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7 CENTER FOR ENVIRONMENTAL HEALTH

9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF ALAMEDA

12 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. RG 15-794036  
13 )  
14 Plaintiff, ) **[PROPOSED] CONSENT**  
15 v. ) **JUDGMENT AS TO TOTALLY**  
16 TOTALLY WICKED-E LIQUID (USA) ) **WICKED-E.LIQUID (USA)**  
17 INCORPORATED, et al., ) **INCORPORATED**  
18 Defendants. )  
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20 **1. INTRODUCTION**

21 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental  
22 Health, a non-profit corporation (“CEH”), and Totally Wicked-E.Liquid (USA) Incorporated  
23 (“Settling Defendant”) to settle claims asserted by CEH against Settling Defendant as set forth in  
24 the operative Complaint in the matter *Center for Environmental Health v. Totally Wicked-E*  
25 *Liquid (USA) Incorporated, et al.*, Alameda County Superior Court Case No. RG 15-794036 (the  
26 “Action”). CEH and Settling Defendant are referred to collectively as the “Parties.”  
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1           **1.2.** On September 2, 2015, CEH served two 60-Day Notices of Violation (the  
2 “Formaldehyde Notices”) relating to the California Safe Drinking Water and Toxic Enforcement  
3 Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling  
4 Defendant, the California Attorney General, the District Attorneys of every County in the State of  
5 California, and the City Attorneys for every City in State of California with a population greater  
6 than 750,000. The Formaldehyde Notices allege violations of Proposition 65 with respect to the  
7 presence of formaldehyde resulting from use of Settling Defendant’s e-cigarette devices and the  
8 e-liquids used in such devices (the “Products”).

9           **1.3.** On November 19, 2015, CEH served two additional 60-Day Notices of Violation  
10 (the “Nicotine Notices”) relating to the California Safe Drinking Water and Toxic Enforcement  
11 Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling  
12 Defendant, the California Attorney General, the District Attorneys of every County in the State of  
13 California, and the City Attorneys for every City in State of California with a population greater  
14 than 750,000. The Nicotine Notices allege violations of Proposition 65 with regard to exposures  
15 to nicotine from use of the Products.

16           **1.4.** Also on November 19, 2015, CEH filed the Action, naming Settling Defendant as  
17 a defendant in the Action.

18           **1.5.** Settling Defendant is a corporation that employs ten (10) or more persons and that  
19 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
20 California or has done so in the past.

21           **1.6.** For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
22 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint  
23 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)  
24 venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this  
25 Consent Judgment as a full and final resolution of all claims which were or could have been  
26 raised in the Complaint based on the facts alleged in the Notices and Complaint with respect to  
27 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

1           **1.7.** The Parties enter into this Consent Judgment as a full and final settlement of all  
2 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
3 related to Settling Defendant alleged therein and in the Notices. By execution of this Consent  
4 Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of  
5 law, or violation of law, nor shall compliance with the Consent Judgment constitute or be  
6 construed as an admission by the Parties of any fact, conclusion of law, or violation of law.  
7 Settling Defendant denies the material, factual, and legal allegations in the Notices and Complaint  
8 and expressly denies any wrongdoing whatsoever. Except as specifically provided herein,  
9 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument,  
10 or defense any of the Parties may have in this or any other pending or future legal proceedings.  
11 This Consent Judgment is the product of negotiation and compromise and is accepted by the  
12 Parties solely for purposes of settling, compromising, and resolving issues disputed in this Action.

13           **1.8.** Upon entry of this Consent Judgment, the Complaint in the Action shall be  
14 deemed amended as to Settling Defendant to include the allegations set forth in the Nicotine  
15 Notices.

16           **2. DEFINITIONS**

17           **2.1.** “Covered Products” means “Covered Liquid Products” and “Covered Device  
18 Products.”

19           **2.2.** “Covered Liquid Products” means liquids that are designed for use with electronic  
20 cigarette devices, also known as tanks and vape pens, that are manufactured, distributed, and/or  
21 sold by Settling Defendant in California.

22           **2.3.** “Covered Device Products” means electronic cigarette devices, also known as  
23 tanks and vape pens, which contain nicotine or are designed and intended for use with nicotine-  
24 containing liquid, that are manufactured, distributed, and/or sold by Settling Defendant in  
25 California.

