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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**
 18 **SAN FRANCISCO DIVISION**

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21 JEROD HARRIS,
 22 Plaintiff,
 23 vs.
 24 R.J. REYNOLDS VAPOR COMPANY,
 25 Defendant.

Case No.

CLASS ACTION COMPLAINT

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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 2007.¹ 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.² The heated e-liquid is not just water vapor, as many believe.³ Rather, it is
18 turned into an aerosol that is inhaled by the user.⁴

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 2012.⁵ An analysis of the 2011-2013

22 ¹ 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 ² *Id.* at 3.

26 ³ *Id.*

27 ⁴ *Id.*

28 ⁵ 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.⁶

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.⁷ In only
8 three years, money spent on e-cigarettes advertising has increased 1,200 percent or 12-fold.⁸ The
9 industry spent \$39 million on advertising between June and November 2013, alone.⁹

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.¹⁰ 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.¹¹ 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.¹²

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.

20 ⁶ 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*,
22 *Nicotine & Tobacco Research*, (2014),
23 <http://ntr.oxfordjournals.org/content/early/2014/08/18/ntr.ntu166.full.pdf+html>.

24 ⁷ See Chapman, *Community Health Threat*, *supra*, at 7.

25 ⁸ *Id.*

26 ⁹ Legacy, *Vaporized: E-cigarettes, Advertising, and Youth*, (May 2014), at 7,
27 http://legacyforhealth.org/content/download/4542/63436/version/1/file/LEG-Vaporized-E-cig_Report-May2014.pdf.

28 ¹⁰ See Chapman, *Community Health Threat*, *supra*, at 6.

¹¹ *See id.*

¹² *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.¹³ The aerosol also
6 contains high concentrations of ultrafine particles that are inhaled and become trapped in the
7 lungs.¹⁴ Once inhaled, these chemicals travel through the circulatory system, affecting the brain
8 and all organs.¹⁵

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

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 ¹³ *Id.*

25 ¹⁴ *Id.*

26 ¹⁵ *Id.*

27 ¹⁶ 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 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.**
24 **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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JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JEROD HARRIS

(b) County of Residence of First Listed Plaintiff Orange County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117,
(415) 913-7800

DEFENDANTS

R.J. REYNOLDS VAPOR COMPANY

County of Residence of First Listed Defendant Forsyth County, NC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332(d)

Brief description of cause:
Violation of Cal.'s Consumers Legal Remedies Act and Unfair Comp. Law for Deceptive and Unfair Sales Practice

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
09/08/2015

SIGNATURE OF ATTORNEY OF RECORD
/s/ Mark N. Todzo

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

- SAN FRANCISCO/OAKLAND
- SAN JOSE
- EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.