes  
 12 users are still using them one year later.<sup>10</sup> Another study showed that e-cigarette users are a third  
 13 less likely to quit cigarettes, contradicting the theory that the e-cigarettes help people successfully  
 14 quit the nicotine habit.<sup>11</sup> Finally, statistics show that dual use of traditional and e-cigarettes is  
 15 continuing to rise, which may lessen any potential benefit of cutting back on tobacco cigarettes.<sup>12</sup>

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16 *Middle and High School Students—United States, 2011-2012*, Center for Disease Control and  
 17 Prevention, MMWR Morbidity and Mortality Weekly Report (2013) 62(35):729-730 (September  
 18 6, 2013),  
 19 [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?utm\\_source=rss&utm\\_medium=ss&utm\\_campaign=notes-from-the-field-electronic-cigarette-use-among-middle-and-high-school-students-united-states-20112012](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6235a6.htm?utm_source=rss&utm_medium=ss&utm_campaign=notes-from-the-field-electronic-cigarette-use-among-middle-and-high-school-students-united-states-20112012).

20 <sup>6</sup> See Rebecca E. Bunnell, *et al.*, *Intentions to smoke cigarettes among never-smoking U.S.*  
 21 *middle and high school electronic cigarette users, National Youth Tobacco Survey, 2011-2013*,  
 Nicotine & Tobacco Research, (2014),  
 22 <http://ntr.oxfordjournals.org/content/early/2014/08/18/ntr.ntu166.full.pdf+html>.

23 <sup>7</sup> See Chapman, *Community Health Threat*, *supra*, at 7.

24 <sup>8</sup> *Id.*

25 <sup>9</sup> Legacy, *Vaporized: E-cigarettes, Advertising, and Youth*, (May 2014), at 7,  
 26 [http://legacyforhealth.org/content/download/4542/63436/version/1/file/LEG-Vaporized-E-cig\\_Report-May2014.pdf](http://legacyforhealth.org/content/download/4542/63436/version/1/file/LEG-Vaporized-E-cig_Report-May2014.pdf).

27 <sup>10</sup> See Chapman, *Community Health Threat*, *supra*, at 6.

28 <sup>11</sup> *See id.*

<sup>12</sup> *Id.* at 7.

1 **Carcinogenic Dangers of E-Cigarettes**

2 17. To date, e-cigarettes are not required to receive pre-market approval of any kind.  
3 Accordingly, there has been a lack of data concerning health effects of e-cigarette use.

4 18. Nevertheless, published studies reveal that the aerosol inhaled by users of e-  
5 cigarettes contains toxic chemicals including formaldehyde and acetaldehyde.<sup>13</sup> The aerosol also  
6 contains high concentrations of ultrafine particles that are inhaled and become trapped in the  
7 lungs.<sup>14</sup> Once inhaled, these chemicals travel through the circulatory system, affecting the brain  
8 and all organs.<sup>15</sup>

9 19. A small study in 2015 demonstrated that e-cigarettes produce formaldehyde, which  
10 is present in the aerosol inhaled by users.<sup>16</sup>

11 20. Recent independent testing of Defendant's e-cigarettes revealed the presence of  
12 significant amounts of formaldehyde and acetaldehyde in the aerosol produced by the Products.

13 **Defendant's Unfair and Deceptive Practices**

14 21. Defendant manufactures, distributes, and sells the Products in California. The  
15 Products, when used as directed and intended, expose users to significant quantities of  
16 formaldehyde and acetaldehyde.

17 22. Defendant's Products expose Plaintiff and the class members to carcinogenic  
18 toxins. The exposure to carcinogenic toxins is information that is material to a reasonable  
19 consumer.

20 23. Despite the fact that Defendant exposes consumers of the Products to formaldehyde  
21 and acetaldehyde, Defendant fails to provide any warnings whatsoever about the carcinogenic  
22 hazards associated with such exposure.

23 \_\_\_\_\_  
24 <sup>13</sup> *Id.*

25 <sup>14</sup> *Id.*

26 <sup>15</sup> *Id.*

27 <sup>16</sup> R. Paul Jensen, et al., *Hidden Formaldehyde in E-Cigarette Aerosols*, New England  
28 Journal of Medicine, 372;392-394 (Jan. 22, 2015),  
<http://www.nejm.org/doi/full/10.1056/NEJMc1413069>.

1           24.     Defendant’s failure to tell consumers that they are buying e-cigarette Products that  
2 will expose them to the carcinogenic toxins formaldehyde and acetaldehyde is a material omission.