26           **2.4.** “Effective Date” means the date on which the Court enters this Consent Judgment.  
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1       **3.       INJUNCTIVE RELIEF**

2               **3.1.       Clear and Reasonable Warnings for Nicotine-Containing Covered Liquid**

3       **Products.** As of the Effective Date, no nicotine-containing Covered Liquid Product may be  
4       manufactured for sale, distributed or sold in California unless such nicotine-containing Covered  
5       Liquid Product has a clear and reasonable warning on the outer label of the product. The warning  
6       shall state the following:

7                       **WARNING:** Use of this product will expose you to nicotine, a chemical  
8                       known to the State of California to cause birth defects or other reproductive  
9                       harm, and formaldehyde, a chemical known to cause cancer.

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

24                       **3.1.1.       Warnings for Nicotine-Containing Covered Liquid Products in the**  
25       **Stream of Commerce.** In an effort to ensure that consumers receive clear and reasonable  
26       warnings in compliance with Proposition 65 for nicotine-containing Covered Liquid Products that  
27       have not been labeled in accordance with Section 3.1, within thirty (30) days following the  
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1 Effective Date, Settling Defendant shall provide warning materials by certified mail to each of its  
2 California retailers or distributors to whom Settling Defendant reasonably believes sold nicotine-  
3 containing Covered Liquid Products prior to the Effective Date. Such warning materials shall  
4 include a reasonably sufficient number of stickers in order to permit the retailer or distributor to  
5 affix the warning on each nicotine-containing Covered Liquid Product such customer has  
6 purchased from Settling Defendant. The warning stickers shall contain the warning language set  
7 forth in Section 3.1 above. The warning materials shall also include a letter of instruction for the  
8 placement of the stickers, and a Notice and Acknowledgment postcard.

9 **3.2. Clear and Reasonable Warnings for Non-Nicotine-Containing Covered**  
10 **Liquid Products.** As of the Effective Date, no non-nicotine-containing Covered Liquid Product  
11 may be manufactured for sale, distributed or sold in California unless such non-nicotine-  
12 containing Covered Liquid Product has a clear and reasonable warning on the outer label of the  
13 product. The warning shall state the following:

14 **WARNING:** Use of this product will expose you to formaldehyde, a  
15 chemical known to the State of California to cause cancer.

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

3 **3.2.1. Warnings for Non-Nicotine-Containing Covered Liquid Products in**  
4 **the Stream of Commerce.** In an effort to ensure that consumers receive clear and reasonable  
5 warnings in compliance with Proposition 65 for non-nicotine-containing Covered Products that  
6 have not been labeled in accordance with Section 3.2, within thirty (30) days following the  
7 Effective Date, Settling Defendant shall provide warning materials by certified mail to each of its  
8 California retailers or distributors to whom Settling Defendant reasonably believes sold non-  
9 nicotine-containing Covered Liquid Products prior to the Effective Date. Such warning materials  
10 shall include a reasonably sufficient number of stickers in order to permit the retailer or  
11 distributor to affix the warning on each non-nicotine-containing Covered Liquid Product such  
12 customer has purchased from Settling Defendant. The warning stickers shall contain the warning  
13 language set forth in Section 3.1 above. The warning materials shall also include a letter of  
14 instruction for the placement of the stickers, and a Notice and Acknowledgment postcard.

15 **3.3. Clear and Reasonable Warnings for Covered Device Products.** As of the  
16 Effective Date, no Covered Device Product may be manufactured for sale, distributed or sold in  
17 California unless such Covered Device Product has a clear and reasonable warning on the outer  
18 packaging of the product. For Covered Device Products that contain nicotine, the warning shall  
19 state the following:

20 **WARNING:** Use of this product will expose you to nicotine, a chemical  
21 known to the State of California to cause birth defects or other reproductive  
22 harm, and formaldehyde, a chemical known to cause cancer.

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

25 **WARNING:** Use of this product with nicotine-containing liquid will  
26 expose you to nicotine, a chemical known to the State of California to

1 cause birth defects or other reproductive harm, and formaldehyde, a  
2 chemical known to cause cancer.

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

17 **3.3.1. Warnings for Covered Device Products in the Stream of Commerce.**

18 In an effort to ensure that consumers receive clear and reasonable warnings in compliance with  
19 Proposition 65 for Covered Products that have not been labeled in accordance with Section 3.3,  
20 within thirty (30) days following the Effective Date, Settling Defendant shall provide warning  
21 materials by certified mail to each of its California retailers or distributors to whom Settling  
22 Defendant reasonably believes sold Covered Device Products prior to the Effective Date. Such  
23 warning materials shall include a reasonably sufficient number of stickers in order to permit the  
24 retailer or distributor to affix the warning on each Covered Device Product such customer has  
25 purchased from Settling Defendant. The warning stickers shall contain the warning language set  
26 forth in Section 3.3 above. The warning materials shall also include a letter of instruction for the  
27 placement of the stickers, and a Notice and Acknowledgment postcard.

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1           **3.4. Optional Additional Injunctive Provisions.** In order for Settling Defendant to be  
2 eligible for any waiver of the additional civil penalty/payment in lieu of penalty payments set  
3 forth in Section 4.1.5 below, Settling Defendant shall undertake one or more of the additional  
4 actions below. If Settling Defendant opts to be bound by this Section, Settling Defendant must  
5 provide CEH with a written election stating which optional provision(s) it is agreeing to  
6 implement.

7           **3.4.1. Product Reformulation.** Within ninety (90) days following the Effective  
8 Date, all Covered Products manufactured for sale in California shall be manufactured such that  
9 use of the Covered Products will not produce detectable levels of formaldehyde and acetaldehyde.

10           **3.4.2. Product Safety Requirements.** If Settling Defendant opts to participate in  
11 Section 3.4, Settling Defendant shall make the following changes to the Covered Products to  
12 increase the safety of such products:

13                   **3.4.2.1.** Within ninety (90) days following the Effective Date, all  
14 Covered Liquid Products manufactured for sale in California shall be manufactured with child  
15 proof caps in accordance with the standards set forth in 16 C.F.R. § 1700.15(b) and flow  
16 restrictions in accordance with the standard set forth in 16 C.F.R. § 1700.15(d).

17                   **3.4.2.2.** Within ninety (90) days following the Effective Date, all  
18 Covered Products manufactured for sale in California shall be manufactured without diacetyl in  
19 the Covered Products.

20           **3.4.3. Prohibition on Sales and Advertising to Minors.** If Settling Defendant  
21 opts to participate in Section 3.4, Settling Defendant shall not sell Covered Products to persons  
22 younger than eighteen (18) years of age and shall take reasonable steps to prevent the sale of  
23 Covered Products to such persons, including, but not limited to the following measures:

24                   **3.4.3.1.** Settling Defendant shall implement one or more systems for  
25 checking the age of persons who purchase Covered Products on the Internet or in person. The  
26 system shall include age verification by requiring and checking an official government  
27 identification card or verifying through a reputable credit agency the age of anyone who  
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1 purchases Covered Products on the Internet, or of anyone under twenty-six (26) years old who  
2 purchases in person. The system shall be put into place within ninety (90) days of the Effective  
3 Date.

4 **3.4.3.2.** Settling Defendant shall not use advertisements that target  
5 minors. Specifically, Settling Defendant will not use models or images of people that appear to  
6 be younger than twenty-eight (28) years of age, cartoons, art, fashion, or music that is intended  
7 and designed to appeal to people under the legal smoking age in advertisements or promotional  
8 materials that appear in California, including on the Internet. Additionally, Settling Defendant  
9 will not: (a) advertise in any media that has more than 25% under 18 readership; (b) utilize any  
10 form of outdoor advertising within 1,000 feet of any school or playground; (c) advertise using  
11 Instagram; and (d) sponsor any athletic, musical or other cultural events unless such events are  
12 designated as prohibiting patrons under the age of eighteen (18).

13 **3.4.4. Prohibition on Health and Safety Claims.** If Settling Defendant opts to  
14 participate in Section 3.4, Settling Defendant shall not make health and or safety claims unless  
15 such claims have been reviewed and approved by the Federal Food and Drug Administration.  
16 Examples of prohibited claims include the following:

17 **3.4.4.1.** Settling Defendant shall not advertise Covered Products as  
18 smoking-cessation devices. This prohibition includes any claims or testimonials about quitting  
19 smoking, using e-cigarettes as a treatment for tobacco dependence or addiction.