3           25.     Defendant knowingly fails to disclose to consumers the presence of the  
4 carcinogenic toxins formaldehyde and acetaldehyde in the Products.

5           26.     The People of the State of California have declared by initiative under Proposition  
6 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
7 other reproductive harm.” Proposition 65, § 1(b).

8           27.     To effectuate this goal, California’s Proposition 65, Health & Safety Code §  
9 25249.5, *et seq.*, prohibits exposing people to chemicals listed by the State of California as known  
10 to cause cancer, birth defects or other reproductive harm above certain levels without a “clear and  
11 reasonable warning” unless the business responsible for the exposure can prove that it fits within a  
12 statutory exemption.

13           28.     In 1988, the Office of Environmental Health Hazard Assessment of the California  
14 Environmental Protection Agency added both formaldehyde and acetaldehyde to California’s  
15 Proposition 65 list of chemicals known to cause cancer, birth defects, or reproductive harm.  
16 Formaldehyde and acetaldehyde are specifically identified as chemicals known to cause cancer.

17           29.     Defendant either had actual knowledge of the fact that use of the Products expose  
18 users to formaldehyde and acetaldehyde, or it was reckless in not knowing.

19           30.     The Products, when used as directed, produce significant amounts of formaldehyde  
20 and acetaldehyde in the aerosol inhaled by users. Thus, the intended use of the Products results in  
21 exposure to formaldehyde and acetaldehyde.

22           31.     Plaintiff and the members of the Class do or did not know that use of the Products  
23 would expose them to formaldehyde and acetaldehyde.

24           32.     Plaintiff and the members of the Class would not have purchased or paid as much  
25 for the Products had they known the Products would expose them to formaldehyde and  
26 acetaldehyde.

27           33.     Defendant’s material omissions are likely to deceive a reasonable consumer.

28           34.     The Products have been sold by Defendant for use in California since at least 2013.

1           35.     At the time Defendant began selling the Products in California, the public  
2 perception of e-cigarettes was that such products were a healthy alternative to smoking because  
3 although e-cigarettes contained nicotine, they did not expose users to carcinogens. Defendant  
4 knew of this public misperception regarding the true nature of e-cigarettes, yet introduced the  
5 Products without disclosing the carcinogenic exposures resulting from ordinary use thereof.

6           36.     Defendant continues to manufacture, distribute, and sell the Products to consumers  
7 in California while knowingly failing to disclose the presence of toxins formaldehyde and  
8 acetaldehyde in the Products.

9                                           **CLASS ALLEGATIONS**

10           37.     Plaintiff brings this lawsuit as a class action on behalf of himself and all others  
11 similarly situated as members of a proposed plaintiff Class pursuant to Federal Rule of Civil  
12 Procedure 23. This action satisfies the ascertainability, numerosity, commonality, typicality,  
13 adequacy, predominance and superiority requirements of those provisions.

14           38.     The Class is defined as:

15                 All persons in California who purchase one or more Products from Defendant from July 1,  
16                 2013 through the present (the "Class Period").

17           39.     Excluded from the Class are Defendant; the officers, directors or employees of  
18 Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal  
19 representative, heir or assign of Defendant. Also excluded are any federal, state or local governmental  
20 entities, any judicial officer presiding over this action and the members of his/her immediate family  
21 and judicial staff, and any juror assigned to this action.

22                                           **Numerosity and Ascertainability**

23           40.     The members of each class are so numerous that joinder of all members is  
24 impracticable. While the exact number of class members is presently unknown to Plaintiff, based  
25 on Defendant's volume of sales, Plaintiff estimates that each class numbers in the thousands.

26           41.     Plaintiff is a representative of all other consumers who have purchased Defendant's  
27 Products in California where Defendant failed to disclose that use of the products will expose  
28 users to the carcinogenic toxins formaldehyde and acetaldehyde, and is acting on behalf of those



1 consumers' interests. The similarly situated consumers are readily identifiable through self-  
2 identification, through customer receipts, and through Defendant's own business records.

3 **Typicality**

4 42. Plaintiff purchased Defendant's Products in California during the Class Period. All  
5 of the Products purchased by Plaintiff failed warn or disclose that use of the Products would  
6 expose him to chemicals known to cause cancer.

7 43. During the Class Period, the Defendants failed to disclose the presence of  
8 carcinogenic toxins formaldehyde and acetaldehyde in the Products purchased by class members.