20 **3.4.4.2.** Settling Defendant shall not make any claim that the  
21 Covered Products do not expose users carcinogens or are better or safer than tobacco.

22 **3.4.4.3.** Settling Defendant shall not make any claim that the  
23 Covered Products produce no second hand smoke.

24 **4. PAYMENTS**

25 **4.1.** Settling Defendant shall initially pay to CEH the total sum of \$30,000, which shall  
26 be allocated as follows:  
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1                   **4.1.1.** \$1,375 as a civil penalty pursuant to California Health & Safety Code §  
2 25249.7(b), such money to be apportioned by CEH in accordance with California Health &  
3 Safety Code § 25249.12 (25% to CEH and 75% to the State of California’s Office of  
4 Environmental Health Hazard Assessment).

5                   **4.1.2.** \$2,062 as a payment in lieu of civil penalty pursuant to California Health &  
6 Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use  
7 such funds to continue its work educating and protecting people from exposures to toxic  
8 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
9 Judgment and to purchase and test Settling Defendant’s Products to confirm compliance. In  
10 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
11 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
12 educate and protect the public from exposures to toxic chemicals. The method of selection of  
13 such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

14                   **4.1.3.** \$26,563 as a reimbursement of a portion of CEH’s reasonable attorneys’  
15 fees and costs. This amount shall be divided into two checks: (1) a check for \$23,563 shall be  
16 made payable to Lexington Law Group; and (2) a check for \$3,000 shall be made payable to the  
17 Center for Environmental Health.

18                   **4.1.4.** The payments required under Sections 4.1.1-4.1.3 shall be made in four (4)  
19 separate checks, all to be delivered within ten (10) days following the Effective Date. The  
20 payments required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable to the Center  
21 for Environmental Health. All checks shall be delivered to Mark Todzo at Lexington Law Group  
22 at the address set forth in Section 8.1.2.

23                   **4.1.5.** In the event that Settling Defendant elects not to certify its compliance with  
24 one or more of the optional provisions in Section 3.4 in accordance with that Section, within  
25 ninety (90) days following the Effective Date, Settling Defendant must make an additional  
26 payment for each provision not certified, as follows: (i) \$3,125 if Settling Defendant elects to not  
27 participate in Section 3.4.1; (ii) \$3,125 if Settling Defendant elects to not participate in Section  
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1 3.4.2; (iii) \$3,125 if Settling Defendant elects to not participate in Section 3.4.3; and (iv) \$3,125 if  
2 Settling Defendant elects to not participate in Section 3.4.4. Each of these payments shall be paid  
3 in two separate checks, each payable to the Center for Environmental Health, to be allocated as  
4 follows:

5 **4.1.5.1.** Forty percent (40%) shall constitute a civil penalty pursuant to  
6 California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
7 accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State  
8 of California's Office of Environmental Health Hazard Assessment).

9 **4.1.5.2.** Sixty percent (60%) shall constitute a payment in lieu of civil  
10 penalty pursuant to California Health & Safety Code § 25249.7(b) and California Code of  
11 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and  
12 protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds  
13 to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant's  
14 Products to confirm compliance. In addition, as part of its Community Environmental Action and  
15 Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
16 environmental justice groups working to educate and protect the public from exposures to toxic  
17 chemicals. The method of selection of such groups can be found at the CEH website at  
18 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

## 19 **5. ENFORCEMENT OF CONSENT JUDGMENT**

20 **5.1.** CEH may, by motion or application for an order to show cause before the Superior  
21 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
22 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
23 shall provide Settling Defendant with a Notice of Violation and a copy of any test results which  
24 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
25 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
26 including providing Settling Defendant a reasonable opportunity of at least thirty (30) days to  
27 cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
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1 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
2 Judgment shall be entitled to its reasonable attorney’s fees and costs incurred as a result of such  
3 motion or application. This Consent Judgment may only be enforced by the Parties.