9 44. The claims of the representative Plaintiff are typical of the claims of the Class, in  
10 that the representative Plaintiff, like all members of the Class, purchased the Products and  
11 Defendant failed to disclose the presence of carcinogenic toxins formaldehyde and acetaldehyde in  
12 those Products.

13 **Adequacy**

14 45. Plaintiff will fairly and adequately represent and protect the interests of the  
15 members of each class. Plaintiff does not have any interests that are adverse to those of the class  
16 members. Plaintiff has retained competent counsel experienced in class action litigation and  
17 intends to prosecute this action vigorously.

18 **Common Questions Predominate**

19 46. There are numerous questions of law and fact common to all class members, and  
20 those questions predominate over any questions that may affect only individual class members.  
21 The common questions will generate common answers that are likely to drive the resolution of this  
22 action.

23 47. Questions of law and fact common to the members of the Class that predominate  
24 over questions that may affect individual Class members include:

- 25 a. Whether Defendant's Products expose class members to formaldehyde and  
26 acetaldehyde;  
27 b. Whether Defendant is under a duty to disclose the presence of formaldehyde  
28 and acetaldehyde in the Products to class members;

- 1 c. Whether Defendant knew or should have known of the presence of
- 2 formaldehyde and acetaldehyde in the products;
- 3 d. Whether Defendant failed to disclose the presence of formaldehyde and
- 4 acetaldehyde in the Products;
- 5 e. Whether Defendant's failure to disclose the presence of carcinogenic toxins
- 6 formaldehyde and acetaldehyde in the Products violated California's
- 7 Consumers Legal Remedies Act ("CLRA");
- 8 f. Whether Defendant's failure to disclose the presence of carcinogenic toxins
- 9 formaldehyde and acetaldehyde in the Products was likely to mislead or deceive
- 10 ordinary consumers, and therefore fraudulent, within the meaning of Bus. &
- 11 Prof. Code § 17200, et seq.;
- 12 g. Whether Defendant's failure to disclose the presence of carcinogenic toxins
- 13 formaldehyde and acetaldehyde in the Products was and is unfair within the
- 14 meaning of Bus. & Prof. Code § 17200, et seq.;
- 15 h. Whether Defendant's failure to disclose the presence of carcinogenic toxins
- 16 formaldehyde and acetaldehyde in the Products violated Bus. & Prof. Code §
- 17 17200, et seq.;
- 18 i. Whether Defendant should be declared financially responsible for notifying all
- 19 class members of the presence of formaldehyde and acetaldehyde in the
- 20 Products;
- 21 j. Whether Plaintiff and the Class are entitled to compensatory damages, and the
- 22 amount of such damages;
- 23 k. Whether Defendant should be enjoined from engaging in the methods, acts or
- 24 practices alleged herein; and
- 25 l. Whether Defendant should be ordered to disgorge, for the benefit of the Class,
- 26 its ill-gotten profits received from the sale of its Products.

27 **Superiority**

28 48. A class action is superior to other available methods for the fair and efficient

1 adjudication of this controversy.

2 49. The prerequisites to maintaining a class action for injunctive or equitable relief are  
3 met as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby  
4 making appropriate final injunctive or equitable relief with respect to the Class as a whole.

5 50. The prosecution of separate actions by individual members of the Class and would  
6 create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for  
7 Defendant. For example, one court might enjoin Defendant from performing the challenged acts,  
8 whereas another might not. Additionally, individual actions could be dispositive of the interests of  
9 the Class even where certain Class members are not parties to such actions.

10 51. Defendant's conduct is generally applicable to the Class as a whole and Plaintiff  
11 seeks, *inter alia*, equitable remedies with respect to the Classes as a whole. As such, Defendant's  
12 systematic failure to disclose material information makes declaratory and injunctive relief with  
13 respect to the Class as a whole appropriate.

14 52. A class action is superior to all other available methods for the fair and efficient  
15 adjudication of this controversy. Without a class action, individual Class members would face  
16 burdensome litigation expenses, deterring them from bringing suit or adequately protecting their  
17 rights. Class members would continue to incur harm without remedy absent a class action, while  
18 Defendant would continue to reap the benefits of its misconduct. In addition, class litigation is  
19 superior because it will obviate the need for unduly duplicative litigation that might result in  
20 inconsistent judgments about the legality of Defendant's sales and advertising practices.

21 **FIRST CAUSE OF ACTION**  
22 **(Violations of California's Unfair Competition Law, Bus. & Prof. Code § 17200, *et seq.***  
**Based on Deceptive Practices)**

23 53. Plaintiff incorporates by reference the allegations contained in the preceding  
24 paragraphs of this Complaint.

25 54. By committing the acts and practices alleged herein, Defendant has violated  
26 California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200-17210, as to the  
27 Class as a whole, by engaging in fraudulent conduct.

28

1           55. Defendant's failure to disclose that the Products expose users to formaldehyde and  
2 acetaldehyde violates the UCL's proscription against engaging in fraudulent conduct.

3           56. As more fully described above, Defendant's failure to disclose that the Products  
4 expose users to formaldehyde and acetaldehyde is likely to deceive reasonable consumers.  
5 Indeed, Plaintiff and the other members of the Class were unquestionably deceived regarding the  
6 safety and health benefits of the Products, as Defendant's marketing, advertising, packaging, and  
7 labeling of the Products misrepresent and omit the true facts about the Products. These acts  
8 constitute fraudulent and unfair business practices.

9           57. Further, Defendant's failure to warn of the carcinogenic exposures resulting from  
10 use of the Products is contrary to California law and policy, which obligates Defendant to provide  
11 such information to consumers.

12           58. Plaintiff and the members of the Class have suffered injury in fact and have lost  
13 money or property because they paid more for the Products as a direct result of Defendant's failure  
14 to disclose that the Products expose them to formaldehyde and acetaldehyde. Had Plaintiff and the  
15 Class members known the true nature of the Products, they would not have purchased them or  
16 they would have paid less for them.

17           59. Plaintiff and the other Class members had no way of reasonably knowing that use  
18 of the Products they purchased would expose them to the carcinogenic toxins formaldehyde and  
19 acetaldehyde. Thus, could not have reasonably avoided the injury each of them suffered.

20           60. Defendant's violations of the UCL continue to this day.

21  
22                                   **SECOND CAUSE OF ACTION**  
23                   **(Violations of California's Unfair Competition Law, Bus. & Prof. Code § 17200, et seq.**  
                                         **Based on Unfair Acts and Practices)**

24           61. Plaintiff incorporates by reference the allegations contained in the preceding  
25 paragraphs of this Complaint.

26           62. Under Cal. Business & Professions Code § 17200, any business act or practice that  
27 is unethical, oppressive, unscrupulous and/or substantially injurious to consumers, or that violates  
28 a legislatively declared policy, constitutes an unfair business act or practice.

1           63. Defendant has engaged, and continues to engage, in conduct which is immoral,  
2 unethical, oppressive, unscrupulous and/or substantially injurious to consumers. This conduct  
3 includes, but is not limited to, failing to disclose that use of the Products expose users to  
4 formaldehyde and acetaldehyde. The gravity of harm caused by Defendant's conduct as described  
5 herein far outweighs the utility, if any, of such conduct.

6           64. Defendant has engaged, and continues to engage, in conduct that violates  
7 California law and policy, which obligates Defendant to inform consumers and provide clear and  
8 reasonable warnings when exposing consumers to chemicals listed by the State of California as  
9 known to cancer. Defendant has further engaged, and continues to engage, in conduct that violates  
10 the legislatively declared policy of the CLRA against misrepresenting the characteristics, uses,  
11 benefits, and quality of goods for sale.

12           65. Defendant's conduct, including failing to disclose that use of the Products expose  
13 users to formaldehyde and acetaldehyde, is substantially injurious to consumers. Such conduct  
14 has and continues to cause substantial injury to consumers because consumers would not have  
15 purchased the Products at all, or would not have paid such a high price for the Products, but for  
16 Defendant's failure to disclose that use of the Products exposes the user to formaldehyde and  
17 acetaldehyde. Consumers have thus overpaid for the Products. Such injury is not outweighed by  
18 any countervailing benefits to consumers or competition. Indeed, no benefit to consumers or  
19 competition results from Defendant's conduct. Since consumers reasonably rely on Defendant's  
20 representations of the Products and injury results from ordinary use of the Products, consumers  
21 could not have reasonably avoided such injury.

22           66. By committing the acts alleged above, Defendant has engaged in unfair business  
23 acts and practices which constitute unfair competition within the meaning of Cal. Business &  
24 Professions Code § 17200.

25           67. An action for injunctive relief and restitution is specifically authorized under Cal.  
26 Business & Professions Code § 17203.