4 **6. MODIFICATION OF CONSENT JUDGMENT**

5 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and  
6 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

7 **7. CLAIMS COVERED AND RELEASE**

8 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH acting  
9 in the public interest and Settling Defendant and Settling Defendant’s parents, officers, directors,  
10 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns  
11 (“Defendant Releasees”) and all entities to whom they distribute or sell or have distributed or sold  
12 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,  
13 franchisees, cooperative members, and licensees (“Downstream Defendant Releasees”), of all  
14 claims alleged in the Complaint in this Action arising from any violation of Proposition 65 that  
15 have been or could have been asserted in the public interest against Settling Defendant and  
16 Downstream Defendant Releasees, regarding the failure to warn about exposure to nicotine and/or  
17 formaldehyde in the Covered Products manufactured, distributed, or sold by Settling Defendant  
18 prior to the Effective Date.

19 **7.2.** CEH, for itself, releases, waives, and forever discharges any and all claims alleged  
20 in the Complaint against Settling Defendant and Downstream Defendant Releasees arising from  
21 any violation of Proposition 65 that have been or could have been asserted regarding the failure to  
22 warn about exposure to nicotine and/or formaldehyde in connection with Covered Products  
23 manufactured, distributed, or sold by Settling Defendant prior to the Effective Date.

24 **7.3.** Compliance with the terms of this Consent Judgment by Settling Defendant and  
25 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
26 Defendant and Downstream Defendant Releasees with respect to any alleged failure to warn  
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1 about nicotine and/or formaldehyde in Covered Products manufactured, distributed, or sold by  
2 Settling Defendant after the Effective Date.

3 **8. PROVISION OF NOTICE**

4 **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the  
5 notice shall be sent by first class and electronic mail as follows:

6 **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to  
7 receive notices pursuant to this Consent Judgment shall be:

8 Anthony Cortez  
9 Greenberg Traurig, LLP  
10 1201 K Street, Suite 1100  
11 Sacramento, CA 95814  
12 cortezan@gtlaw.com

13 **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
14 this Consent Judgment shall be:

15 Mark Todzo  
16 Lexington Law Group  
17 503 Divisadero Street  
18 San Francisco, CA 94117  
19 mtodzo@lexlawgroup.com

20 **8.2.** Any Party may modify the person and address to whom the notice is to be sent by  
21 sending the other Parties notice by first class and electronic mail.

22 **9. COURT APPROVAL**

23 **9.1.** This Consent Judgment shall become effective on the Effective Date, provided  
24 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
25 Settling Defendant shall support approval of such Motion.

26 **9.2.** If this Consent Judgment is not entered by the Court, it shall be of no force or  
27 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
28 purpose.

1     **10.     GOVERNING LAW AND CONSTRUCTION**

2             **10.1.**   The terms and obligations arising from this Consent Judgment shall be construed  
3 and enforced in accordance with the laws of the State of California.

4     **11.     ENTIRE AGREEMENT**

5             **11.1.**   This Consent Judgment contains the sole and entire agreement and understanding  
6 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all  
7 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
8 merged herein and therein.

9             **11.2.**   There are no warranties, representations, or other agreements between CEH and  
10 Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,  
11 express or implied, other than those specifically referred to in this Consent Judgment have been  
12 made by any Party hereto.

13            **11.3.**   No other agreements not specifically contained or referenced herein, oral or  
14 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
15 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
16 any of the Parties hereto only to the extent that they are expressly incorporated herein.

17            **11.4.**   No supplementation, modification, waiver, or termination of this Consent  
18 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

19            **11.5.**   No waiver of any of the provisions of this Consent Judgment shall be deemed or  
20 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
21 such waiver constitute a continuing waiver.

22     **12.     RETENTION OF JURISDICTION**

23            **12.1.**   This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

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

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

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

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

8 **15. EXECUTION IN COUNTERPARTS**

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

11  
12 **IT IS SO STIPULATED:**

13 **CENTER FOR ENVIRONMENTAL HEALTH**

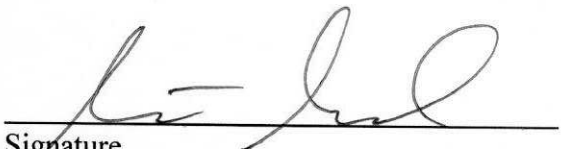
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18 Charlie Pizarro  
19 Associate Director

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**TOTALLY WICKED-E.LIQUID (USA) INCORPORATED**

  
Signature

Scott Spoerl  
Printed Name

Chief Financial Officer  
Title

**IT IS SO ORDERED:**

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Judge of the Superior Court