27           68. Plaintiff and the members of the Class have suffered injury in fact and have lost  
28 money or property because they paid more for the Products as a direct result of Defendant's failure

1 to disclose that the Products expose them to formaldehyde and acetaldehyde. Had Plaintiff and the  
2 Class members known the true nature of the Products, they would not have purchased them or  
3 they would have paid less for them.

4 **THIRD CAUSE OF ACTION**  
5 **(Violation of the California Consumers Legal Remedies Act Civ. Code § 1750, *et seq.*)**

6 69. Plaintiff incorporates by reference the allegations contained in the preceding  
7 paragraphs of this Complaint.

8 70. Defendant R.J. Reynolds Vapor Company is a “person” as defined by Civil Code  
9 § 1761(c).

10 71. Plaintiff and many Class members are “consumers” within the meaning of Civil  
11 Code § 1761(d).

12 72. Defendant’s e-cigarette Products are “goods” within the meaning of Civil Code  
13 §1761(a).

14 73. Defendant is obligated by law to disclose the fact that Products expose users to  
15 carcinogenic chemicals.

16 74. As alleged more fully above, Defendant violated the CLRA by failing to comply  
17 with its duty to disclose to Plaintiff and Class members that use of its e-cigarette Products exposes  
18 the user to formaldehyde and acetaldehyde. Specifically, Defendant’s failure to disclose material  
19 facts regarding its e-cigarette Products violated (a) § 1770(a)(5)’s proscription against representing  
20 that goods have characteristics or benefits they do not actually have; and (b) § 1770(a)(7)’s  
21 proscription against representing that goods are of a particular standard or quality when they are of  
22 another.

23 75. Defendant’s wrongful conduct continues to this day.

24 76. Plaintiff and the members of the Class have suffered damage as a direct result of  
25 Defendant’s failure to disclose that use of its Products expose the user to formaldehyde and  
26 acetaldehyde. Had Plaintiff and the Class members known the true nature of the Products, they  
27 would not have purchased them or they would have paid less for them.

28

1 77. Defendant's omissions were designed to induce Plaintiff and members of the Class  
2 to purchase the Products.

3 78. If Plaintiff knew that labels on Defendant's Products were truthful and not  
4 misleading, he would consider purchasing the Product in the future. At present, however, Plaintiff  
5 cannot be confident that the labeling of the Product is, and will be, truthful and non-misleading.

6 79. Plaintiff and the members of the Class are providing Defendant with the notice  
7 required by the Consumers Legal Remedies Act by giving notice of Defendant's violations of the  
8 Act by certified mail. Plaintiff and the Class at this time request only injunctive relief, until the  
9 expiration of the thirty-day period in which Defendant may respond to the notice. Plaintiff and the  
10 Class will amend the Complaint to add claims for damages in the event Defendant does not  
11 respond to the notice in the specified time. As such, Plaintiff has complied with California Civil  
12 Code section 1782(a).

13 80. Plaintiff and the Class members may be irreparably harmed or denied effective or  
14 complete remedy if such an order is not granted.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff demands judgment on behalf of himself and the Class as  
17 follows:

18 A. An order certifying the proposed Class; appointing Plaintiff as representative of the  
19 Class; and appointing Plaintiff's undersigned counsel as Class counsel

20 B. A declaration that Defendant is financially responsible for notifying Class members  
21 of the pendency of this suit;

22 C. An award of restitution;

23 D. An award of restitutionary disgorgement pursuant to California Business and  
24 Professions Code § 17203 for members of the Class;

25 E. An order enjoining Defendant's unlawful and deceptive acts and practices, pursuant  
26 to California Business and Professions Code § 17203, and requiring Defendant to place clear and  
27 reasonable warnings on the packaging of the Products that use of the Products exposes the user to  
28 formaldehyde and acetaldehyde, chemicals known to the State of California to cause cancer;

- 1 F. Injunctive relief for Plaintiff and members of the Class pursuant to California Civil  
2 Code § 1780;
- 3 G. Statutory damages in the maximum amount provided by law;
- 4 H. Punitive damages in accordance with proof and in an amount consistent with  
5 applicable precedent;
- 6 I. An order awarding Plaintiff and the other Class members the reasonable costs and  
7 expenses of suit, including their attorneys' fees; and
- 8 J. Any further relief that the Court may deem appropriate.
- 9  
10

11 DATED: September 8, 2015

LEXINGTON LAW GROUP

13 /s/ Mark N. Todzo

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15 Attorneys for Plaintiff

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